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PROCEEDINGS AND DEBATES OF THE 98th CONGRESS, SECOND SESSION

SENATE—*Wednesday, February 22, 1984*

(Legislative day of Monday, February 20, 1984)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

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

Let us pray.

Be still—and know that I am God.—Psalm 46: 10.

Patient Father in Heaven, we live so much of our lives in a busy, superficial, noisy environment. We are inundated with an avalanche of words, information, ideas, requests, complaints and suggestions. Teach us the wisdom of contemplation—the luxury of silence—the sheer necessity of withdrawing for quiet reflection. The prophet Isaiah declared, "* * * in quietness and confidence is thy strength." (Isaiah 30: 15). May we heed his counsel. Help us to distinguish between business and mere busyness, that we may approach our heavy responsibilities with sanity and objectivity. We ask this in the name of Him who never neglected people, yet always took time to pray. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. BAKER. I thank the Chair.

SENATE SCHEDULE

Mr. BAKER. Mr. President, after the two leaders are recognized under the standing order today, there will be six special orders, not to exceed 15 minutes each, in favor of Senators JEPSEN, PROXMIRE, BAUCUS, ABDNOR, EXON, and HART.

If all that time is used, it will be close to 12 o'clock before we can get on with the unfinished business. If any time remains before 12 o'clock, I ask unanimous consent that that time be devoted to the transaction of routine morning business, in which Senators may speak for not more than 2 minutes each.

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

Mr. BAKER. Mr. President, that means that if we have not finished the special orders and the leader time before 12 o'clock, there will be no time under that order for the transaction of routine morning business, and the leadership on this side will make an effort to provide for an additional period for routine morning business later in the day. But if we do finish, and I expect that we can, and if time remains before 12 noon, that period will be for the transaction of routine morning business.

At 12 noon or after the execution of the special orders, whichever is the later, the Senate will proceed to the consideration of S. 1765, which is the unfinished business, the death penalty bill, pursuant to the provisions of rule XXII and the postcloture situation. There is a time agreement for a vote at 2:30 p.m. today on final passage.

Mr. President, the time between the time we begin consideration of the bill and 2:30 will be divided on the basis of three-fifths to the minority and two-fifths to the majority, as contemplated by that order.

After we finish the death penalty bill, it is the intention of the leadership on this side to ask the Senate to proceed to the consideration of the career criminal bill, S. 52. I do not know how long that will take, but I do anticipate that it will take the remainder of the day and that there will be votes on that measure, as well as on final passage of the death penalty bill.

Mr. President, I will confer with the minority leader about the schedule of the Senate after that. I am not prepared at this moment to make an announcement, except to say that I do expect the Senate to be in session every day this week through Friday and that we will have business to transact.

Mr. President, I offer my remaining time under the standing order to the distinguished minority leader, if he has need for it.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. JEPSEN). The minority leader is recognized.

Mr. BYRD. I thank the distinguished majority leader.

Mr. President, there is nothing I wish to add at the moment, and I have no Senator who seeks time.

I ask unanimous consent that should I have a statement today, if I should wish it to appear at this point in the RECORD, it so be placed.

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

(Mr. THURMOND assumed the chair.)

RECOGNITION OF SENATOR JEPSEN

Mr. BAKER. Mr. President, I observe that the Senator from Iowa, who has the first special order, is prepared to proceed.

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

DOMESTIC CONTENT LEGISLATION AND JAPANESE BEEF IMPORTS LINKAGE

Mr. JEPSEN. Mr. President, I am alarmed over attempts to link domestic content legislation and Japanese beef imports. Such a linkage would be devastating to American agriculture.

Domestic content legislation would create an endangered agricultural export list, affecting not only my Iowa farmers but all American farmers and allied agribusiness in the United States of America.

Linkage of the legislation to Japanese beef imports would hasten that

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

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process—the process of endangering all our agricultural products to Japan.

Domestic content, Mr. President, may play well in the union halls of Detroit, Mich., but it does not play well in Iowa. The possibility of domestic content legislation passing could be devastating to the economy of my State of Iowa and to the agriculture economy across this country.

Mr. President, as I have made very clear in the past, I support efforts to expand our export markets, in particular where Japan is concerned.

I have not hesitated in the past to criticize Japan for erecting barriers to our agricultural products, including beef which plays such a vital role in the economy of my State.

I think we can and should do more to pull down those barriers. I do not like nor appreciate that Japan imposes not only a quota but a 25-percent import tariff on American beef.

We must do everything possible to get the Japanese to eliminate these barriers, and we have been working overtime to get that done.

I do not like nor appreciate that while American pork is not subject to quota, it is kept at an uncompetitive price with Japanese pork through a variable levy.

We must do everything possible to get the Japanese to do away with this barrier.

But linkage of domestic content legislation with open access for U.S. meat in Japan is a dangerous and unnecessary gamble. It could be counterproductive for beef and all our exports.

This type of Russian roulette is far from a responsible approach to the goal of increased exports.

Our trade negotiators must continue the strongest possible efforts to open these restricted markets, consistent with our international trading obligations and with the vast market in Japan for soybeans, corn and other U.S. farm products.

But while we must increase export volumes of our processed and value-added agricultural products, we greatly value our relationship with Japan as the biggest buyer of our U.S. farm exports.

Our efforts on behalf of the meat industry must not be conducted in such a way as to jeopardize those markets.

The domestic content legislation would represent just such a danger in terms of major potential damage to both our current farm export markets and our efforts toward an eventual open market for U.S. meat and other products in Japan.

I, for one, am not about to vote for creation of an endangered farm export list, which is the very thrust of the domestic content legislation.

Domestic content laws will have the same effect as embargoes and we all know the devastating impact the Carter-imposed Soviet grain embargo had on American agriculture. Our farm economy is still suffering from that embargo.

When the embargo was put in place the brakes were put all the way to the floor on American agriculture. At the same time, the throttle was put all the way to the wall by our competitors around the world in increasing their production.

And our reputation as a reliable supplier in the eyes of all of our potential customers all around the world was shattered. Domestic content will have the same effect.

We are talking about not only billions of dollars of money in the pockets of our farmers but also the potential loss of 423,000 jobs throughout our economy if domestic content is permitted to pass.

Domestic content not only will lead other nations to retaliate but, like the Carter embargo, they will go elsewhere for farm commodities.

And linkage of that bill with Japanese beef imports will hurt American agriculture. Just remember that Japan is by far our largest growth market.

Let me cite a few figures just to make my point:

In 1982, the value of all U.S. agricultural exports to Japan was $5.7 billion.

In 1983, this had gone up to $5.9 billion. This year, it is estimated that the total value will be $6.7 billion.

That $6.7 billion represents 17.2 percent of total U.S. agricultural exports.

Put another way, 17.2 cents out of every export dollar earned by U.S. farmers comes from one single place and that is Japan.

I would like to employ another illustration: In 1982 Japan imported almost 500 million bushels of our corn, and therefore directly affected the livelihood for 7,500 average corn farmers.

I am not about ready to trade 7,500 of my corn farmers for a questionable number of automobiles.

Nor am I willing to jeopardize the $238 million of our beef and veal we sent to Japan at this time. While that is small by comparison with the more than $1 billion of corn we ship to Japan, it still represents 64 percent of the share of the U.S. beef export market. We can do better, yes—but not through domestic content.

I urge my colleagues in the strongest possible terms to reject any notion that linking domestic content with meat exports will do us any good. It will only create an agricultural endangered export list—and I am not willing to do that. Nor, for that matter, do I feel that any of my colleagues, when they fully understand the potential harm here, will be willing to go that route either.

Mr. President, I ask unanimous consent to have printed in the RECORD a table which I have entitled the Domestic Content Endangered Export List.

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

DOMESTIC CONTENT, ENDANGERED EXPORT LIST—MAJOR U.S. AGRICULTURAL EXPORTS AND SHARE OF JAPAN (1982)

	Quantity (1,000 metric tons)			Value (U.S. dollars in million)		
	Total	To Japan	Share of Japan (percent)	Total	To Japan	Share of Japan (percent)
Feed grains	56,196	13,544	24	6,444	1,511	23
Corn [1]	48,789	11,435	23	5,582	1,275	23
Wheat	40,780	3,345	8	6,676	564	8
Soybeans	25,475	4,068	16	6,218	970	16
Cotton [2]	1,392	339	24	1,955	501	26
Tobacco [3]	259	50	19	1,547	310	20
Grain sorghums [1]	6,015	1,870	31	692	205	30
Chickens [4]	237	53	22	245	65	27
Beef and veal [5]	86	53	62	373	238	64
Pork [5]	69	31	45	188	114	61
Oranges and tangerines [6]	353	83	24	196	51	26
Grapefruits [6]	261	140	54	98	47	48
Lemons and limes [6]	135	107	79	84	69	82

[1] Excluding seed.
[2] Excluding linters.
[3] Unmanufactured.
[4] Fresh and frozen.
[5] Excluding offals.
[6] Fresh.

Source: U.S. Department of Agriculture.

Mr. JEPSEN. Mr. President, I shall close by simply pointing out that the commodities on this endangered export list include feed grains, corn, wheat, soybean, cotton, tobacco, grain sorghum, chicken, beef and veal, pork, oranges and tangerines, grapefruits, lemons and limes, a list that this country and the agriculture community of this country must keep healthy and alive.

I thank you, Mr. President.

RECOGNITION OF SENATOR PROXMIRE

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

Mr. PROXMIRE. Thank you, Mr. President.

THE PEOPLE WAY AHEAD OF THE CONGRESS ON NUCLEAR WAR

Mr. PROXMIRE. Mr. President, the Sunday, February 19, Washington Post carried a story by Barry Sussman showing the deep concern of people in the Washington area over the prospect of nuclear war. Adults placed the nuclear arms buildup first by a decisive margin. They were asked to choose 2 from among 10 leading problems facing the United States today, 43 percent of the adults and 65 percent of the youngsters selected the nuclear arms buildup as one of the Nation's two most important problems.

So, nearly half of the adults indicated that they felt that the nuclear arms buildup was more important than all of the other issues that they

were asked about and two out of three young people made that judgment.

Why was the response impressive? To make the nuclear arms buildup the Nation's most important problem was a remarkable response in view of the relatively limited treatment the nuclear arms buildup receives in the press compared to the other nine problems listed in the Post poll. For several months now I have searched leading Wisconsin papers and the Washington Post and the New York Times for stories about the nuclear arms race, nuclear arms negotiations, or some aspect of the nuclear arms story. On many days there is not a single story in any of these papers about the nuclear arms problem: no column, no editorial, no article. Normally, I will find from one to three articles, editorials, or columns a week on this issue in each paper. Occasionally, when the President speaks out on nuclear arms negotiations, the tempo steps up. By comparison the other issues suggested in the Washington Post poll are carried far more frequently.

In the order these problems rated behind the nuclear buildup, they were crime, education, the economy—and, of course, that includes inflation and unemployment—national defense, quality of Government leadership, equal opportunity for women and minorities, the environment, health care, and energy. How about television and radio, where many get their news and their impression of world problems? Certainly there have been some spectacular documentaries on the nuclear arms race such as "The Day After." But there have been far more stories on television on the nine other problems listed in the Post poll. On radio, the nine other problems have virtually excluded discussion of the nuclear arms buildup.

Certainly if we considered time devoted in the Senate and the House to debate and discussions and hearings, as well to the number of bills and resolutions we have introduced, the nuclear arms buildup would place a distant 10 among the 10 problems listed in the poll. Late last year we had one short debate followed by a vote in the Senate that defeated the nuclear freeze. We also had one or two debates on amendments designed to limit nuclear proliferation.

This latest Post poll discloses that in the Washington area 8 out of 10, both among teenagers and adults, favor the nuclear freeze. The figure is similar to nationwide poll findings.

Why these differences between public opinion and Senate action, Mr. President? Is it because Members of this body are better informed than the general public about the consequences of the nuclear arms buildup? After all, we are exposed to more hearings, more debate, pro and con. We have a responsibility to act on these matters. That is our job. And in the process of acting we study the threat of nuclear war and what policies will be most likely to prevent it. This is not the job of most Americans so, presumably, they study the problem less thoroughly.

That is one explanation. But I do not buy it. I have found that almost without exception the best informed scientists, the best informed military experts, including admirals and generals, and the best informed experts on the Soviet Union overwhelmingly warn of the absolutely catastrophic effects of a nuclear war and plead for comprehensive nuclear arms negotiations stopping the arms race cold—including testing. Is the failure of this body—the U.S. Senate—to make the end of the nuclear arms buildup our No. 1 priority because we are too old to care? That is a shocking thought. But the Post poll suggests there may be something to it.

That poll found that teenagers, by a 53-percent majority, felt that a nuclear war was either fairly likely or very likely by the year 2000. That means that most of these youngsters do not expect to live beyond the age of 30, and expect they will probably die in a nuclear war. The Post found that many of these young people worry frequently and have nightmares about nuclear war.

In contrast, among those over 60 only 4 percent worried much about a nuclear war. By the year 2000 many of us now in the Senate will be dead anyway of natural causes. So our Senate age may partly explain our outlook, but only partly. Is our smaller concern about nuclear war caused by the old habits of thinking about conventional war as a way of defending our freedom at a terrible but still acceptable cost?

Have we failed to adjust our thinking to the fact that a nuclear war is an entirely different catastrophe a final catastrophe for our country, surely destroying our freedom and perhaps the human race?

The people of this country, and especially the young people, may not have the detailed information we have on megatonnage, throw-weight, MIRV'd missiles and triads, but they have common sense and a desire to live. They understand what every expert tells us: that most Americans would die in a nuclear war, that we do not stop a nuclear war by simply building more nuclear weapons, and that it therefore makes elemental sense to do everything within our power to negotiate a mutual, verifiable end to the arms race, now.

Mr. President, I ask unanimous consent that the article from the Sunday, February 19, Washington Post to which I have referred by Barry Sussman be printed at this point in the RECORD.

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

[From the Washington Post, Feb. 19, 1984]

YOUNG PEOPLE IN AREA FEAR A NUCLEAR WAR

(By Barry Sussman)

For many young people in the Washington area, perhaps a majority of them, the question about nuclear war seems to be not whether there will be one, but when. Not a week goes by but that most of them don't find themselves thinking about the future holocaust or talking to friends and family about it. Large numbers of them have taken their fears to sleep, dreaming about the bomb. Most think few people will survive after it falls.

Young people feel the urgency of the nuclear peril far more than their parents. It is not that adults don't share the nightmare; they do. But not to the same extent.

We are talking about adolescents here, ages 13 to 17, junior and senior high school students, boys and girls who usually, no doubt, have their minds on more everyday matters like schoolwork or learning to deal with the opposite sex, or pocket money. It would be wrong to visualize them as transfixed by the bomb. But nevertheless, according to the findings of an areawide Washington Post poll, nuclear war intrudes on their thoughts far more than it does on those of older people.

They are young people like Mark Ein, 17, of Bethesda, who has decided that if the Russians don't drop a bomb, then someone else will by the time he is 30 or so. "Eventually nuclear weapons will proliferate to the point where a madman will have one," Ein says, and that will be that.

Or Lottie Siegrist, 13, of Bowie, who says that "the past repeats itself. People never learn from the mistakes of war, and I believe the next war will involve the use of nuclear weapons."

Or James Carter, 17, of the District of Columbia, who feels that "something small, like an assassination attempt, could cause a chain reaction."

Or one 15-year-old Arlington girl, for whom the arithmetic is simple: "the United States and the Soviet Union keep on making more bombs, and sooner or later they will drop them."

We are talking about a generation without much confidence in what their president or their military leaders or even the clergy tell them on this subject, looking mostly to scientists or to parents and school-teachers for answers and not finding much to be optimistic about.

Many are youngsters who don't know their history. Fewer than half are even aware that the United States dropped two atomic bombs on Japan in World War II. But history is the past, and hence not what they are worried about. These young people are worried about the bomb now.

That is how it is with American teen-agers these days, if those in the Washington area are in any way typical. There are many, to be sure, who think nuclear war is unlikely, many who trust their president, many for whom the teen-age joys and sorrows are no different than they were for earlier, safer generations. But they seem to be in the minority.

For most, the nuclear threat, which they have lived with all their lives, is very real. It drives some of them to morbid thoughts and causes others, when asked about such things, to draw some different conclusions

than adults do about who is to blame for this danger and what should be done now.

These findings come from a survery of 519 young people and 771 adults in the D.C. area, conducted during January.

It may be that the results are slightly different from those that would come out of Denver or Birmingham or Minneapolis. Past surveys have shown adults in the Washington area to be slightly more liberal politically than other Americans; perhaps the young people have a slightly different point of view as well.

It may be that some of these teen-agers will change their views as they get older, the way people sometimes "grow out of" asthma or other childhood illnesses. But that is not known.

There are few big differences in the thinking of adults and young people interviewed by The Post, but those differences show up on some of the most significant matters.

"How likely do you think the United States is to get into a nuclear war within this century," one question asked, "very likely, fairly likely, fairly unlikely or very unlikely?"

Among adults, the response from a 58 percent majority is that nuclear war in that time frame is on the unlikely side. Among young people, the result comes out the other way: A majority of 53 percent say it is either fairly or very likely.

By sex, not quite half the boys but fully two-thirds of the girls interviewed feel nuclear bombs are likely to fall by the year 2000.

For the young, convinced as they are that few would survive a nuclear war, a literal interpretation of those figures means that most of them don't expect to like beyond age 30.

On first look, that seems a rash over-statement of the level of concern. But more than 1 in 4 of the young people interviewed—27 percent—say that fear of nuclear war causes them to "worry frequently about death."

By contrast, among those 18 years old or older, only 7 percent—say that. The fact is, the older a person is, the closer to dying of natural causes, the less likely it is for concern of nuclear war to bring on thoughts of dying.

Among people age 60 or older, only 4 percent say fear of the bomb has led them to frequent worries about death, the lowest figure for any age group.

Along the same lines, 1 in every 4 young people—24 percent—says he or she has had dreams about nuclear war, with most of those dreams being nightmares. Only 12 percent of adults say they have dreamt about nuclear war, and a smaller proportion of adults say those dreams were nightmares.

Few have had such dreams often. For young people the average is four times, for adults, three times.

But a number of young people say they had such dreams at least 10 times, and among the adults interviewed, two say they must have dreamt of nuclear devastation 100 times or more.

A majority of the young people also said that they thought or talked about nuclear war at least one or more times a week.

The televised movie, "The Day After," so controversial before it was shown last November, provides another indication of how concern over nuclear war exerts a greater grip on the young.

After widespread discussion, some parents, heeding warnings about the possible damaging effects of the movie, would not let their children watch it.

Nevertheless, according to The Post's survey, 82 percent of those between the ages of 13 and 17 did watch, compared to 64 percent of the adults.

We are dealing with young minds not with people who have given adult thought to who is responsible for world problems and what should be done about them.

So on the one hand, since they are their parents' children, it is not surprising that on most issues these teen-agers pretty much echo adult opinions.

Young people and adults in the Post poll have just about the same views on President Reagan, on whether the nation is headed in the right direction or off on the wrong track (right direction among both groups, by 50 to 37 percent), on which national problems are the most serious, on how they might vote in a Reagan-Walter F. Mondale election (for Mondale, barely), and on many other matters as well.

There is little or no difference on some of the main issues dealing with nuclear peril, either.

Seven in 10 among both young and old believe that no future circumstances could justify the United States being the first to drop a nuclear bomb on another country.

Seven in 10 among both groups also believe that Washington is particularly vulnerable, that in event of nuclear war this area will be hit first.

Just over 8 in 10 teen-agers and adults favor a nuclear freeze in which the United States and the Soviet Union both "halt the testing, production and installation of additional nuclear weapons." That is the same level of support as found in most recent national surveys among adults only.

But on the other hand, the young people not always echo the adults. For one thing, they differ significantly on attitudes toward the Soviet Union. Among adults, 37 percent blame Moscow exclusively and 58 percent blame Moscow and Washington both for the failure to come up with an arms control agreement in the last four years. Among the teen-agers, 30 percent blame the Russians alone and 65 percent blame both nations.

Adults are split 5 to 4 on whether compromise is possible with the Soviet Union, with 53 percent saying it is, but 42 percent taking the view that the Russians "are basically so untrustworthy that it will probably be impossible to work out any solutions."

By 2 to 1, the young are optimistic on negotiating with the Soviets; 65 percent say compromise is possible, compared to 32 percent who say it is not.

Similarly, among adults, 21 percent favor unilateral, gradual dismantling of the American nuclear arsenal in advance of any international agreement; that figure rises to 35 percent among young people.

Reagan has maintained that increasing America's nuclear capability will make a holocaust less likely in that it will make for a stronger deterrent.

Neither a majority of adults nor young people agree with that, but again, there are sharp differences between the two. Adults are narrowly divided, with 44 percent saying the building of more nuclear weapons will increase the chances of nuclear war and 36 percent taking Reagan's view. Among the young people, 62 percent say more A-weapons mean a greater chance of nuclear war and 30 percent see in them a deterrent.

And so it goes. In some areas the differences in outlook are small, some are middle-sized and some large. Almost always, however, they are consistent. They show the young to be more frustrated about the way things are, fearing nuclear war more personally, more anxious to take the first step—any step—toward a solution.

Perhaps the differences may be summed up in the response to one of the poll questions. Agree or disagree: "There's not much hope for the future unless there are some radical changes."

Adults are divided about evenly on that, with 50 percent disagreeing and 47 percent agreeing. Young people are not divided evenly. By 59 percent to 39 percent, they say that there is not much hope without radical change.

IRAN'S GENOCIDE IN TARGETING THE BAHA'I FAITHFUL

Mr. PROXMIRE. Mr. President, the Baha'is persecution by the Iranian Government is receiving more and more media attention.

A February 6, 1984, front-page article in USA Today cites the State Department's 160-nation report on global human rights practices in 1983. The report lists Iran as one of the chief violators of international civility because of its continued jailing and executions without trial of the Baha'i faithful, who number about 350,000 in Iran.

Firuz Kazemzadeh, chairman of Middle Eastern studies at Yale University and the leader of the Baha'is in the United States, states in this newspaper article that:

> Because the Baha'is today abstain from terrorism or revolution against Khomeini, they see with their own eyes that the Baha'is are victims of Khomeini . . . The American Baha'i community knows of more than 160 Baha'is—most of them elected religious officials—who have been executed since Khomeini came to power 4 years ago. Another 600 have been jailed and many more are missing . . . There is no longer any doubt that this is genocide.

Mr. President, the Baha'i faithful is now a worldwide religion with communities in about 100 nations. The Baha'is are a very peace-loving group who believe in equality of sexes, universal education, and the elimination of racial prejudice.

We, as U.S. citizens and lawmakers, committed to universal human rights, can no longer close our eyes to the documented evidence and testimony before us. Let us reaffirm our constitutional commitment to human rights and condemn the senseless actions of the Iranian Government toward the Baha'i faithful by ratifying the Genocide Convention.

The Baha'is and numerous other persecuted groups are crying out to us for help. Let us not allow these cries to fall on deaf ears a moment longer.

POWDER RIVER BASIN COAL LEASE SALE

Mr. PROXMIRE. Mr. President, on February 17, the Commission on Fair Market Value Policy for Federal Coal Leasing released its report which con-

cluded that the Interior Department has mismanaged the Federal coal leasing program. This is hardly a surprise. The General Accounting Office and the House Appropriations Committee reached similar conclusions last year. Three different investigations have now determined that the Department of the Interior sold the public's coal for less than fair market value, which is a violation of the Federal Coal Leasing Amendments Act of 1976.

But we still have not gotten to the bottom of this issue, which is why I have asked the Attorney-General to determine if the law was broken. That the Department of the Interior has not been willing to investigate and eliminate waste and fraud from within its own ranks is self-evident.

We have known about a leak of proprietary information in the Powder River sale since May 1982, but the Department's Inspector-General did not open an investigation until the following year. On May 11, 1983, he issued a widely released report which said that there had been no leak and that the allegations that the Department had slashed its minimum bids before the sale in response to industry pressure were based on nothing more than a rumor. But 2 months later, the Inspector General revised his report, concluding that proprietary information had in fact been released to coal company executives. That information was kept secret. Despite the Congress active interest in the matter, and despite the ongoing Linowes commission's investigation, the reports were not made available. Somebody obviously had something to hide.

When President Reagan came into office, the first thing he said he was going to do was eliminate waste in Government. He also vowed to crack down on corruption. To do so, he said he was going to rely on tough inspector generals. I am afraid that, as evidenced by its handling of the investigation of the Powder River Basin coal lease sale over a 2-year period, the Office of the Inspector General at the Department of the Interior has lost its credibility.

I therefore believe that an investigation by the Justice Department is required. Mr. Linowes, in effect, agrees, as he has noted in his letter to me of February 9, 1984.

I must say that I disagree with Secretary Clark, who has written me that he believes, if further information is needed, that the General Accounting Office be called upon to do a second study of the Powder River sale. The GAO has neither the resources nor the mandate to carry out a criminal investigation, which is what is required at this point.

To restore public confidence, not only in the Department of the Interior's federal leasing programs, but also in Government generally, it is time that we finally get to the bottom of this matter. The resources of the Justice Department should be called upon.

What we have seen in the administration's coal leasing program, as in so many of its other programs, is an abdication of Government's responsibility to protect the public's interest and to enforce the laws that do so. It is time we ended the practice—and indeed the admitted philosophy—of Government which caters only to the special interests.

Mr. President, I ask unanimous consent that copies of my correspondence with Secretary Clark, Attorney General Smith, and Mr. Linowes be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C., February 1, 1984.

Hon. WILLIAM CLARK,
Secretary of the Interior, Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: Last week we learned that the Inspector General of the Department of the Interior has concluded that the Powder River Basin coal lease sale, the subject of Congressional scrutiny for almost two years, was compromised after all. The Inspector General of the Department of the Interior acknowledges that a high level Interior official leaked proprietary data to a coal company lawyer just before the Department of the Interior slashed minimum bids in half for the public's coal, a decision which, according to the General Accounting Office, may have cost the government millions of dollars.

We have known about improprieties in the Power River sale since May 1982, although the Inspector General did not issue a report on the subject until amost a year later, after first refusing to investigate the matter. According to a press release from the Office of the Secretary of the Interior, dated May 12, 1983, the Inspector General concluded that there was no evidence of a leak in the Powder River sale. Two months later, the Office of the Inspector General issued two supplemental reports which concluded that proprietary information had in fact been released to coal company executives. That information was not made available to the Congress or the Linowes Commission until last week, though it clearly should have been.

When President Reagan came into office, the first thing he said he was going to do was eliminate waste-in-government. He also vowed to crack down on corruption. To do so, he said he was going to rely on tough inspector generals. I am afraid that, as evidenced by its handling of the investigation of the Powder River Basin coal lease sale over a two-year period, the Office of Inspector General at the Department of the Interior has lost its credibility.

I think, therefore, that the matter should be turned over to the Department of Justice for investigation of possible wrongdoing. Not only may the Federal Coal Leasing Amendments of 1976 have been violated if the public did not get fair market value for its coal, as the Government Accounting Office has concluded, but also evidence indicates that the Department's regulations and code of ethics were not followed when proprietary information was made available to private industry. At stake is not only the government's coal leasing program, but also public confidence in the integrity of government and your ability to prevent private firms from unjustly enriching themselves at the taxpayers' expense.

Sincerely yours,

WILLIAM PROXMIRE,
U.S. Senator.

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C., February 1, 1984.

Hon. WILLIAM FRENCH SMITH,
Attorney General of the United States, U.S. Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: As you know, there have been alleged improprieties in the Powder River Basin coal lease sale which the Department of the Interior conducted in April 1982. Both the General Accounting Office and the House Appropriations Committee have concluded that the government received less than fair market value for the public's coal, which is a violation of the Federal Coal Leasing Amendments Act of 1976.

In addition, last week we learned that the Inspector General of the Department of the Interior has concluded, belatedly and reluctantly, that the Powder River Basin coal lease sale was compromised after all. After declaring last May that there had been no leak, the Inspector General acknowledged in July that a high-level Interior official gave confidential government data to a coal company lawyer just before the Department of the Interior cut minimum bids for the public's coal in half. This leak—and possible subsequent industry pressure—may have influenced that decision. For unknown reasons, the Department did not make the Inspector General's reports available to either the Congress or the Linowes Commission, which has been investigating the Powder River Basin sale.

Although Gerald McDowell, Chief of the Public Integrity Section, Criminal Division, concluded on November 28, 1983, from what appears to have been a narrow review of the facts of the case, that there were no grounds for criminal prosecution, I believe the new revelations show that there are grounds for a broader and more thorough investigation by the Justice Department. At stake is not only the government's coal leasing program, upon which Congress has placed a moratorium pending conclusion of the Linowes Commission's investigation, but also public confidence in the integrity of government.

Sincerely yours,

WILLIAM PROXMIRE,
U.S. Senator.

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C., February 2, 1984.

Mr. DAVID F. LINOWES,
Chairman, Commission on Fair Market Value, Policy for Federal Coal Leasing, Washington, D.C.

DEAR MR. LINOWES: I look forward to reviewing your report on the Administration's coal leasing program. As you know, many of us in Congress are extremely concerned about its wisdom and management.

From what I have read about the Powder River Basin coal-lease sale, I have concluded that there are grounds for a criminal investigation by the Justice Department. In par-

ticular, I am disturbed that the Department of the Interior Inspector General's reports, which found that the sale was compromised, were not made available either to you or the Congress until last week. To bring this matter to a conclusion which leaves no unanswered questions, I urge you to join me in calling for such an investigation. Good government, as well as the future of federal leasing, requires nothing less.

I have enclosed, for your information, copies of the letters I have written to the Secretary of the Interior and the Attorney General.

Sincerely,

WILLIAM PROXMIRE,
U.S. Senator.

Enclosures.

THE SECRETARY OF THE INTERIOR,
Washington, D.C., February 4, 1984.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: Thank you for your letter of February 1, 1984. I share your questions respecting the events surrounding the Powder River Basin coal lease sale. I am currently obtaining a chronology of the events leading to the sale. However, a key part of our review must be the report of the Commission on Fair Market Value Policy for Federal Coal Leasing which has not yet been submitted. Our latest information is that we may expect the report no later than February 17. I am allotted thirty (30) days to review and assess that report and, I understand, both the report and my assessment will be reviewed by the Congress during the following sixty (60) days.

If further investigation and review of events leading to the Powder River Basin coal lease sale are deemed appropriate, I propose to call upon the General Accounting Office (GAO). It is my understanding from a general discussion of GAO functions with Comptroller General Bowsher that, if a GAO review reveals possible criminal activity, the matter would be referred to the Justice Department.

I appreciate both your concern and that of your colleagues on this or any other issue that may relate to the Department's integrity.

Sincerely,

WILLIAM CLARK.

COMMISSION ON FAIR MARKET VALUE,
POLICY FOR FEDERAL COAL LEASING,
Washington, D.C., February 9, 1984.

Hon. WILLIAM PROXMIRE,
U.S. Senator, Joint Economic Committee,
Washington, D.C.

DEAR SENATOR PROXMIRE: Thank you for your letter dated February 2, 1984 (which was received in this office on February 8, 1984) with which you enclosed copies of your letters to The Honorable William French Smith and The Honorable William Clark, each dated February 1, 1984. I appreciate your sending this material to us.

With reference to the Powder River Basin coal lease sale and the subject Inspector General's reports, the final report of the Commission in Chapter 9 reads as follows:

"The Commission was extremely disturbed that these reports became available only through the efforts of Representative Edward S. Markey. The Commission believes that the Secretary of the Interior should conduct a review to determine why the Commission and the public were not informed of the results of the supplemental investigation in a timely manner. In addition, the Commission finds that the IG's reports do not fully resolve the questions and allegations raised. The Commission concludes that the Secretary, and perhaps the Justice Department, should reexamine the disclosure of the pre-sale appraisals and the subsequent dissemination and use of the information."

The action of the Commission, as stated above, I believe supports your position on this matter.

The printed report will be available for distribution on February 16, 1984. As I mentioned to Mary Muska of your staff, we expect to have the typed report available tomorrow and I shall arrange for an advance copy to be delivered to your office at that time. Meanwhile, I am taking the liberty of enclosing a copy for Chapter 10, Summary of the Report which will be part of the final 550 page report. In this Chapter we print verbatim the relevant part of each Chapter. The material quoted above appears on the bottom on page 532 and continues to the top of 533.

If at any time you would like to discuss all or any part of our report, before or after the printed report is presented to the Congress and the Secretary of the Interior, I would be pleased to make arrangements to meet with you at your convenience.

Sincerely,

DAVID F. LINOWES,
Chairman.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

WISCONSIN STUDENTS SPEAK OUT ON EDUCATION REFORM

Mr. KASTEN. Mr. President, one of our Nation's most valuable resources for building a better future is education. It is the foundation of our free society and it has insured this country's strength from one generation to the next.

We have all heard the warnings of the National Commission on Excellence in Education—our education system has been steadily declining over the past decade and is in need of reform.

The Commission's blunt assessment has sparked a renewed national interest in education and a myriad of legislative proposals to remedy the problems. And there has been no shortage of experts offering their advice on how we should improve education.

But up until now, one group has been largely excluded from the education debate. Washington has for the most part ignored the largest education constituency—the students.

We have seen recommendations from and heard the testimony of teachers, principals, business people, college professors, Government officials and other experts, but we have not given due consideration to the views of those individuals who have the greatest stake in educational reform.

Last month, I distributed education surveys to over 3,000 students at six different schools in Wisconsin. Then I visited these students at public and private schools across the State to learn more about their opinions on the recommendations of the National Commission on Excellence in Education and to hear more on what they think about the education they are receiving.

I was inspired by the students' interest in making the system better. They were optimistic and eager to express their opinions and to offer their suggestions for improving education.

There are innovative things taking place in our schools. I saw students engrossed in robotics, math, and science projects. I saw student-programed computers at work. But we need to acknowledge, as the students did, that there is still room for improvement.

Mr. President, the results of my survey and the student forums are in no way scientific. But the responses from school to school are remarkably consistent and they bring to light some important points which I think warrant our attention here in the Senate.

The unanimous message from students was this. If we want to improve education, the key is to improve students' motivation: 64.6 percent of the students surveyed said that tougher graduation requirements would not improve their education. And two-thirds said that the most critical factor is improving students' motivation to learn.

During my first meeting at Aquinas High, a private school in La Crosse, one student remarked that many students are apathetic toward learning, saying that, "We're here to learn something. We've got to develop our minds better." According to Father Robert Altmann, principal of Aquinas, 90 percent of Aquinas students go on to college and nearly two-thirds meet or exceed the increased graduation requirements proposed by the National Commission on Excellence in Education. Yet they still see room for improvement in education and think that motivation is the key ingredient to success.

The students at the other private school I visited, Premontre High in Green Bay, shared the "motivation" concern and those thoughts were echoed in the public schools. Most students felt that the primary challenge lies with the students, not the teachers; 65.4 percent rated their teachers as good and 13.4 percent rated them as excellent.

At Chippewa Falls High School, one student put it this way: "If students

want a good education, they can try harder in classes, and that is the bottom line. The best teachers in the country are of no use if a student doesn't want to try his or her best to learn." David Lindahl, principal of Chippewa Falls High, pointed out that his students have already demonstrated a great degree of motivation and the results are paying off—his students have outperformed students statewide and nationwide on the ACT tests, where Wisconsin already rates No. 1 in the Nation.

Nearly 76 percent of the students said that they did not feel that lengthening the amount of time in school would do much to improve education.

A student at Middleton High School made this point: "I think that you should improve the quality of time which is already spent in school—quality not quantity." Principal Dr. Brad Allison and student council president and forum moderator, Dan Feller, noted that students already have an 8-hour day.

Two students at Cudahy High put it this way: "Lengthening the school day or year cannot make up for a lack of student enthusiasm." Then, "If school stays boring and uninteresting, raising the standards or amount of time will only worsen the problem stated by the Commission." As we discussed the Cudahy curriculum, principal Harold Lorenz made it clear he shares his students' no-nonsense philosophy.

Students repeatedly emphasized that we must start educational improvements at the elementary and secondary level, focusing some of our attention on the most impressionable students.

A student from D.C. Everest High School in Schofield said, "I personally think that the major problem starts in the grade schools * * * students slip behind and are pushed through * * * then when they reach high school, they're not prepared." D.C. Everest is well known throughout the State for its strong curriculum, as Principal Roger Dodd noted. Student council president, Mike Mundy, exemplified the students' pride in their school, but acknowledged that even they could be better. Another Everest student noted, "The problems do not start in 10th or 11th grade but evolve from the early years."

Overwhelmingly, students rated their education as adequate; 65.7 percent rated it as good; 22.7 percent rated it as excellent; and 64.5 percent rated it as superior to the education their parents received. Students emphasize that while the quality of education may be slipping, our expectations also may be higher than they were in the past. An Aquinas student remarked, "I've always wanted my parents to sit down and help me with homework. But it hasn't happened because the degree of difficulty has gone up so much since my parents have gone to school."

Over two-thirds of the students felt that some of the school day was wasted but over 70 percent said that discipline was not much of a problem. But one Chippewa Falls student noted, "I feel that when my parents were in school, there was more respect and discipline."

Mike Hermes, student council president of Premontre High, an all boys parochial school, shared with principal Father Gary Neville's view that discipline is not a problem in their school. The parochial school students felt strongly about this: 81 percent said discipline was not a problem compared to 66 percent who said the same in the public schools.

Although the responses from private schools were generally the same as those from public schools, there were two other areas where they differed significantly: 38.4 percent of parochial school students rated their education as excellent compared to 15.2 percent in the public schools, but 70.1 percent of public school students still felt that their education was good; 56.7 percent of the private school students rated their education as good.

There were many students and teachers at each school who provided invaluable assistance in calculating the survey results. Although time and space prevents me from mentioning every name. I would like to thank and commend these individuals for the fine job that they did. Principals Father Robert Altmann, Dr. Brad Allison, Roger Dodd, David Lindahl, Harold Lorenz, and Assistant Principal Father Gary Neville also deserve applause for their instrumental role in organizing the forums. Finally, I have nothing but praise for the students who came forth with tough questions and candid comments on the surveys and during our meetings to make this venture the success that it was.

Mr. President, as Members of Congress, we have an obligation to consider the views of all of our constituents. When it comes to education, we should give serious thought to what the students have to say.

Recently, I was appointed chairman of the Senate Republican Task Force on initiatives to strengthen schools. I think my experiences in the schools and the students' comments will be valuable to the task force as we develop education initiatives.

I have learned a lot from the students in Wisconsin. Having the opportunity to discuss education reform with students provided me with new insights that would be impossible to obtain here in Washington. These forums have reaffirmed my belief that productive exchanges between students and the Government can and should take place.

We must give tomorrow's leaders a chance to express their ideas on the education problem so they can contribute to an effective agenda for the future. I think more hearings of this nature will serve to reinforce Congress commitment to providing leadership in education.

I plan to hold more hearings in my State, and I strongly urge that my colleagues also seek out students' opinions on this critical national issue.

Mr. President, I ask unanimous consent that the results of my Wisconsin student surveys be printed in the RECORD at this point.

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

U.S. SENATOR BOB KASTEN'S 1984 EDUCATION QUESTIONNAIRE FOR HIGH SCHOOL STUDENTS

	All students	Public	Private	Seniors
1. Overall, how would you rate the high school education you are receiving?				
Excellent	22.7	15.2	38.4	19.4
Good	65.7	70.1	56.7	62.0
Fair	10.6	13.5	4.3	17.0
Poor	1.0	1.2	.6	1.6
2. How would you compare your high school education to what your parents received?				
Superior to	64.5	64.4	64.6	65.1
About the same	28.5	28.0	29.5	26.2
Inferior to	7.0	7.6	5.8	8.7
3. Do you find that good grades are:				
Easier to get than they really should be	9.8	11.3	6.8	18.6
About the way they should be	79.2	77.5	82.8	75.9
Too difficult to get	11.0	11.2	10.4	5.5
4. Do you feel that any of your school day is wasted?				
Much is wasted	9.1	9.9	7.4	12.4
Some is wasted	60.1	60.3	59.7	60.0
None is wasted	30.8	29.8	32.9	27.6
5. Do you feel you would get more out of your courses if homework assignments were increased?				
Yes	18.6	21.9	11.6	19.5
No	81.4	78.1	88.4	80.5
6. Do you feel that you would receive a better education if graduation requirements at your school were strengthened?				
Yes	35.4	37.0	32.0	32.8
No	64.6	63.0	68.0	67.2
7. The National Commission on Education has recommended lengthening the schoolday by1 hr and the school year by 1 mo. Which do you think would improve education?				
Longer day	14.4	16.0	12.0	12.0
Longer school year	7.0	7.0	7.0	.8
Both	3.0	3.0	3.0	.7
Neither	75.6	74.0	78.0	72.5
8. Overall, how would you rate the quality of your teachers?				
Outstanding	13.4	10.0	21.0	10.3
Good	65.4	64.0	66.0	62.9
Farr	19.3	23.0	12.0	25.7
Poor	1.9	3.0	1.0	.2
9. Is it your impression that most of your teachers:				
Are very happy doing what they are doing	30.1	25.0	40.0	27.0
Enjoy their jobs, at least to some extent	66.0	70.0	58.0	67.0
Are frustrated and unhappy and unhappy in their positions	3.9	5.0	2.0	6.0
10. A lack of discipline in a classroom can detract from a learning environment. How much of a problem is discipline in your classes?				
Not much of a problem	71.2	66.0	81.0	73.0
Somewhat of a problem	25.6	30.0	16.0	26.2
A serious problem	3.2	4.0	3.0	.3
11. What is your impression of teachers' salaries?				
Too high	4.4	4.0	5.0	6.0

U.S. SENATOR BOB KASTEN'S 1984 EDUCATION QUESTIONNAIRE FOR HIGH SCHOOL STUDENTS—Continued

	All students	Public	Private	Seniors
About right	32.5	35.2	26.9	33.0
A little too low	44.9	43.2	48.3	41.0
Much too low	18.2	17.6	19.8	20.0
12. With regard to the level of funding your high school receives:				
Too much money is spent at the school	5.3	5.7	3.7	6.0
About the right amount of money is spent	64.0	68.4	47.2	60.0
Our school is being short-changed	30.7	25.8	49.1	34.0
13. What is your level of confidence that you will be able to either gain admission and succeed in college, or find the type of job you want:				
Certain I will be successful	47.3	43.7	54.9	50.0
Not sure	45.0	47.1	40.6	42.0
Am worried	7.6	9.1	4.4	8.0
14. What do you think is the most critical factor to improving education?				
Improving the quality of teachers	14.4	14.8	13.6	18.0
Improving the curriculum	19.3	20.0	17.7	17.0
Improving students' motivation to learn	66.2	65.1	68.6	65.0
15. How interested are your parents in your education?				
Very interested	69.1	64.8	78.2	68.0
Somewhat interested	27.9	31.3	20.6	28.0
Not at all interested	3.0	3.9	1.1	4.0

Mr. KASTEN. 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. BAUCUS. 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 BAUCUS

The PRESIDING OFFICER (Mr. KASTEN). Under the previous order, the Senator from Montana (Mr. BAUCUS) is recognized for not to exceed 15 minutes.

JAPANESE BEEF

AMERICA'S BEEF WITH JAPAN

Mr. BAUCUS. Mr. President, last week our trade negotiators sat down again with their Japanese counterparts to discuss Japan's barriers against imports of U.S. beef. Some progress occurred, but not very much. The main issues remain unresolved. And time is running out.

So today, with several of my colleagues, I must reemphasize that I have a beef with Japan.

GENERAL BACKGROUND

The Commerce Department just announed the U.S. trade deficit for 1983: $70 billion. The largest component of this deficit was an astonishing $19 billion trade deficit with Japan.

One way Japan has achieved this significant trade advantage over the United States has been by maintaining a system of quotas, tariffs, and other barriers to imports of American products.

The Office of the U.S. Trade Representative has noted that:

> A widespread perception persists among Japan's trading partners . . . and not incorrectly, that the Japanese market remains relatively less open to foreign suppliers when compared to access for Japanese goods and services to their markets.

JAPANESE BEEF IMPORT BARRIERS

Some of the most imposing barriers block imports of one of America's most competitive products: beef. These barriers take two general forms.

The most straightforward barrier is the beef quota system. All beef imports are subject to this system. Designed to protect the Japanese cattle industry, the quota now permits only 30,800 tons of high quality beef imports per year. America is the world's leading producer of high quality beef, and our exports to Japan under this quota represent the equivalent of one good ten ounce American steak, per year, for each Japanese consumer.

The second barrier is a web of additional tariff and nontariff restrictions. Besides the quota, our high quality beef is subject to a 25-percent tariff, an artificial pricing system, procurement by an exclusive importing agent, and a web of complex licensing requirements. By the time our steak hits the Japanese retail market, the same pound of boneless American sirloin that costs a Montana consumer $3.50 costs the Japanese consumer $14.15.

THE UNITED STATES-JAPANESE BEEF AGREEMENT

During the Tokyo round of multilateral trade negotiations that concluded in 1979, the United States and Japan signed a 5-year bilateral agreement with specific provisions governing our high-quality beef exports to Japan. Under this agreement, Japan agreed to gradually increase the quota for high quality beef from about 16,000 tons to 30,000 tons. Japan further pledged to negotiate on ways to further expand the importation of high quality beef in 1984 and thereafter to the mutual benefit of both countries.

In return, the United States agreed not to invoke remedies under United States and international trade laws.

This bilateral agreement was hailed by both sides as fair and as a good step toward a more mature United States-Japan trade relationship.

The 5-year agreement expires this March 31. Negotiations to replace it, with a more liberal agreement are underway. Unfortunately, the Japanese Government has now hidden behind the recent electoral setback, for the ruling Liberal Democratic Party, to explain its reluctance to offer more than a token increase in the quota. In addition, Japan has flatly rejected any changes in its procurement and pricing policies and has flatly refused to bind the 25-percent tariff.

THE SENATE'S CONCERN

Mr. President, the Senate already has indicated its concern about these issues.

On July 14, 1983, I and 51 other Senators sent a letter to Japanese Prime Minister Nakasone. This letter said that Japan's barriers to imports of U.S. beef remain one of our most important bilateral issues. It concluded by asking the Japanese to join us in the spirit of free trade "in reaching a new agreement liberalizing the treatment of American beef."

And on October 31, 1983, we approved by a vote of 92 to 6, my resolution expressing the sense of the Senate that "the U.S. negotiators should insist that Japan dismantle all nontariff barriers to imports of beef" and that "if negotiations do not result in satisfactory progress toward the dismantling of all nontariff barriers the U.S. trade representatives should seek appropriate relief under United States and international trade law."

But, still, despite passage of that resolution, Japan's negotiators refuse to offer reasonable concessions.

A QUESTION OF FAIRNESS

Mr. President, America accords near-free access to the products Japan produces competitively. We are proud of our free trade record, and our consumers have benefited greatly from this policy.

Given our established record of free trade policies, and given the massive bilateral trade surplus Japan has accumulated because of these policies, I am dismayed by Japan's refusal to give us a fair chance to sell them American beef. They deny U.S. cattlemen the same treatment America routinely accords Japanese manufacturers.

The issue before us today is essentially one of fairness. We cannot permit the Japanese to exploit our trade policies for their exclusive benefit. We want the Japanese to affirm their own commitment to basic principles of free trade.

To encourage this, we must show the Japanese that we mean business. After witnessing long, frustrating, and unproductive negotiations, I have reluctantly concluded that, unless a satisfactory new agreement is reached, we must retaliate. Specifically, I have announced that I will link my vote on the so-called domestic content legislation to the achievement of a satisfactory new beef agreement. And I have urged other Senators from agricultural States to do the same.

By linking these two issues, I hope to make one point clear: To sustain broad international support, a free trade system must be reciprocal. Eventually, the Japanese must acknowledge this point. The beef negotiations give them an excellent opportunity to do so.

CONCLUSION

I stand here today as a good friend of the Japanese people. I want to strengthen American-Japanese relations, not weaken them. I want our countries to move closer to a mature trading relationship, not slide toward a mutually destructive trade war.

We can achieve these goals. But the Japanese must do their part. They must demonstrate that trade is a two-way street.

Therefore, I respectfully call on the Government of Japan to dismantle its protectionist barriers. Then American cattlemen can change their slogan from "We have a beef with Japan" to "We have beef for Japan."

CORRECTING MISCONCEPTIONS ON THE JAPANESE BEEF ISSUE

Mr. President, as the beef negotiations enter the critical final stage, I believe it is essential that we correct the misconceptions and misleading arguments that critics of our efforts to liberalize the Japanese beef import quota have made. I believe a question-and-answer format is the best way to refute these arguments.

Therefore, I would now like to describe a series of questions which often have been asked about our efforts, and then answer those questions.

QUESTION

Why make such a fuss over the beef issue? After all, the potential market in Japan for American beef is negligible compared to our massive trade deficit with Japan.

ANSWER

Estimates made by various analysts indicate that elimination of the Japanese beef quota could lead to additional U.S. beef exports of perhaps as much as $500 million; $500 million may not mean much to the ivory tower economists who use decimal points when they talk about anything less than a billion dollars. In Montana, we think half a billion dollars is worth fighting for. To show how strong they feel about this issue, 25 Montanans came to Washington to attend a Montana beef luncheon I hosted earlier this month. The Japanese Ambassador was our guest of honor, and 20 other Japanese officials and business leaders joined us. Luncheon sponsors included the National Cattlemen's Association, the National Meat Association, and the American Meat Institute. These organizations know full well the significance of a market increase of half a billion dollars to the U.S. cattle industry.

We must also acknowledge that there is no accurate way to gage Japanese consumer demand if the Japanese market is opened up and pricing made more reasonable. The only time in Japanese history when they opened their markets fully to beef imports—in the mid-1950's—beef came into the market at such a rate that the Japanese soon thereafter closed the door. It has never been fully reopened since. I, for one, question the validity of any figure that is used for market potential for beef in view of Japan's traditional closed-door policies.

QUESTION

But would not more beef exports hurt our grain industry which already exports considerable quantities of cattle feed to Japan?

ANSWER

Not at all. Keep in mind that our grain exporters are paid in dollars. It is irrelevant to them whether these dollars come from grain sold to feed Japanese cattle or grain sold to American cattlemen who will send their grain-fed beef to Japan.

In addition, an opening of the Japanese market to imports coupled with a more consumer-oriented Japanese pricing policy will stimulate competitive Japanese beef production as well as demand for imports.

QUESTION

The Japanese people historically have not included meat in their diet. What makes you think they would start doing it now?

ANSWER

Meat indeed has not been a fixture in the Japanese diet. In fact, meat was subject to an unwritten taboo under Buddhist influence until the Meiji restoration. Meat consumption did not increase much after that period because of generalized poverty, the insular nature of the Japanese society, and a slow breakdown in the longstanding taboo.

The post-World War II era has wrought many changes in Japan, and diet is one of them. As Japanese income rose, the diet diversified. Demand for red meat rose, and was met for the most part during the fifties and sixties by slaughtering the large herd of increasingly redundant draught animals.

Japan, however, had no established beef industry as such, and Government policy began to steer consumers deliberately toward the more efficient chicken and pork industries.

Between 1960 and 1980, Japanese meat consumption rose more than fourfold, from 5 to 22.5 kilograms per capita per year. Chicken consumption rose fortyfold during this period, pork tenfold. Beef consumption tripled, a remarkable rise considering the prohibitive pricing on beef.

These figures clearly show that the Japanese want more meat. They have been prevented from consuming more red meat because of their inefficient beef industry and the barriers they have maintained against beef imports.

QUESTION

The Japanese do not like our type of beef. They are used to the highly marbled Kobe beef. What makes you think they will change their habits?

ANSWER

So-called Kobe beef, the highly marbled beef from Wagyu cattle, is truly a product for a very limited clientele. It can cost up to $120 per pound, and is well out of reach to all but a few Japanese. The Japanese have increasingly adopted lower quality Japanese and imported beef to their tastes in cooking. According to John Longworth, who wrote the benchmark study, Beef in Japan:

> It seems that many sections of the Japanese meat trade now regard the best cuts from the United States as comparable in quality not only to the best dairy steer but also to all except supergrade Wagyu meat.

Longworth went on to say that:

> * * * some hotels and restaurants now serve imported high quality beef Wagyu which, of course, further enhances it acceptability.

I have no accurate way of determining how the Japanese consumer would respond to our beef. I only ask that we be given the chance to serve them our beef. We will cut it any way they like it.

QUESTION

Will free access for imported beef destroy the Japanese beef industry?

ANSWER

No. It will make it more competitive. The 25-percent tariff and shipping costs give a substantial built-in pricing advantage for the domestic Japanese cattle industry. By any standard, these are generous protectionist tools. Removing the quota will end the guaranteed market of domestic producers and force them to be more competitive.

An article in the September 1983 issue of Challenge took this argument even further:

> Protection from imports and support of prices not only maintain the existing structure of Japanese agriculture, they also cause high land prices. Consequently, a strong case can be made that greater imports and lower prices would speed up—not slow down—the process of structural adjustment.

QUESTION

The rural Japanese electorate is of critical importance to the ruling Liberal Democratic Party. The LDP, and other Japanese parties, appear committed to maintaining the livelihood of these rural constituents. How can you make this policy compatible with increased beef imports and lower prices?

ANSWER

Economists in both the United States and Japan have argued that direct payments to Japanese cattlemen affected by beef imports could maintain their income levels while bringing important benefits to Japanese consumers. These same economists believe that the advantages to Japan of increased imports, lower consumer prices, and payments to Japa-

nese farmers far outweigh the benefits—financial or otherwise—of maintaining the current protectionist policies.

For example, let me quote from a recent policy statement by the Keidanren, the Japanese Federation of Economic Organizations.

Japan's agricultural policy is geared toward protecting farmers, while it ignores industrial users and individual consumers of farm products. In fiscal 1982 farm subsidies totaled 2.3 trillion yen, or about 4.6 percent of the Government's general account budget. But agricultural productivity has not increased in proportion to the huge amounts of Government assistance, and farm product prices remain high. This situation not only makes the people's lives more difficult but also hinders Japan's food industry from becoming as competitive as its foreign counterparts.

Demands from abroad that Japan liberalize its agricultural trade are becoming increasingly strident. It is imperative that the nation establish an agricultural policy benefitting an open economy and obtain a stable food supply that will meet the people's needs.

In addition, Yoshiaki Iwao, a respected journalist with the Japanese newspaper SanKei Shimbum, and a critic of U.S. efforts to eliminate the beef quota, recently wrote in a letter to the JAMA Forum:

We should not forget that without the export of automobiles and steel, we cannot maintain our agriculture. It is also true that Japanese agriculture, in large part, has lost its competitiveness because of the heavy subsidies and this situation has forced an unreasonable burden on the Japanese consumer.

Quoting further from the same reporter:

The Japanese farmers and consumers should realize that Japan will have to remain a trading nation and should take the cool and realistic attitude that the demand for liberalization from the U.S. will bring with it the advantage of compelling Japanese agriculture to modernize.

QUESTION

Is the U.S. call for Japan to break down its meat import barriers inconsistent with U.S. policy that also restricts meat imports?

ANSWER

The U.S. Meat Import Act of 1979 is not relevant to the issue of Japan removing its beef import barriers. Japan exports no beef to the United States and is not likely to do so in the future.

Japan does not consider the Meat Import Act a barrier to their trade. The United States does consider Japanese restrictions important barriers to our trade. It must be mentioned also that the United States is a major importer of beef. We would feel no need for a quota if we could freely sell our beef abroad.

QUESTION

Can the United States be trusted as a supplier? Look at the 1973 U.S. embargo on soybean exports.

ANSWER

I believe that the soybean embargo has been seriously distorted by the Japanese media and analysts. You must remember that the U.S. administration in 1973 quickly realized that the embargo was a mistake. The embargo lasted only 3 weeks, and Japan imported more soybeans in 1973 than any other year.

I support legislative changes—such as those in the Export Administration Act that Congress now is considering—that would make agricultural embargoes much less likely in the future.

What is more, Japan's beef is fed mainly by U.S. feed grains. Thus, its beef industry already depends on U.S. sources.

QUESTION

Japan has legitimate needs for food security. Must not the beef industry, a young industry, be protected if it is to grow?

ANSWER

This is faulty reasoning. Dropping import restrictions will increase competition and lead to a better allocation of resources in the agricultural sector. This will better serve Japan's long-term food security needs and will lower prices to the consumer.

QUESTION

Japan already imports 30 percent of the beef it consumes. This is the highest of any industrialized country. Why should Japan be asked to do more when it is already doing more than others?

ANSWER

It is a matter of fairness. The United States accords near-free access to the goods Japan produces competitively, and Japan should do the same for the products we produce competitively. Our agricultural products should be allowed to compete fairly for the Japanese market.

QUESTION

How can you invoke free trade principles when the United States has invoked protectionist remedies against Japanese steel, motorcycles, and textiles?

ANSWER

I never claimed that the United States was 100 percent pure on trade. I did say that the United States accords broad access to many competitive Japanese products. Our $19 billion trade deficit with Japan attests to this.

QUESTION

Does international law recognize a distinction between agricultural trade and other trade?

ANSWER

It does indeed, but one not relevant to this case. The subsidies code distinguishes between subsidies for agricultural products and for other products. And agricultural quotas are permitted in certain limited situations. But neither of these distinctions applies here.

QUESTION

Is it inconsistent to claim Japan violates GATT when the United States got a GATT waiver for many of its agricultural programs?

ANSWER

No. The 1950's GATT waiver was obtained entirely consistent with international trade law. If Japan believes it deserves a similar waiver, it can apply for one.

QUESTION

The Japanese are already the largest purchaser of American agricultural products. Should not this entitle them to the privilege of picking the mix of products they wish to buy?

ANSWER

This is like suggesting that the United States, the largest purchaser of Japanese manufactured goods, be accorded the privilege of buying cars but barring radios, importing TV's but no calculators. It is totally inconsistent with the principles of free and fair trade.

QUESTION

Why have you chosen to link your vote on domestic content legislation to the beef talks rather than be satisfied with the standard procedure of retaliating under section 301 of the Trade Act?

ANSWER

I see no other way to convince Japan how serious the beef issue is.

As we all know, the Japanese have argued that America benefits from competition with Japanese imports, because it leads to structural adjustments favoring our most competitive industries. We generally have accepted this argument—and our automobile, steel, and electronic workers have suffered the pains of adjustment. But when we play the same argument back to the Japanese, they object. They say that domestic political considerations prevent them from opening up their beef market. They invoke the political power of the rural Japanese electorate.

Apparently the Japanese think it is wrong to protect American workers, but not Japanese farmers. And apparently they assume that Senators from agricultural States—the leaders of the old free trade coalition—will automatically support free trade, regardless of whether Japan maintains its barriers against imports of U.S. beef and other products.

We must show Japan that these assumptions are false. If the current negotiations fail, we certainly should pursue a section 301 trade complaint with the GATT in Geneva. But that may not be enough. Therefore, I have reluctantly concluded that, unless a satisfactory new agreement is reached, we must do even more. That is why I have decided to link my vote on do-

mestic content to the achievement of a satisfactory new beef agreement.

I do this even though I am philosophically opposed to domestic content legislation. It tends to be restrictive and counterproductive, and it tends to force up prices unnecessarily. But I strongly believe that the only way we can knock some sense into Japan on this issue is for us in the United States—including Members of Congress and the administration—to stand a little taller for American trade.

Mr. President, I see Senator SYMMS, of Idaho, and Senator HEFLIN, of Alabama, on the floor. If Senator SYMMS wants to speak at this time, I would be glad to yield to him and then to Senator HEFLIN.

Mr. SYMMS. I thank the distinguished Senator from Montana, Mr. President. I am pleased to join with him in the discussion today concerning the ability of American meat producers to market their products in Japan. Historically, Japan has been the No. 1 export market for U.S. beef and pork. It is now the No. 2 export market for U.S. variety meats. The demand for U.S. high quality meats in Japan is strong, and this evidenced by America's increased share of the Japanese beef market over the last 4 years.

Nevertheless, gaining access to the Japanese market has been difficult at best. The Government of Japan openly restricts meat imports with quotas, Government buying programs, and domestic pricing mechanisms designed to make imported meats less price competitive.

Japan monitors beef imports, for example, through a quota system. Each year, the Government of Japan issues a general beef quota which states the amount of beef Japan will import from all sources. The private sector is allocated about 10 percent of this quota, with Japan's Livestock Industry Promotion Corp., a quasi-governmental group, controlling 90 percent of the general quota.

Under the general quota, Japan has agreed to import an annual allotment of high-quality, grain-fed beef. Recently, the Government of Japan announced an additional beef import allocation of 29,000 metric tons (MT) for the second half of Japan's 1983 fiscal year March 1983-April 1984. When combined with a previously announced quota of 40,000 MT, this new allocation brings Japan's second half beef quota to 69,000 MT.

Also, the Government of Japan issued a 72,000 MT beef import quota for the first half of Japan's 1983 fiscal year, bringing the total fiscal year import allocation to 141,000 MT, a 4,000 MT increase over Japan's 1982 fiscal year.

In addition to the general quota, the Government of Japan issues a special quota. This quota has four categories: hotel, school, lunch, Okinawa, and boiled beef.

Added to its quota system, the Government of Japan assesses a 25-percent CIF import duty on U.S. beef products.

I repeat, Mr. President, 25 percent. The average ad valorem duty on Japanese products entering the United States, however, is not 25 percent, it is not 15 percent, it is not 10 percent. It is 2.5 percent, Mr. President. Some difference between that and the 25 percent assessed against our products.

By the time the Government of Japan assesses its import duty and U.S. beef travels through Japan's complicated distribution system, products can cost three to five times the delivered price.

While I am pleased that Japan has recently announced and increased its quotas, I do not believe their actions address the major trade issue we have with Japan, which is reciprocal market access. It would be unrealistic to believe that agricultural exports alone could correct our multibillion-dollar trade deficit with Japan. However, the Japanese should be asked to grant the same type of access to their domestic market that other trading nations, including the United States, grant to their products.

Mr. President, I think the Senator from Montana is making a good contribution today. He knows, as we all do, that the problem, of course, in Japan from a political standpoint is that a downtown Tokyo member of the Japanese Diet represents 2 million people. The farmer representative from North Hokkaido represents 20,000 people. They have the control of the Diet based on the geographical distribution of the votes. I appeal to those people from industries, from the banking industry and so forth, in Japan who do have the political clout to appeal to their own colleagues and countrymen that if they fail to open up beef and other agriculture markets for American products they are only asking for retaliation from the United States. It would be, indeed, tragic and unfortunate if that were to come about, but I think from a realistic standpoint the drumbeat of retaliation is beckoning closer and closer all the time. I for one would not like to see it. However, I think from a realistic standpoint the Japanese must understand, if they want to continue to have the large share of the American automobile market and the American electronics market that they now enjoy, they are going to have to give ground and accept some American agriculture products; it would be in the best interests of the Japanese consumer.

The Senator from Montana is absolutely correct. Our high-quality, grain-fed beef can compete very, very well with Japanese Kobe beef, and it does compete well when given the opportunity. With any kind of fair treatment with respect to the pricing, we could have a big market in that country. We need that market in order to continue to trade with our friends in Japan.

Mr. President, I yield the floor to the Senator from Alabama.

Mr. ZORINSKY. Mr. President, I have a beef with Japan.

Our friends in the Orient do so many things very well, from electronics and cars to high-quality manufactured products, but they cannot produce beef in volume as economically or of such high quality as we do in America.

My State of Nebraska, Mr. President, is known as the "Beef State." We had an official commemorative postage stamp issued attesting to that fact just a few years ago. We rank second in the country in cattle production and would like to export more of our high quality beef to Japan where it has already been well accepted by the Japanese citizens.

The primary problem for our beef producers is access to the Japanese market. The current high-quality quota of 30,000 metric tons is insignificant compared to consumer demand in Japan. This quota must be substantially liberalized by the Japanese no later than April 1, 1984.

The role of the Japanese Livestock Industry Promotion Corp. (LIPC) must be altered so that our Nation's beef packers may deal more directly with private Japanese buyers.

The United States must obtain, in addition to any short-term agreements now being negotiated, a commitment to, first, further liberalize the Japanese market, and, second, a timetable to obtain this goal.

The Nebraska Livestock Feeders Association has sent me the resolution unanimously approved at the recent meeting of the National Cattleman's Association in New Orleans. I ask unanimous consent that their resolution be printed at this point in the RECORD.

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

TRADE WITH JAPAN

Whereas, for the past decade and a half the United States has made a concerted effort to persuade Japan to open the Japanese economy to foreign goods, services and investments; and

Whereas, a widespread perception persists among Japan's trading partners, including the U.S., the E.C., and others, and not incorrectly, that the Japanese market remains relatively less open to foreign suppliers when compared to access for Japanese goods and services in their markets; and

Whereas, in the face of mounting trade surpluses with the U.S. the Japanese refuse to eliminate quotas on 22 agricultural and marine products which the U.S. views as being illegal and in violation of Japan's obligations under the "GATT"; Therefore, be it

Resolved, That the U.S. negotiators seek liberalization to the Japanese market for beef. This liberalization should begin no later than April 1, 1984. In addition to liberalization any such agreement with Japan on beef should include both the binding of the Japanese tariff on beef at a nominal amount and the staged reduction of the Japanese Livestock Industry Promotion Corporation's involvement in controlling imported beef; (be it further

Resolved, That should the Japanese refuse to meet their obligation under the "GATT" the President be encouraged to take action, as provided by the Trade Act of 1974 to correct this large persistent trade deficit.); and be it further

Resolved, That should the Japanese refuse to begin meaningful liberalization of their market for beef no later than April 1, 1984, NCA contact President Reagan, the Office of the Special Trade Representative, and/or Members of both Houses of Congress to utilize whatever means available and necessary to impose an import surcharge on all Japanese imports sufficient to overcome the present trade imbalance.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, I rise to address the issue of Japanese quotas on beef imports. I should like first to pay my respects and congratulations to the distinguished Senator from Montana (Mr. BAUCUS) for taking the leadership on this issue and bringing to the attention of the American people through the forum of the U.S. Senate this very important matter. Senator BAUCUS has let it be known to his colleagues who represent States where there is beef production that this day would be set aside for discussion of the problem dealing with Japanese beef imports. I congratulate Senator BAUCUS on his leadership in this regard.

Over the past 2 years, America's trade deficit with Japan has surpassed $35 billion. Commerce Department figures for 1983 show that the U.S. trade deficit with Japan increased $3 billion over the previous year. It is evident that the continued use of Japanese trade barriers, that restrict American exports, are primarily responsible for this growing figure.

Barriers directed against U.S. beef imports are of major concern. These protectionist barriers, in the form of import quotas and artificial pricing systems are designed to protect Japanese cattle producers. American beef exports to Japan are limited to 30,000 tons under existing bilateral agreements. This same beef is then artificially priced upward to discourage Japanese consumption.

While the American cattlemen are refused a large segment of the Japanese market, Japan continues to sell billions of dollars of automobiles and high technological equipment in U.S. markets. The persistence of this double standard suppresses United States-Japan relations and hampers economic growth in our own Nation.

An increase of $1 in agricultural exports, such as beef, stimulates economic activity in the United States by $2.23 and increases Federal tax revenues by 3 cents. Each billion dollar increase in exports also creates 30,000 additional jobs for Americans. These statistics point out that the impact of Japan's current trade policy is not limited to the U.S. beef industry.

Mr. President, given this situation, I believe we in the Senate must express our concern to the Japanese and to our people present at the ongoing bilateral trade negotiations. The U.S. negotiators should insist that Japan dismantle all nontariff barriers to imports of beef. If these negotiations prove unsuccessful, the U.S. Trade Representative should seek relief, under United States and international trade law.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I thank the Senator from Alabama (Mr. HEFLIN) for his help. He is one of the most persistent and effective Senators, and has worked hard on this issue and on the full range of issues important to his State and his Nation.

I also thank the Senator from Idaho. As Senators from neighboring States, we share many of the same interests. These interests include trade issues affecting beef, timber, and other important Western products. Again, I thank the Senator for his efforts.

Mr. President, I see that the Senator from Nebraska is on the floor, and I ask if he wishes to proceed at this time. If not, I will proceed.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. I thank the Senator from Montana.

Mr. President, at this time I should like to make some appropriate remarks on the matter before us.

Mr. President, the State of Nebraska is well known for producing some of the best beef in the world. It is, therefore, with great frustration that I view the barriers erected by the Japanese Government on imported beef, as Japan could be an excellent market for Nebraska beef. This Senator, as the record will show, has previously addressed this problem of restraint of trade by the Japanese, we are about to become involved in a great debate with fundamental free trade overtones through the domestic content legislation. Since the end of the Second World War, the United States and Japan have both enjoyed an important and close commercial relationship. In many respects we are each other's best customer.

The American market has long been open to Japanese products. In fact, I would not be surprised if an "average American" were to awaken each morning to the sound of a Panasonic clock radio, cook breakfast in a Toshiba microwave oven and drive to work in a Toyota automobile while listening to a Sanyo car stereo. This "average American" might even work in a building partially constructed with Mitsubishi steel where he or she operates an Amoda machine tool. On the way home from work, he or she might also stop at a drugstore to buy a roll of Fuji film while the children at home listen to the JVC stereo. At the end of the day, this "average American" could easily relax by watching "Shogun" on a Sony television set.

Unfortunately, the Japanese market has not been nearly as open to American products as the U.S. market is open to Japanese products. In 1983, the Japanese had the benefit of $19.3 billion bilateral trade surplus with the United States. That is up from $15.8 billion in 1982. One of the major reasons for the widening trade gap between the two nations is the existence of Japanese import barriers.

While, by nature, I am a "free trader," I believe that there must not only be free trade, there must be fair trade. One of the most blatant examples of the violations on the principles of free and fair trade is the Japanese restrictions on imported beef.

In addition to a price support system which guarantees high prices for Japanese cattlemen, the Japanese Government limits, through the use of quotas, the amount of imported beef. Under an agreement due to expire in days, the quota for high quality imported American beef is set at 30,800 tons per year. That amount is about 10 ounces of beef per consumer per year.

The Japanese Government also levies a 25-percent ad valorem tariff on all imports of fresh, frozen, chilled, and boiled beef. When the imported price falls below the domestic price, another surcharge is levied against the imported beef.

Finally, the Japanese Government imposes an unreasonable licensing system and unreasonable quarantine requirements for live cattle.

The Japanese market offers a tremendous opportunity for the United States to narrow its trade deficit with Japan, as I have said previously on GATT, we appreciate our agriculture trade with them. But trade with them has become seriously imbalanced and we must do something. The Japanese people have become very fond of high quality beef. In fact, it has been reported that Japanese consumers have been known to pay more than $35 per pound for certain cuts of beef. Even lower quality meat sells for $10 or more per pound.

In addition, the Japanese market could grow tremendously. In 1979, the Japanese ate an average of 7 pounds of beef per person per year. In the United States, we consumed 81 pounds or beef per person per year.

Given this country's ability to produce the finest quality beef at the most reasonable prices, and the strong demand for beef among Japanese consumers, it is a shame that the American cattlemen have not been given a fair chance to enter this market.

Mr. President, as I mentioned, the current agreement with the Japanese regarding beef imports is due to expire soon. I would like to send a clear signal to the Japanese Government, that the Congress of the United States will no longer tolerate the persistently lopsided trade relationship our country has with Japan.

The Japanese must liberalize their beef quota system or risk serious actions by the United States under its trade laws and international trade law.

Mr. President, in September 1982, an excellent article written by Robert Dorr appeared in the Omaha World Herald.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Like Its Cattle, Japan Pampers Beef Raisers."

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

[From the Omaha World-Herald, Sept. 6, 1982]

LIKE ITS CATTLE, JAPAN PAMPERS BEEF RAISERS

(By Robert Dorr)

AYAMA, JAPAN.—Takeo Fujita poured a bottle of Kirin Lager Beer down the throat of one of his high-quality beef cows, then told a visiting reporter that he is worried he will not be able to keep doing the work he loves.

What concerns him, he said, is the possibility that Japan may allow more beef imports to enter the country. If that happens, Fujita and many other Japanese beef producers could quickly be put out of business.

"This cannot be allowed to happen," Fujita said as he showed a World-Herald reporter his cattle-feeding operation in the mountains southwest of Tokyo.

Japan's overall trade surplus over the United States soared to $15.8 billion last year. To reduce that imbalance, the U.S. government is pressuring Japan to allow more American farm goods to enter the country.

The U.S. argument: Unimpeded until recently by quotas, Japan captured 25 percent of the American car market—one reason 200,000 U.S. autoworkers are laid off.

At the same time, Japan's tight quotas on some farm goods have kept the United States from reaping the benefits of its most efficient type of production. Considering the big Japanese trade surplus, many Americans feel that isn't fair.

Japan isn't the only nation that props up its agriculture with quotas and subsidies. France and the Netherlands pay egg producers a subsidy of $4 for each case of eggs exported.

As a result, U.S. egg exports have dropped 90 percent since March, "even though we can produce eggs cheaper than any other country in the world," said Buddy Yeiser of Decatur, Ga., an industry spokesman.

A major Nebraska producer, the Milton G. Waldbaum Co. of Wakefield, is among the U.S. producers that have lost large contracts in the Middle East and elsewhere.

The 10-nation European Community (EC), which includes France and the Netherlands, puts high duties on imports, then uses that revenue to subsidize agricultural sales, said Richard Smith, administrator of the U.S. Department of Agriculture's Foreign Agricultural Service. He added, "We're competing with the European treasury."

A Common Market official responded that the export subsidies are designed to compensate for the difference between farm prices in Common Market nations and the lower world market prices—not to undercut world market prices.

"The EC has a $12 billion trade deficit with the U.S. alone, $7 billion of which is in agricultural trade," said Ulrich Knuppel of Washington, EC agricultural official in the United States.

The U.S. farmer gets government assistance, too, but is not subsidized as much as farmers in the Common Market, said Under Secretary of Agriculture Seeley Lodwick in Washington.

Despite obstacles, U.S. farm exports increased sixfold since 1970 to $43.8 billion last year. This year, exports have declined, dealing a serious blow to farm prices.

CATTLE GET RUBDOWN

The small and feisty Fujita, 58, started his cattle-feeding business in Japan with one animal 20 years ago. He kept it in an addition to his house.

Now, he has 80 head of black-haired Wagyu cattle. That makes his operation larger than most in Japan, but small by U.S. cattle-feeding standards.

Fujita massages his cattle with a curry brush "to scatter the fat evenly throughout the meat." The massaging improves an animal's blood circulation and makes it feel better, he said.

Occasionally, he gives an animal a bottle of beer. "That aids the digestion."

Each animal has a document with the names of its parents and grandparents. Its nose print is stamped on the certificate.

The result—the famed kobe beef—justifies all the effort, Fjuita said. When cut into thin slices and dipped first into boiling water and then into soy sauce, it is indeed tasty.

It also is very expensive. At Tokyo's Okura Hotel, a kobe beef dinner cost $54.

Even lower quality beef does not come cheap. A Tokyo grocery store was selling cuts of beef recently for $7.53 to $10.75 a pound; hamburger was $2.33 to $5.38 a pound.

The average price of all beef consumed in Japan last year was $5.86 a pound, or $3.47 more than the U.S. average.

FREE TRADE FEARS

"If we had the chance, we could whip the tar out of those guys with their kobe beef," said Paul Johnston of Lincoln, executive vice president of the Nebraska Livestock Feeders Association.

That is not disputed in Japan. If there were free trade, said Iwao Yamaguchi, senior managing director of the Japanese Central Union of Agricultural Co-operatives, "Japanese agriculture would be in a bankrupt situation."

Japanese agricultural officials say they must protect their remaining agriculture because the nation already is too dependent on outside food suppliers.

The two areas Japan is trying hardest to protect, beef and oranges, are the ones the United States believes offer the greatest potential to this country.

Fujita and other Japanese cattlemen are resisting expanded beef imports; Japanese mandarin orange producers fear the effects of opening the gates to U.S. oranges.

BOOM POSSIBLE

U.S. beef industry officials consider Japan a prime prospect because incomes in that nation are high and, they believe, there is a lot of room for the Japanese to eat more meat. The average Japanese ate 7 pounds of beef in 1979 compared with 81 pounds by the average American.

If the price dropped substantially, demand for beef would boom, Americans believe.

Sen. Edward Zorinsky, D-Neb., member of the Senate Agricultural Committee, said he visited a supermarket while in Tokyo and noted that high-quality kobe beef sold for $36 a pound. Later, he said, he was told by Japanese officials that lowering the quotas would not boost U.S. beef sales much.

"They told me, 'We don't sell a lot of beef anyway. We eat fish,' " Zorinsky said.

The senator said he replied: "At these prices, I'm surprised you sell any beef."

GRAIN SALES COULD SAG

If Japan lowered its beef barriers, the results might backfire on the United States, said Tadashi Yamauchi of Tokyo, a grain and feed manager for the Zen-Noh agricultural cooperative.

A weakened Japanese cattle-feeding industry would need less corn and soybeans, virtually all of which now come from the United States. In addition, most of the new beef sales might be won by Australian and New Zealand cattle producers, instead of American cattlemen, he said.

American beef industry spokesmen reply that the United States would not be beaten in selling high-quality, grainfed beef that, they believe, represents the market of the future in affluent Japan.

The Japanese are quick to point out that the United States is not above protecting its own agriculture and industry.

One instance: In 1964, this country's beef industry was confronted with large quantities of cheap grass-fed beef imported from Australia for hamburger, sausage and sauce mixes. A law was passed giving the government power to set quotas on imported beef. The law remains on the books, although no restraints actually are in effect now.

Another example: The U.S. government has persuaded Japan to voluntarily hold the number of cars exported to America to a maximum of 1.68 million a year.

Even so, Reagan administration remains committed to free trade and will continue its efforts to persuade other nations to reduce barriers, Under Secretary of Agriculture Lodwick said. "We won't let up on that."

The Japanese have made some concessions. "But we're getting there in nickels and dimes when we need bold liberalizations," said Bill Coyle, Japan specialist for the USDA's Economic Research Service.

QUOTA CUT SOUGHT

The United States is pressing for the removal of 22 quotas, including those on beef and oranges, and talks are to start in October.

Repeatedly, a World-Herald reporter was told by Japanese government officials and industry spokesmen that Japan doesn't want to alienate the United States.

"We would like Americans to understand that Japan is a very big importing nation (of U.S. farm products)," said Sakue Matsu-

moto, vice minister of agriculture. "Friendly relations should be maintained."

Still, Japan doesn't want to sacrifice its farmers.

Mr. EXON. Mr. President, I wish to quote briefly from that article to which I have just referred to kind of give you a picture of why beef is so high in Japan and how well their beef producers are protected.

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The average price of all beef consumed in Japan last year was $5.86 a pound, or $3.47 more than the U.S. average.

Mr. President, it seems clear to me that we have to send a signal, a strong message, if you will, to the Japanese on the overall problem that we have with the balance of trade.

With the great abundance that we have in agriculture and our ability to produce food, we should take advantage of this. They should understand our problems if we are going to continue the free trade route that most of us enthusiastically have supported.

Mr. President, I thank my friend from Montana for bringing up this critical subject.

I hope that our colleagues in the Senate not as familiar with the barriers to selling agricultural products to the Japanese and others about the world, will listen very carefully to the remarks that have been made by those of us from the agricultural States who are standing up today to say we simply are not being treated fairly, and that is all we ask.

Mr. President, I yield back the remainder of my time to the Senator from Montana.

Mr. BAUCUS. Mr. President, I thank the Senator from Nebraska for his initiative in this matter.

Mr. President, in addition to those who have spoken before this morning, I have statements from other Senators who join us in our efforts to encourage Japan to open up its borders to American beef, Senators McCLURE, ABDNOR, BENTSEN, BURDICK, and BOREN.

I ask that they be inserted at this point in the RECORD.

● Mr. McCLURE. Mr. President, I recently joined Senator BAUCUS in sponsoring Senate Concurrent Resolution 87, a resolution which would instruct U.S. trade representatives to dismantle nontariff trade barriers by the Japanese on beef imports. These restrictions are unfair and place American beef producers at a disadvantage when competing on the Japanese market.

Japan presently holds a $16 billion trade surplus with the United States but still has strong barriers against beef imports. In addition to these import quotas, the Japanese can manipulate the prices of our beef through controls imposed by the Livestock Industry Promotion Corp. While it is true that Japan is the single largest importer of U.S. agricultural products, this is no reason for them to expect that restrictions on our agricultural commodities are acceptable.

In the past, the United States has been limited to 30,800 metric tons of beef exported to Japan. We have only recently reached that quota. The current agreement with Japan concerning beef imports expires on April 1, 1984, and the United States is now in the process of renegotiating a trade agreement with Japan.

Congress must move aggressively in reevaluating the role of our agricultural commodities in foreign markets. A balance of trade must be considered when U.S. representatives sit down to negotiate new trade agreements, but this balance of trade has gotten out of hand. We must right this wrong that has been forced on American producers. I urge my colleagues to support this resolution.●

● Mr. ABDNOR. Mr President, today I am pleased to join my other colleagues in this special order in regard to Japanese beef imports.

As my colleagues are aware, Japan maintains strict barriers against U.S. beef imports. One of the major barriers limits imports of high quality beef—most of which is produced in the United States. This barrier now permits imports of only 30,800 tons of high-quality beef a year. This meager amount allows Japanese consumers only one good American steak per year. In addition, a sirloin steak in Tokyo sells for over $14 per pound while a sirloin in my home State of South Dakota sells for under $3 per pound.

On March 31, 1984, only 38 days from now, our current 5-year bilateral agreement with Japan relating to beef imports expires. It is my hope that we in Congress can send a strong message to the Japanese Government. That message should be that America and America's cattlemen demand greater liberalization of the Japanese beef market.

According to figures released by the Commerce Department, the United States suffered a $19.3 billion trade deficit with Japan in 1983. Tariff and nontariff trade barriers erected by Japan are a major contributing factor to this deficit.

But, while our trade representatives are trying to open up Japan's markets and while our negotiators continue to press for liberalization of Japan's beef imports, the Japanese Government continues to be as intransigent as ever. It is time that we in the Senate send a clear message to the Government of Japan. It is time that Japan realize that the United States no longer will sit idly while Japan exports more and more of their products to us and while, at the same time, Japan restricts access of our products to their markets. I can think of no better time to start than now and no better issue to use than beef imports.

It is no secret that our Nation's beef producers have weathered some terrible storms in recent years—storms known as high interest rates, drought, low prices, PIK, and most recently the dairy diversion program. These occurrences and programs have left stock growers beleaguered and in frightful financial condition.

We now have the opportunity to assist these cattlemen, not through Government handouts or artificial prices, but rather by allowing their product to trade more freely in the Japanese market. If we in the Senate are serious about assisting cattlemen and saving the family farm or ranch, let our actions and votes speak louder than our words.

On January 24, 1984, Senator BAUCUS introduced, and I was pleased to cosponsor, Senate Concurrent Resolution 87 which demands that Japan dismantle its barriers to American beef. It further states that if the negotiations with Japan do not result in satisfactory progress toward the dismantling of all Japanese nontariff barriers to beef by the time our current agreement expires, the U.S. Trade Representative should seek appropriate relief under United States and international trade law.

I urge my colleagues to support Senate Concurrent Resolution 87 and to press for liberalization of the Japanese beef market. Thankfully, we are not to the point where the Federal Government has added beef to its long list of commodities which it supports in order to maintain farmers' incomes. I fear, however, that if we do not take actions to liberalize markets for our beef producers, beef may be added to the list. Even worse yet, I fear that beef may become a rare component of the American diet since we did not have the foresight to aid an ailing in-

dustry in a pure, free trade fashion. That would be a unforgivable blunder.

Instead, let the Senate go on record as being in support of the American cattlemen and in support of the free trade of his product.●

JAPANESE BEEF IMPORT RESTRICTIONS

● Mr. BENTSEN. Mr. President, I join today with several of my colleagues, including the distinguished Senator from Montana (Mr. BAUCUS) who has initiated this colloquy, to discuss the unfair trade restrictions which the Government of Japan applies to U.S. meat exports. I commend the Senator on the outstanding job that he has done in carrying the case for the cattlemen of Montana on this issue. Action is long overdue to open up the Japanese market to U.S. meat exports, just as the U.S. market has been open for many years to Japanese exports of manufactured goods.

Mr. President, I have been working on this issue for many years, both in the initial openings of the Japanese market that occurred through the negotiations culminating in the Trade Act of 1979 and in subsequent efforts to further open the Japanese market.

I will not reprint the statements in the CONGRESSIONAL RECORD, but I would note that I made a major floor speech on this issue on March 10, 1982. In addition, a Senate resolution which I authored calling for an opening of the Japanese market to U.S. beef and citrus passed the Senate unanimously on September 30, 1982. A similar resolution introduced by the distinguished Senator from Montana (Mr. BAUCUS) passed the Senate last year, and I was a cosponsor of that resolution.

In looking back on the statements I made on those occasions, I see that nothing has changed. The Japanese are still refusing to negotiate seriously about opening their markets to U.S. agricultural products. The concern and the pressure that we have sought to generate has helped to hold firm the U.S. negotiators' demands for concessions, but so far there has been no progress.

However, time is rapidly running out. As part of the 1979 agreement the United States agreed not to file formal complaints under the General Agreement on Trade and Tariffs (GATT) against these unfair Japanese import restrictions for the 5-year duration of the agreement. That agreement expires April 1, 1984.

We are fast coming to a decision point, and if concessions are not forthcoming from the Japanese, as we were led to expect during the negotiations in 1979, then I will strongly urge the administration to seek relief under international trade law. Very serious consideration will also be given to other options, including congressional action on some of the many trade issues involved here.

The Japanese are masterful bargainers. They talk and talk and ship and ship. Every delay means more Japanese goods coming over here and longer before we have similar access to Japanese markets for U.S. beef, citrus, and other agricultural products.

This show cannot run forever. We must make clear that trade is a two-way street. Trade benefits both parties when it is fair and equitable. U.S. consumers have benefited from the tremendous flow of Japanese goods, and Japanese companies have achieved sales growth far beyond anything possible in their small domestic market because of open access to this huge country. However, Japanese consumers are still paying very high prices for limited supplies of high-quality U.S. beef, and U.S. ranchers are still denied the opportunity to produce for a potentially lucrative market.

As the ranking Democrat on the International Trade Subcommittee, I have been a proponent of an open world trading system. I have pointed out that fair trade benefits all people. But what we have now with Japan is neither free trade nor fair trade. That trade is free to them and closed to us.

The expiration of this trade agreement must be the occasion for a total reassessment of our trade relationship. Frankly, I do not at all like many of the things I now see in our current relationship. I do not like the existing barriers to U.S. agricultural products such as beef and citrus. I see a growing trend of protectionism in Japan for their high-technology industries. I see a familiar pattern developing. First early protection of fledgling Japanese industries. Then attempts to buy or even steal basic U.S. technology and Government funding to improve that technology. Finally we will get low-cost imports from Japanese companies that do not have to pay the R&D bills for the basic research that made their products possible.

I do not like that pattern, and I think the Japanese would do well to consider the meaning of the children's story of the little red hen. If the United States is denied the right to sell high-technology products, or agricultural products like beef and citrus, in Japan then why should Japanese companies later expect to be able to sell high-technology products in the United States?

Both countries will be poorer from such refusals, but the Japanese negotiating posture is convincing more and more Americans that extreme measures may be necessary to get our point across. There are massive forces within this country seeking to change our trade relationship, and I believe the question is not whether a change will occur but when and how. The change can be negotiated smoothly. If there are no substantive negotiations by the Japanese the change may be abrupt and unpleasant.

Being from a farm background myself, I remember the story of the farmer with the balky mule. He solved the problem by whacking the mule between the ears with a big stick. When asked why he did that, he pointed out that the mule was a little unsteady for a moment, but that he had been able to resume his plowing once he had gotten the mule's attention. It would be a shame to forsake all our modern communications devices and to deal with trade problems in this high-tech era with methods more appropriate to a Missouri mule.

I fervently hope that a speedy and satisfactory resolution of these issues can be worked out. Texas is the largest cattle-producing State in the Nation, and the heart of the world's cattle-feeding industry is in the Texas panhandle. We produce high-quality steaks that Japanese consumers want to buy. We also produce citrus, including the finest quality grapefruit and grapefruit juice in the world. Texas ranchers and farmers want no more than equal access to the Japanese market for their products, and I will continue to work to see that they get no less than that.●

● Mr. BURDICK. Mr. President, American agriculture has been in the forefront of the movement to maintain freer trade and preserve open markets. Senators and Congressmen from agricultural States have done their best to resist protectionist pressures because we know, and our constituents know, that U.S. agriculture thrives in a freer trade market. We welcome international competition; we ask only that it be fair.

Unfortunately, we are now faced with a particularly glaring example of unfair competition—Japan's restrictions on imports of U.S. beef. American beef exporters are denied fuller access to the Japanese market by a quota system, and a number of tariff and nontariff restrictions. The quota limits U.S. exports of beef to only 10 ounces of beef per consumer per year. The tariff and nontariff restrictions mean that U.S. beef is twice as expensive when it is sold in Tokyo.

The issue of beef exports has long been a matter of concern to U.S. trade negotiators. Back in 1979, the United States and Japan were able to come to some agreement on this question when the two countries signed a 5-year bilateral agreement. According to the terms of this agreement, the United States would not invoke remedies under United States and international trade laws. Japan would gradually increase the quota for high-quality beef and would negotiate on ways to further expand the importation of high-quality beef in 1984 and thereafter to the mutual benefit of both countries.

Although the 1979 agreement expires on March 31, the Japanese have not yet made good on their pledge to negotiate "to the mutual benefit of both countries." We have patiently tried to nudge the Japanese along in the negotiations. We have repeatedly assured them that we are not trying to destroy Japanese agriculture or make Japanese cattlemen suffer. We have pointed out that the Japanese market can absorb greater imports of high quality beef without disrupting domestic agriculture. To quote from a letter Ambassador Mike Mansfield sent to Senator BAUCUS, "We want and need a viable Japanese agriculture. Academic studies seem to indicate that Japan could open its market without great harm to cattle growers."

Our efforts to resolve this difficult issue fairly and amicably have not borne fruit. Our negotiators have gone round and round with the Japanese on the beef issue, but the only Japanese response has been an offer to provide a token increase in the quota.

Japanese intransigence on this question is troubling for the future of trade relations between our two nations. Americans know that the U.S. trade deficit with Japan was $19.3 billion in 1983. They know that the U.S. market is open to Japanese exports of automobiles, electronics, and such. Americans and their Representatives in Congress can only conclude that Japan's reluctance to open up its market to U.S. agriculture is unfair, and a violation of the spirit of freer trade.

Today, my colleagues and I would like to serve notice to the Japanese Government that its action—or inaction—on the beef issue is making it difficult for U.S. Representatives from agricultural States to continue to champion the cause of freer trade in an increasingly hostile environment. It will become even more difficult for us to resist protectionist pressures unless Japan can loosen its protectionist mantle. Freer trade is the proverbial two-way street, and right now, we need some help from the Japanese if we are to preserve a system that has traditionally benefited both our economies.●

● Mr. BOREN. Mr. President, I compliment my colleague from Montana for his efforts in focusing our attention on this gross injustice in America's trading relationship with Japan and his persistence in contributing to a fair resolution of the problem.

I am a cosponsor and strong supporter of Senate Concurrent Resolution 87. Examples of these unfair practices are legion. Essentially, the Japanese have contrived an elaborate system of import duties, health standards, and assorted other charges which limit U.S. access to their market. Any U.S. beef that is sold in Japan ends up costing from three to five times its price in the United States. The quota on imports of high quality U.S. beef is so small that the total comes out to an average of one-half pound of such beef for each Japanese citizen in 1 year.

These absurdly low quotas must be expanded through the negotiations that have been going on in view of the March 31 expiration of the quota on high quality U.S. beef. While deliberating over an expansion of this quota, I urge the Japanese negotiators to consider the fact that Japanese consumers have demonstrated a desire to see these quotas eased. The U.S. Meat Export Federation presented evidence of this point in their newsletter some time back. The fact that only 11.8 percent of those questioned urged the Government to continue its present system of restrictions should serve as a dramatic signal to the Japanese Government to import more U.S. beef.

An increase in exports of high quality U.S. beef to Japan would benefit Japanese consumers while also contributing significantly to U.S. farm income and strengthen America's trade balance. I strongly urge my colleagues to approve Senate Concurrent Resolution 87 quickly so that we can send a strong message to the Japanese that their unfair trade practices must end.

I ask unanimous consent that the copy of the article on Japanese public opinion be printed in the RECORD at this point.

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

JAPANESE DIVIDED ON THE DECONTROL OF BEEF IMPORTS

While the Japanese people are about equally divided on the advisability of decontrolling beef and citrus imports, most criticize the present import quota system for maintaining a high price on beef products, according to the results of a nationwide poll conducted by the Yomiuri Shimbun, a Japanese daily newspaper.

The newspaper sent surveys to 3,000 people throughout Japan using a stratified, multi-staged random sampling method. Answers were obtained from 2,137 people for a recovery rate of 71 percent.

When asked their views on the issue of liberalization beef imports, 33.2 percent said imports should be increased in stages, but that a certain degree of import restrictions should always be enforced; 24.5 percent said imports should be increased in stages and imports should be completely liberalized eventually; 15.2 percent said restrictions on imports should be removed as quickly as possible and imports completely liberalized; 11.8 percent said import restrictions should continue as present.

When asked if the consumption of beef would increase with the liberalization of imports and lower beef prices, 43.7 percent said their frequency of beef consumption would not change; 37.6 percent said their frequency of consumption would increase a little; 15.4 percent said it would increase rather greatly.

As for Japan's current system for beef imports, 52 percent said it results in higher beef prices; 35.2 percent said it was helpful in the protection of the livestock industry; 32.9 percent said it caused economic friction with overseas trading partners; 23.1 percent said it creates an unreasonable distribution structure; 13.9 percent said it raises the self-sufficiency rate of agricultural products.●

Mr. BAUCUS. Mr. President, I thank the Senators who have spoken and submitted statements today.

Our beef agreement with Japan expires March 31. This is going to be a lively issue during these remaining weeks and the country of Japan will hear again from us in many ways and in many different forums.

I thank the Chair.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR HART

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

Mr. HART. Mr. President, I thank the Chair.

S. 2320—U.S. MILITARY FORCES IN CENTRAL AMERICA

Mr. HART. Mr. President, 6 months ago, Senator Kennedy and I introduced legislation to freeze the number of U.S. combat troops in Central America. That troop freeze bill would have prevented the long provocative round of U.S. military maneuvers in Central America, but, unfortunately that measure was never acted upon.

Today, in Lebanon, we see American forces being withdrawn—the penalty of blind intervention in a civil war. American lives have been sacrificed on the altar of unwise policy in that country and over 250 young Americans have paid, in my judgment, vainly—the ultimate price.

Today, I am introducing legislation that is intended to draw the obvious conclusions from the U.S. experience in Lebanon and, through it, place some political discipline on an administration now unchecked in its headlong flight toward a similar disaster in Central America.

Mr. President, it is no longer enough to simply freeze the current levels of U.S. troops in Central America as we attempted to do 6 months ago. We must also now withdraw the hundreds of U.S. troops sent to Honduras since the originally proposed troop freeze last August. I am introducing legislation today to do exactly that. My bill will require the withdrawal of all U.S. troops introduced into Central America on or after August 1, 1983, unless, first, Congress specifically authorized their continued presence; or second, the presence of such forces is necessary to respond to a clear and present danger to U.S. citizens or to the national security interests of the United States itself.

The withdrawal of U.S. forces from Honduras and the other nations of Central America is a necessary step in reversing the escalating U.S. military involvement that threatens to inevitably draw the United States into a regional military conflict. In February 1983, the administration embarked upon a series of military maneuvers in Honduras and the Caribbean with the intention of intimidating Nicaragua and other nations in the region. Not content with the results of this muscle-flexing, the administration began planning yet another set of military exercises.

The President misleadingly described these maneuvers, known as Big Pine II, as nothing out of the ordinary. Big Pine II, however, has been unprecedented in both scope and duration, including more than 5,000 U.S. troops and continuing from August 1983 to February 1984. It was in January 1984, in the course of Big Pine II that a U.S. helicopter pilot was killed by Nicaraguan troops after allegedly flying over Nicaraguan territory—a meaningless and unnecessary death.

Even with the consequences of an ever-expanding U.S. military presence clearly in view, the administration has reportedly been planning the third set of major military exercises in Honduras in just 2 years. Through these successive military maneuvers, Honduras is being turned into a permanent U.S. military outpost, complete with American-built airfields, communication facilities, and naval centers. Hardly after the ink on the Kissinger Commission's report was dry, the administration was evidently interpreting it as a blank check for increased U.S. military involvement in Central America.

The administration's vain search for military solutions fails to recognize that the primary enemy in Central America is not communism, but poverty. Additionally, the administration has yet to realize that successfully addressing the political problems of the region will require not more marines, but more diplomacy.

Mr. President, Senator KENNEDY and I called for the withdrawal of U.S. troops from Central America months ago. In the wake of our current tragedy in Lebanon, this incident, the risks and consequences of a continuing U.S. military presence in Central America are even more tragically apparent. An American military presence in Honduras only serves to aggravate this volatile region. By withdrawing U.S. troops from Central America, we could reassess our policy in the region free from the risk that increased U.S. military activities would further inflame tensions. The administration's decision to increase the American military presence in Central America is unwise and could turn out to be, before or after the next national election, provocative in the extreme. America is once again being viewed, because of the President's actions, as a bully looking for a fight. No clear, present, or urgent national security rationale for increasing our military presence or continuing our presence in Central America exists. It is clear from past experience in the area that U.S. troops have not brought regional stability, but in fact have now cost American lives that never should have been lost—and will cost even more if this involvement is not ended.

We need more diplomatic maneuvers and fewer military maneuvers in this region of violence and conflicting political interests. The administration views Central America as a breeding ground for communism. I view it as a breeding ground for democracy. The people of Central America will either become our best allies, or our worst enemies. The administration's provocative actions over the last 3 years suggest that the administration instead of hoping for the former, seems to be guaranteeing the latter.

We have in this legislation the means of reversing our slide toward military confrontation in Central America. In deciding upon this bill, we will be deciding on a question of congressional authority as well as a question of policy. Congress must choose whether it will act now to prevent American involvement or act later under War Powers Act legislation to resolve an involvement precipitated by brinkmanship and bluff.

Mr. President, this country can do better than just deploying its military forces. We can address the real human needs. We can do so without enormous investment of American dollars. We can share with the people of this depressed region the technical knowledge and progress that we have available to us to help elevate their standard of living and to deny those who would capitalize upon indigenous revolution the opportunity to foist off their own political ideologies.

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

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

S. 2320

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States should withdraw military forces introduced into Costa Rica, El Salvador, Guatemala, Honduras, or Nicaragua for training exercises or any other purpose on or after August 1, 1983. Such withdrawal must be completed by April 22, 1984.

Be it further enacted, that no forces of the Armed Forces of the United States may be sent into the territory, airspace, or waters of Costa Rica, El Salvador, Guatemala, or Honduras for training exercises or any other purpose until—

(1) Congress has authorized in advance the presence of such forces in such areas by a joint resolution signed by the President of the United States; or

(2) the presence of such forces is necessary to provide for the immediate evacuation of United States citizens, or to respond to a clear and present danger of military attack on the United States.

In either case described in paragraph (2), the President should advise and, to the extent possible, consult in advance with the Congress

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

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 12 noon.

SENATOR BRADLEY, A TEAM PLAYER

Mr. BYRD. Mr. President, in yesterday's Washington Post, there appears an article on our colleague, the senior Senator from New Jersey (Mr. BRADLEY). Though the article concerns Senator BRADLEY's career as a professional basketball player, it touches on those qualities which have made Senator BRADLEY a successful Senator as well. These include his everready willingness to work as a team player and his disciplined dedication to the task at hand, whether it be perfecting his basketball skill or mastering the many duties which make up a Senator's day.

I congratulate the distinguished Senator on the tribute he received last Saturday night in New York—that being the highest athletic honor—having his uniform retired. If other Senators have not noticed it, I call attention to the article entitled "Bradley: Team Player Gets Singular Honor."

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

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

BRADLEY: TEAM PLAYER GETS SINGULAR HONOR

(By Tony Kornheiser)

NEW YORK.—No. 24 belongs to the ages now. It hangs high above the Madison Square Garden Floor, with No. 19, No. 22 and No. 10. Up there for generations to remember with affection. Four jerseys from the greatest team I ever saw, the New York Knickerbockers of 1969 to 1973: Reed's, DeBusschere's, Frazier's and now Bradley's. Camelot's team. A team of truth and beauty, a team of all for one and one for all, a team whose whole was always greater than the sum of its parts.

On Saturday night, a man who has spent his adult life in public view, a man of discipline and accomplishment, a fine and good man in rare position to become a great man, warmed himself in the brilliant sun of gratitude. As 19,591 fans—including former teammates like Dave DeBusschere, Earl

Monroe, Jerry Lucas, Phil Jackson, Cazzie Russell, Dick Barnett and Dave Stallworth—cheered lustily, Bill Bradley, once a small forward and now a U.S. senator from New Jersey, was awarded the ultimate athletic honor, having his uniform retired.

"I remember years ago," Bradley told the crowd, "after a game in Chicago, a man coming up to me and asking me, "Do you really like playing ball?"

"Yes, Yes, I do," I told him.

" 'I think I know what you mean,' he said. 'I used to play the trumpet in a band. We were good. So good that we got offers to tour, the others wanted to do it, but I didn't.'

" 'Why not?' I asked him.

" 'I guess because it didn't fit in my life's plan. It didn't seem secure. So I went to law school instead.'

" 'And do you like the law?' I asked him.

" 'Yes,' he said. 'But not like playing the trumpet.' "

A week before the ceremony, Bradley sat in his Senate office and spoke about the honor about to come. "I first heard about it last summer," he said. "I kind of felt like, well, okay." He waved his arms in an embarrassed manner. "I'd had some second thoughts about it. Part of me said, 'I don't think I should have it retired until after Monroe, maybe even Barnett.' Part of me asked the question: 'Do you deserve this?'

"But ultimately, I said that's for others to judge, whether I do or I don't. Do I feel like I was a contributing member of that group? Yes. Do I feel like I played a significant role? Yes. So the more I thought about it, the more I felt very sentimental about it, the more I liked it.

"But was I great?" Bradley considered the question fully; he never averaged more than 16 points per game in 10 pro seasons, his career average was under 13 points per game. "No, I don't think I was great—not if you define great through points. But if you define it in different terms it becomes more complex. In the pros I really had to sense what my role was; I had to be much more subtle than in college."

He smiled at the sense of what he'd done, how he'd changed, who he was. "That's why this means so much to me. Because it's done within the concept of the team. There was an element of truth to that team.

"It wasn't that we won, but how we won. We did it in a way that energized everybody. The crowd was a part of it, and we were a part of it individually and as a whole. We were all breathing in at the same moment, all exhaling at the same moment. Maybe in one game, or a two-of-three, we might be overpowered. But if the series lasted long enough, we'd have found a way to win."

If he chose, Bradley could paper the walls of this office with photos that give testimony to his athletic prowess. Instead, he has hung only two. One was taken at the buzzer ending the dramatic seventh game of the 1970 championship series against Los Angeles, in which Bradley's clenched fists are halfway to heaven. And the other, taken seconds after the Knicks' 1973 championship clincher against those same Lakers, in which Bradley has jumped into Reed's arms, basketball's version of the famous Don Larsen-Yogi Berra moment of ecstasy.

It is instructive that Bradley, not given to public passion, should declare these photos his personal favorites.

"The elation, the emotional release, the sense of accomplishment, the sense of joy," Bradley said smiling as much at what they say to him as what they say about him. "I guess those are the peak moments."

He seemed slightly embarrassed at his uncharacteristic emotional expansiveness, but the lesson outweighed the risk. "What kept me playing," he said, "were the experience of those peaks, the wanting to have them again, and those moments when things worked together correctly—the backdoor play; the pass that leads to the pass that leads to the basket; the sense that somehow or other things were right, the group meshed."

All for one, one for all.

"Those moments," Bradley said, satisfied that indeed the Knicks had managed to catch the wind, "those moments have an inexorable rightness to them."

When he left professional basketball in 1977, Bradley left for good. Unlike so many athletes who suffer withdrawal pains and cannot adjust to a life beyond the playing fields, Bradley never looked back in longing. Not since then has he played a game of basketball. No full court. No half court. Not even one-on-one. What's done is done.

And yet there was a time last summer. Well, better to let him tell it:

"I had turned 40," Bradley said, "and for a present somebody had given me a tape of the seventh game of the 1970 championship. I took it home and played it for my 5-year-old daughter; it was the first time she'd ever seen me playing basketball. She knows Willis and Dave, and when she saw the tape she said, 'There's Mr. Reed.' I said, 'That's right. And there's Mr. DeBusschere.' She looked at the man I was pointing to and said, 'That's not Mr. DeBusschere. Mr. DeBusschere has gray hair.' "

Bradley chuckled. Age, you unrelenting thief, you.

"Anyway," Bradley said, "after I watched it, I really kind of got the itch. So I went down to a playground near the house and started shooting around. I went through my warm-up routine, the one I'd done since I was 14 years old. Only I didn't spend my usual three hours doing it, just 40 minutes. The first 10 minutes were just range finding. I went from spot to spot, trying to hit 13 or 15 in a row. I didn't do much jumping; I couldn't. But I found that you never really lose your shot, you just lose the ability to get your shot. You lose the ability to move and the ability to last. Tell you the truth, after I found my range, it felt terrific. The only problem was the next day."

Bradley's laugh was as rich as hot fudge. "The next day my knees were aching."

Bradley went down to the court a few times after that. Once there were some kids shooting around, and they said to him, "Let's play." He was convinced they didn't know him. "How could they? I was just some older man shooting baskets in a playground."

Bradley declined the game. It wasn't part of his life's plan any more.

The trumpet stays in a case now, its lovely notes stilled. Perhaps forever. The song is gone, but the melody lingers on.

THE MOBILIAN OF THE YEAR: DR. WILLIAM K. WEAVER, JR.

Mr. HEFLIN. Mr. President, I rise today to pay tribute to Dr. William K. Weaver, Jr., who was recently recognized by the Civitan Club of Mobile, Ala., as "Mobilian of the Year," for 1983.

Dr. Weaver, the president of Mobile College, was selected by delegates representing more than 120 civic organizations. Last year, he acted as chairman of the 1983 Mobile Area United Way campaign, which collected more than $4 million in charitable contributions, its largest total ever.

Among Dr. Weaver's other civic activities are serving as board member of the Mobile Area Chamber of Commerce, president of the Community Chest and Council, and as member of the local library and museum boards. In addition, he has served as president of the Mobile Rotary Club and as a district governor of Rotary International.

A former pastor of the First Baptist Church of Sylacauga, Dr. Weaver has been president of Mobile College since the school was chartered in 1961. He has led the school through some outstanding years and, under his leadership, I am sure it has an even brighter future.

Bill Weaver is a great guy, a warm compassionate friend and a joy to be around.

Dr. Weaver is certainly an outstanding Mobilian, and I congratulate him on this recognition.

Mr. President, I ask unanimous consent that an article from the Mobile Register be printed in the RECORD.

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

CIVITANS PICK WEAVER AS TOP '83 MOBILIAN

(By Brightman Brock)

The Civitan Club of Mobile on Thursday named Dr. William K. Weaver, Jr., president of Mobile College, as Mobilian of the Year for 1983.

Weaver's selection marked the 36th presentation of the award.

Runners-up in the selection were: U.S. Rep. Jack Edwards, R-Ala.; Alfred F. Delchamps, Jr., president and chief executive officer of Delchamps Food Stores; Sister M. Romana Statz, director of Mobile Catholic Social Services; and Lillian R. Jackson, coordinator of March Against Crime.

Delegates from more than 120 civic organizations voted on the nominees.

Active in numerous civic affairs, Weaver in October acted as chairman of the 1983 Mobile Area United Way Campaign. The United Way surpassed its largest campaign goal ever. He led the more than 600 community leaders in the drive which gained $4,011,085 in contributions.

"I'm just overwhelmed by the whole thing," Weaver said Thursday. "It's a tremendous honor and one that must be shared by hundreds of people that have worked with me on so many wonderful projects."

The college president said he was informed of the honor Thursday morning when a delegation from the Civitan Club came out to Mobile College "and shocked me with it."

His accomplishments include serving as a member of the board of directors of the Mobile Area Chamber of Commerce, president of the Community Chest and Council, as well as being a member of the museum and library boards of Mobile.

He has also served as president of the Rotary Club of Mobile and as governor of district 688 of Rotary International.

At one time pastor of the First Baptist Church in Sylacauga, Ala., Weaver has also held positions with the Baptist denomination in Kentucky as well as Alabama.

He was a chaplain in the U.S. Army and at the Southern Baptist Convention level, Weaver was a member of the Baptist Sunday School Board, chairman of the Education Commission and is currently a member of the Board of Trustees of the Southern Baptist Theological Seminary in Louisville, Ky.

The Oxford, Ala., native graduated from Talladega High School in Talladega, and continued his education at Samford University in Birmingham, where he received his B.A. degree. He received his master's degree in theology from Southern Baptist Theological Seminary.

Weaver, who has been president of Mobile College since it was chartered in 1961, said he looks forward to a bright future at the school which is situated approximately 10 miles from downtown Mobile on 685 acres of land. Although he has accomplished many goals in his position at the school's helm, Weaver says he looks forward to many more.

THE STUDENT LOAN CONSOLIDATION AND TECHNICAL AMENDMENTS ACT OF 1983

Mr. HATCH. Mr. President, today I wish to address the recently adopted procedures by which the Department of Education is implementing the requirements of Public Law 98-79, the Student Loan Consolidation and Technical Amendments Act of 1983. I am concerned that the Department has crafted its own version of legislative intent, by imposing a preclearance requirement for the issuance of tax-exempt securities by State student loan authorities based on a statement by Representative WILLIAM FORD inserted into the CONGRESSIONAL RECORD of August 1, 1983.

Section 7(a) (paragraph "(d)(1)(G)") of Public Law 98-79 indicates that "the authority will not issue obligations for amounts in excess of the reasonable needs of student loan credit in that area." This provision was viewed by both Houses of Congress as so unexceptional that it was not mentioned in any committee report. Representative FORD's statement comprises the entire extent of written comment devoted to this issue. In the absence of significant legislative history, the Department of Education saw fit to issue bulletin 83 No. 1-81E, "New Legislative Requirements Applicable to Student Loan Authorities Issuing Tax-Exempt Obligations," outlining a preclearance requirement that, in my opinion, goes far beyond anything stated or implied in the statutory language.

As chairman of the Committee on Labor and Human Resources, I am distressed to see such an interpretation adopted in a bulletin without public comment, rather than proposed through normal regulatory procedures. The chairman of the Senate Subcommittee on Education, Mr. STAFFORD, shares my concerns.

Paragraph (d)(1)(G) would have most certainly generated considerable controversy had provisions for prescreening all bond issues been explicitly mandated. In fact, they were not, explaining why no discussion was aroused during the legislative crafting. A reasonable reading of Congress intent, in fact, suggests monitoring these issues through normal after-the-fact auditing. Not only was the Ford provision not a floor amendment, but it had been part of the committee draft of the bill for some time and represented as anything but a requirement for prescreening.

You will remember, Mr. President, that Congress was operating under significant time constraints during the passage of this bill, on the eve of the August recess. House and Senate negotiators had crafted a bill to suit both Houses of Congress. The involved parties were anxious to see legislation passed before recess that would extend Sallie Mae's consolidation authority through November 1, and that would rectify disclosure requirements for terms of federally insured student loans. The bill was held at the Senate desk to expedite its passage on August 2, the same day that the August 1 CONGRESSIONAL RECORD, containing Mr. FORD's comments, was issued. Whatever Congressman FORD's actual intent by his comments, in the unlikely event that they were considered in fact by the Members of either House, they were not interpreted to require preclearance of bond issues, certainly not in the Senate.

I am pleased with the portion of Public Law 98-79 that requires the inclusion in an authority's "plan for doing business" provisions designed to assure (but not prove) that "the authority will not issue obligations for amounts in excess of the reasonable needs for student loan credit * * *." Indeed, State agencies should be encouraged to take a hard look at all possible sources of private loan capital, and be sure that such resources have been adequately utilized before Federal moneys are involved. However, requirements for assurances are found throughout the Federal education laws, and they are typically satisfied by an appropriate assurance of compliance in the application. I question the fairness of establishing Sallie Mae as the only resource left for agencies who have exhausted other sources of private capital. Borrowing from Sallie Mae is a costly venture for State agencies—one that renders them unnecessarily vulnerable to Sallie Mae and the resulting interest payments which are difficult to predict.

The yearly audit outlined in section 438(d)(1)(E) provides the assistance needed for the Department to exercise control over the amount of bond issues. If the audit reveals that more funds have been borrowed than are reasonable in light of the circumstances, then the Department should work with the agency to adjust its procedures for estimating the amount required, and should monitor more closely that agency's implementation of those procedures for a time. If the agency refuses or neglects to comply in a subsequent offering, the Department has ample means of imposing discipline.

Mr. President, it is my hope that the Department of Education will review its position, and solicit the guidance of both Houses of Congress in determining the true legislative intent of section 438(d)(1)(G). It is through such collaboration that the correct implementation of our Nation's laws has been and will continue to be successfully achieved. If the Department or any other agency of the executive branch ever has trouble interpreting legislative intent, it is up to the legislative branch to give any additional clarity or redefinition. It is the Congress which makes the law, as clearly enunciated in article 1. The laws we make are not options or suggestions to be accepted or rejected with impunity.

I am deeply concerned that quality education be available to all those who seek it. I believe that without placing an unnecessary strain on the Federal budget, we can make flexible repayment schedules available to responsible students facing education debts through the loan consolidation agency that will best meet their needs.

THE NATIONAL PRAYER BREAKFAST

Mr. HATFIELD. Mr. President, it was my privilege to chair the Annual National Prayer Breakfast on February 2 at the Washington Hilton Hotel. There were 3,700 people from across this land and around the world in attendance. And by all accounts it was one of the most stirring and challenging national prayer breakfasts in years. It was indeed an honor to participate in the event with many of our colleagues and friends.

For me one of the most inspirational moments was when our former Senate colleague Jacob Javits read the scriptures and led us in prayer. His bout with debilitating illness made his presence with us a matter of some considerable sacrifice and struggle. The immeasureable benefit of his participation cannot be fully appreciated by merely reading his words.

I want to express gratitude to all of the committee members from both the Senate and the House who planned the event, and in particular to Senator BILL ARMSTRONG and his office staff who tended to the organizational de-

tails. Also a special thanks must be extended to the countless volunteers who gave hundreds of hours to the meeting of the diverse needs of the thousands of guests.

Mr. President, I ask unanimous consent that the entire transcript of the February 2, 1984, National Prayer Breakfast be printed in the RECORD.

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

NATIONAL PRAYER BREAKFAST

(Thursday, February 2, 1984, International Ballroom, Washington Hilton Hotel, Washington, D.C.)

[Opening song by the Johnston County Choral Society, Smithfield, North Carolina]

Senator HATFIELD. Ladies and gentleman, would you all please stand for the opening prayer. The opening prayer will be given this morning by the Vice President of the United States, George Bush.

The VICE PRESIDENT. May we bow our heads.

Lord, we come to You today as people of many faiths, but one faith, that which affirms Your love and mercy. We come as a people of many traditions, but one tradition, that which celebrates Your glory. We come as proclaimers of many principles, but one principle, to love You with all our hearts and to love our neighbors as ourselves.

We ask for Your blessing on President Reagan, Mrs. Reagan and all the Members of the Congress, and on all those who give themselves to serve their country, and we ask especially that You bless our men and women in uniform, keep them well and safe.

Bless those who heal the sick and help the poor, help us affirm the power of prayer and face each other and the world, with faith, hope and love. All this we pray in Thy name. Amen.

Senator HATFIELD. Good morning. Welcome to this celebration of a worldwide fellowship of believers in the Lord Master of Creation.

The Psalmist exclaims, "Be exalted, O Lord, in Thy strength, we will sing and praise Thy power." All of us gathered here today have an individual understanding of power and the proper exercise of power. In His wisdom, God grants to certain members of the human family the responsibility to govern, to exercise political power.

Each year we gather in this room as people representative of the leadership of the land and we acknowledge that political power and spiritual power must not be confused. St. Paul instructs us with these words: "For in Him were all things created, in Heaven and on earth, visible and invisible, whether thrones or dominions or principalities or authorities, all things were created through and for Him."

Undoubtedly, the power of the spirit of God transcends all power exercised by humans, be it political power or institutional power. Superficially, the world may see us as an assemblage of greater and lesser lights, but we know deep in our heart that all of us share a common denominator. We stand here today together as sinners before a loving and forgiving God, a God of righteousness.

The word "righteousness" has taken on a meaning of personal piety in our contemporary society. But in both the Hebrew and Greek languages, "righteousness" is synonymous with the word "justice." And this God of justice, through the teachers and the prophets of the Old Testament, and in the life and ministry of Jesus Christ in the New Testament, most frequently measures our faithfulness as His followers on the basis of our relationship to the poor, the downtrodden and the outcast.

Indeed, our very spiritual destiny is intimately linked with those powerless ones who may live on the margins of society but who rest in the knowledge of a concerned and compassionate God. Therefore, this morning let us affirm our love for God by living and serving one another with the recognition that life is not lived in vast ballrooms but instead in the poverty where God calls us to serve rather than to be served.

May we assert through our lives the truth that while political power can corrupt, spiritual power can bring repentance and renewal to our souls and the soul of the Nation.

At this time I am delighted to present to you the caring and the beautiful First Lady of our Nation, Nancy Reagan.

[Applause.]

Now may I present the terrific and devoted Barbara Bush.

[Applause.]

A most remarkable achiever, Marian Javits.

[Applause.]

The dynamic First Lady of the Navy, Shiela Watkins.

[Applause.]

My very best friend, Antoinette Hatfield.

[Applause.]

We will now have a message from the Prayer Group of the House of Representatives, given by the Chairman of that group, the Honorable Charles D. Whitley.

[Applause.]

Mr. WHITLEY. It is a rare and distinct pleasure for me to bring you greetings from the men and women of the House of Representatives and particularly from our House Prayer Breakfast Group.

I want to read just a very brief passage of scripture from the Old Testament, I Kings. The situation was that the little kingdom of Israel was in very bad shape under the reign of a bad King Ahab, and Prophet Elijah felt this very keenly. He had suffered a great deal of disappointment and frustration in his own life. And he had gone out by himself and was in a cave near the holy mountain called Mt. Horeb or Sinai in search for God. And God directed him to come out and stand at the mouth of the cave, and He said go forth and stand upon the mount before the Lord, and behold the Lord passed by and a great and strong wind rent the mountains and broke in pieces the rocks before the Lord, but the Lord was not in the wind. And after the wind, an earthquake, but the Lord was not in the earthquake. And after the earthquake, a fire, but the Lord was not in the fire. And after the fire, a still, small voice, and it was in that still, small voice that Elijah found the Lord.

This past Wednesday evening, many of you, many of us who are here this morning were in the Chamber of the House for the State of the Union Address by the President. That is always an occasion of great ceremony and considerable gravity. It is a time when we observe protocol and formality. As the President stands upon that podium delivering his message, just below him on the floor of the House sits the Chief Justice and the Associate Justices of the Supreme Court representing the Judicial Branch of our government. The President, of course, represents the Executive Branch. Just behind him sit the Vice President and the Speaker of the House, representing the Legislative Branch. And behind all of that hangs the flag which is the symbol of the union of our fifty states.

But above all of these is inscribed on the wall of the House Chamber, our national motto, "In God We Trust." But we don't always find God, we as individuals in ceremonial events of that type, and we in the House of Representatives don't always find God in the hurly-burly of legislative debate on the floor of the House and in our committees. And we don't always find God in the hectic and frantic time that we often spend in our offices with the telephones ringing and staff members scurrying back and forth and looking at important letters and signing others and returning telephone calls. And we don't always find God in a very tight and hectic schedule that we often follow when we go back to our districts.

But we can and we do find God in that still small voice that is there when we meet in small groups for fellowship, for prayer and meditation, such as our regular Thursday morning Prayer Breakfast Group and other groups, and there are a number of them that meet regularly in the House of Representatives for the specific and primary purposes of meditation and prayer and seeking God and His will for us in our lives.

And so all of us welcome you, knowing that you share this kind of search for God, that many of you belong to similar small fellowship groups throughout this land and throughout the world. So we welcome you here this morning in that spirit. We enjoy your fellowship. We earnestly and sincerely covert your prayers.

Thank you.

[Applause.]

Senator HATFIELD. Since the founding of the Republic, few have reached or earned the title of truly great who have served the United States Senate, but we have one such person here this morning who will give us selections from the Old Testament, former Senator Jacob Javits of New York.

[Applause.]

Senator JAVITS. Thank you very much, Senator Hatfield, and thank you very much for my wife and partner, Marian and Lee, for this great honor and great pleasure of joining in prayer with the President of the United States and Mrs. Reagan and the Vice President, a dear old friend, and Mrs. Bush, and great proportion of my former colleagues in the House and especially in the Senate and, having been to these breakfasts before, the great representation of the diplomatic corps and the clergy and many distinguished fellow Americans.

It is a great honor too to repeat verses from the Old Testament which I have cherished and my family has cherished for so many decades. I shall take the liberty of reading just a few which we love and especially sharing with you the common humility which opens minds and hearts of the most cherished dreams and aspirations in prayer.

First, from the Book of Micah, Chapter 6, Verse 8: What is good, and what doth the Lord require of thee? But to do justly and to love mercy and to walk humbly with Thy God.

And now my favorite Psalm and Mark Hatfield told me it is his, too, the 23rd Psalm: The Lord is my shepherd, I shall not want. He maketh me lie down in green pastures. He leadeth me beside the still waters; He restoreth my soul. He leadeth me in the path of righteousness for His name sake.

Yea, though I walk through the valley of the shadow of death, I will fear no evil; for Thou art with me. Thy rod and Thy staff, they comfort me. Thou preparest a table before me in the presence of mine enemies; Thou anointest my head with oil, my cup runneth over. Surely, goodness, and mercy shall follow me all the days of my life; and I will dwell in the House of the Lord forever.

And now, with your indulgence, my own prayer: May we be capable of respectful consideration of the views of our adversaries, and may we be active and resolute in pursuit of the passion for liberty and justice which we inherit from our civilization and our ages, for it can save us from the dread peril of extinction from weapons of destruction of our own invention, the threat of which hangs like a pall over us all.

May this passion for liberty and justice which still prevails in our land endure forever, and may it permeate the thinking and the feelings of all peoples as time goes on, whatever their form of government and whatever their social order. Amen.

Senator HATFIELD. Willa Dorsey will now sing for us.

[Solo.]

[Applause.]

Senator HATFIELD. It may break tradition, but I don't think it will break the dignity of this gathering if you want to say "amen."

At this time we are happy to call on the Honorable Jennings Randolph to offer a message of greeting from the Senate Prayer Group.

[Applause.]

Senator RANDOLPH. President and Mrs. Reagan, Vice President and Mrs. Bush, and Antoinette and Mark, what a wonderful team. Let's cheer them. Would you do it for me?

[Applause.]

You know, those in public office and officials of government are often prone to exaggerate. I wanted to disabuse you at the very outset and say that I have checked the figures carefully. There are 3,200 worshipers in what is called the Ballroom International Center—3,200. There are 500 gathered in the Jefferson Room. I believe that comes out to 3,700, and that is probably the largest number of individual persons, worshipers that have been at any of the prayer breakfasts since 1953.

Back across the years, of course, comes the memory to me and others who are here of Frank Carlson of Kansas, the Senator is still living. It was Frank who brought our Senate Prayer Breakfast Group into being, and that was in 1942. And so the Prayer Breakfast Group has been around for another 42 years and now we are in the year of 1984.

The first day of the Second Session of the 98th Congress was, of course, on a Monday. We heard you on Wednesday, and then between Monday and Wednesday we were having the Prayer Breakfast in the Senate. And there were some 25 Senators from across this land who came together and who worshiped that morning in the Vandenberg Room of the United States Capitol.

I have thought so very often of people who are joined together in one place or another in worship. I naturally think of that church, the Washington Cathedral, atop the highest point in the District of Columbia, Mount St. Albens, and 5,000 worshipers can come together there.

And then being a man from the hill country, I can recall and do so very often the little church called Jobe's Temple. It seats 30 in the rural section of Gilmer County, in our state. It was constructed before the War between the States. It seats people on benches, but there are no backs so, you see, one could not go to sleep without falling over the bench and attracting attention to himself.

But when I think of these gatherings of people, I think, of course, of the little table, the breakfast table there in our home in Salem, a place of peace—that's the meaning of the word. And grandpa would come in, grandma sometimes. But we sat together.

And I hope you will understand—and I think you will—that we never could begin to eat, Ernestine and I could not begin to eat, not even look longingly at what was upon the plate until the prayer had been spoken, often by papa, sometimes by mama, but very often by grandpa who had come in rather quietly to sit with us.

I do feel that there is the place of meeting which is important, but I feel more strongly that it is the personal ministry of each one of you here today and across the world and around the globe, the personal ministry, after you have left the doors, whatever the doors may be, in which you have worshipped and go out to join your brothers and sisters, believing in many places, of course, formal religions but knowing that you are healed physically, you are healed mentally, you are healed spiritually by our God.

And so this morning I hope you will let me tell you that I trust you will join your hands just now, all of you who are sitting at the tables here and in the Jefferson Room because, as Mark knows, we never go out from our Prayer Breakfast Group, where some twenty are always there—40 or 50 of the Senators are active—we stand and we hold our hands together because there is something valuable in the clasp of hands as the closing prayer is said.

Thanks for allowing the Senate Prayer Breakfast Group through me to greet you this morning.

[Applause.]

Senator HATFIELD. At this time we will have readings from the New Testament by the Secretary of Transportation, the Honorable Elizabeth Dole.

[Applause.]

Secretary DOLE. Mr. President, Mrs. Reagan, Vice President Bush, Mrs. Bush, distinguished guests at the head table and in the audience: Each of us is faced with enormous challenges, pressures and demands on our time and energies. What a joy that in times of stress we as fellow believers can turn to the Lord, realizing that through our faith we have a source of strength, wisdom and courage far beyond our own. But this kind of reliance often isn't easy.

How many times I have struggled single-handedly with a problem, only to recall belatedly that I don't have to deal with it alone. Serving God means trusting in His strength, yielding to His guidance and His will.

Through gatherings such as this, weekly bible studies and prayer breakfasts, and through the witness of our individual lives, we impart our faith to one another and we grow stronger in the Lord. Each of us is thus a blessing to the other as we face our individual challenges.

Because the words of Hebrews, Chapters 11 and 12, have meant so much to me in my spiritual journey, I would like to share some selected passages with you this morning.

And what is faith? Faith gives substance to our hopes and makes us certain of realities we do not see. By faith, Enoch was carried away to another life without passing through death. He was not to be found because God had taken him. For it is the testimony of scripture that before he was taken he had pleased God, and without faith it is impossible to please Him, for anyone who comes to God must believe that He exists and that He rewards those who search for him.

By faith, Noah divinely warned about the unseen future, took good heed and built an ark to save his household. By faith, Abraham obeyed the call to go out to a land destined for himself and his heirs and left home without knowing where he was to go. By faith, he settled as an alien in the land promised him, living in tents as did Isaac and Jacob, who were heirs of the same promise, for he was looking forward to the city with firm foundations, whose architect and builder is God.

By faith, even Sarah herself received strength to conceive, though she was past the age. By faith, Abraham when the test came, offered by Isaac. He had received the promises and yet he was on the point of offering his only son, for he reckoned that God had power even to raise from the dead.

By faith, when Moses was born, his parents hid him for three months. They were not afraid of the King's edict. By faith, Moses, when he grew up, refused to be called the son of Pharaoh's daughter, prefering to suffer hardship for the people of God, rather than enjoy the transient pleasures of sin. He considered the stigma that rests on God's annointed, greater wealth than the treasures of Egypt, for his eyes were fixed upon the coming day of recompense. By faith, he left Egypt and not because he feared the King's anger, for he was resolute as one who saw the invisible God.

Need I say more? Time is too short for me to tell the stories of Gideon, Barak, Samson, and Jephthah, of David and Samuel and the prophets. Through faith, they overthrew kingdoms, established justice, saw God's promises fulfilled. They muzzled ravening lions, clenched the fury of fire, escaped death by the sword. Their weakness was turned to strength. These, one and all, are commemorated for their faith.

And what of ourselves? Of all these witnesses to faith around us like the cloud, we must throw off every encumbrance, every sin to which we cling and run with resolution the race for which we are entered, our eyes fixed on the Lord, on whom faith depends from start to finish.

[Applause.]

Senator HATFIELD. Would you please remain seated while I invite the Mayor of the City of Indianapolis, the Honorable William Hudnut, to offer a prayer for the national leadership.

[Applause.]

Mr. HUDNUT. Thank you. President and Mrs. Reagan, Vice President and Mrs. Bush, distinguished guests: In the spirit of Abraham Lincoln who once remarked, it is the duty of nations as well as of men to own their dependence on the overruling power of God, to confess their sins and transgressions in humble sorrow, yet with assured hope that genuine repentance will lead to mercy and pardon, and to recognize the sublime truth announced in the Holy Scriptures and proven by all of history, that only those nations are blessed whose God is the Lord.

Let us Pray: Eternal God, source of all good, the ground of all being, Lord of Lords, light of lights, God of truth, God of life, God of love, God of Abraham, Isaac and Jacob, God of Ruth and Naome and Mary,

God the Father of our Lord Jesus Christ, from whom to be turned is to fall, to whom to be turned is to rise, and in whom to abide is to stand fast forever. You are great and greatly to be praised. Be present, we pray, as we meet together in this 32nd Annual National Prayer Breakfast. Rule over us and in us and so imbue us with your spirit, that in faith and hope and love we may worship You this morning with reverence and gratitude and come to a clear understanding of your will for our lives and your power in time of need. As we vow to make ours a nation under God, help us to understand the difference between this and making a god of our nation, between looking upon You as the Lord of all nations and regarding You as the ally of one, between affirming my country for God and boasting God for my country, between praying humbly that we might be on your side and self-righteously asserting that You are on ours, help us to understand that You are on the side of those things that promote peace and freedom and justice, that build up rather than tear down, and draw together rather than drive apart, that contribute to the enhancement of human dignity and fulfillment and to the improvement of the quality of life, and help us to be on that side, too, O God, wisely, bravely, and sensitively. We believe You are a God of mercy as well as justice, so aware that all too often we fail to live up to the better angels in our nature. We ask for your forgiveness, pardon us for our mistakes and shortcomings, we pray, and grant that we may learn from them and become better persons, better leaders, better servants thereby. Almighty God, in your providential care for all your children, we believe you have plans for each one of us and power to make them happen. Give legislators, executives, judges, and government workers a knowledge of your will for them, for the world. Let us remember that we serve a public trust beyond personal gain or glory. May we see that our nation does not live for itself alone, but is responsible to You for peace and justice and freedom and for the well-being of all your children. And to You, Great God, be the praise and the glory now and forever, world without end. Amen.

Senator HATFIELD. We are privileged to have with us Barbara Jordan, former Congresswoman from the 18th District of the State of Texas.

Since leaving the Congress in 1978, she has held the Lyndon B. Johnson Chair of National Policy at the University of Texas, and she has done so with great distinction.

A wise sage once observed that no person has a right to be a teacher unless he or she possesses a singular teaching. Congresswoman Jordan has made clear through her advocacy for voting rights while she was a Member of Congress and in her subsequent professorship that indeed she does possess a teaching rooted in spiritual realities of her own. We are grateful to have her this morning to share with us her very special gift. Barbara.

[Applause.]

Ms. JORDAN. Thank you very much, Mr. President, Mrs. Reagan, Vice President Bush and Barbara Bush, and there are so many others, Members and officials and people of high office that I cannot acknowledge any further.

I am delighted to be here to deliver the message for this National Prayer Breakfast. I haven't given my remarks a subject, a title, but I will tell you what I am going to talk about. I am going to talk about the necessity for using, merging the inner life and the outer life, the inner self and the outer self.

When I told my colleagues at the University of Texas that that is what I was going to talk about, they said I hope there are no politicians where you're going. [Laughter.]

And I said why do you say that, sir? He says, well, people who are in politics have been stripped of their inner lives, they don't have any, they are empty inside, they are slow, they are plastic.

I told him he was not telling the truth. [Laughter.]

So let us begin. Knowing that here on earth God's work must truly be our own—knowing that here on earth God's work must truly be our own. Now, you will recognize those as the closing words of John Kennedy's Inaugural Address.

Would we behave as we do behave in word, thought and deed if we truly believed that we are God's stewards on this earth? Would our policy decisions be the same that they are if we were always consciously aware of our trusteeship role on this earth? Would our oversight responsibilities be sharper, more incisive if we believed that we are God's caretakers?

Our responses to these questions will reflect, will define how we relate our humanity to God. Your responses will also reflect the character and quality of your innate nature.

Shakespeare asks in one of his sonnets, what is your substance, whereof are you made. That's a big question. What is your substance? Whereof are you made? The answer to that question is not very simple.

Most of us would quickly retire to the Old Testament and say we are made in the image of God, and we would intone those words. But that response leaves too much unexplained. If we are made in the image of God, what is the source of our love of money? What is the source of our love of power? Profit? Wherein does greed and avarice and bitterness lie if you are made in the image of God? How do you explain your despoliation of the earth and propensity to rule over other men? How do we explain if indeed we are made in the image of God our capacity to extinguish mankind?

We are very complex beings and we seem to be bifurcated between an outer self and an inner self. In my opinion—underscore "in my opinion"—the innate nature of man is good, basically good. For me, our inner self seems to be in touch with God and communicating with Him regularly. This inner self is likeable, caring, compassionate. The instincts of the inner are right ordered, well ordered. The outer self appears to be dominant and the outer self seems extraordinarily willing to negotiate those basic fundamental principles which arise from within. The outer self is our sophist to the world. Inner, outer self, each experience some victories, some defeats.

Tension between an inner and outer self is both wearing and worrying. The problem is that this tension does not have to be inner, outer, can be one, should be one. They should be in such close relationship with each other that you can't tell where one leaves off and the other begins. They should be congruent. Our demonstrable actions reflect our inner reality.

Now, this point is made very well by Jonathan Shell who is writing a series of articles in The New Yorker on nuclear arms. This one statement I take from one of those articles: If the inner landscape of the soul does not change, the outer landscape of the world does not change either. And once the choice is made, it must, like every profound moral and spiritual decision, be continually refreshed and renewed. The inner self, notwithstanding its nature, is not static. It needs improvement. The fusion of inner and outer self should result in a whole person fully aware that God's work is truly our own. This awareness should be presaged by a personal view from each of us about the innate nature of man.

Now, I gave you my personal opinion. For centuries, the issue of the innate nature of man has been discussed: Are we good, are we evil, basically? The ancient Chinese philosopher Mencius taught this: Humans are inherently good and fall into evil ways by forgetting or losing their original capacity for goodness.

In direct opposition to that point of view, another Chinese philosopher Hun Su taught: Man is by nature evil and goodness is the result of conscious activity. And then there is the biblical view of human nature: Man was created in the image of God and fell from grace through his own act of rebellion.

Whatever your view about the nature of man, there is no precedent, historical or contemporary, for man to be two people in one. There is no precedent for that. This is a duality which we have contrived for our convenience. We can talk about this and explain our aberrant behavior without saying much more.

As a people with merged, with fused inner and outer selves, we eliminate the distinction between image and reality. We cease projecting shadows where substance is required. That person who is whole has a nonnegotiable set of values, a non-negotiable set of principles. Core beliefs, they are advanced boldly. These core beliefs of this whole person includes—well, it includes several things, but I want to just mention two.

The first, justice. Justice is the flagship principle. Justice is the overarching principle. Justice is fairness. Justice is proportionality. Justice is rectification. Justice is equity. Justice.

It was Reinhold Niebuhr who said that justice is the highest ideal of society. A belief in justice is very simple: Everyone is treated fairly by everyone else. There is nothing very complicated about that belief, but the whole person has it.

This entitlement, entitled to be treated fairly by everyone else, this entitlement is so simple because it is right. It is just right that everybody is entitled to be treated as fairly as everybody else, and you need nothing sophisticated, no deep insight to recognize that basic right.

Justice should be followed by just acts. This is a belief that justice should pervade our personal and our institutional relationships.

Another ingredient, the second one that I will include in this four set of beliefs of this whole person, selflessness. Oh, that is hard. It is very difficult to attain selflessness. Why is it difficult? Well, it is just natural for self-preservation to be paramount for us. But if self-preservation is paramount, you are failing to actualize the spirit of Christ. There is no doubt about that. Self-denial feels very alien on a landscape of acquisitiveness, profits, competition, progress. Self-denial—yes, we ought to have it.

God's work is for the many, not the few. We can deny ourselves some things. If sacrifice is a requirement for the common good, let's sacrifice. That's required of us. It is so much easier to pay lipservice to sacrifice than to really do it. Oh, how we like to beat

our breasts and say how we are suffering and what we are giving up. But we can sacrifice. God's strengthening of us and our knowledge of God's requirements of us, which were read by Senator Javits from Micah, what does the Lord require of thee, God's strengthening of us and acknowledgement of his requirements of us will help us sacrifice.

To what end has this merger of inner and outer self occurred? What difference does it make that we have this fusion of inner and outer self? Well, if we are whole people, there are some very old words which will be used to define us, words like truth, virtue, honesty. Our political and policy decisions will be released once we are old. Our political and policy decisions will be released, can be released for ethical analysis and hold up wonderful, with a good conscience our only sure reward, with history, the final judge or our needs.

Let us go forth and lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own.

Thank you.

[Applause.]

Senator HATFIELD. Thank you very much, Barbara.

Ladies and gentlemen, the President of the United States.

[Applause.]

The PRESIDENT. Thank you very much. Thank you, Mark, and thank all of you, ladies and gentlemen. Before I tell you what I was planning to say this morning, Senator Javits, you concluded your reading with a prayer so, of course, I know and understood that all of us are customed not to applauding prayer. But I can't help but think that all of us here have a hunger within us to applaud you for your presence here and what you have meant to this gathering.

[Applause.]

Barbara, I had a terrible fear there for a few moments that you were going to make anything I had to say redundant, but I think that maybe the two fit together.

We all in this room I know—and we know many millions more everywhere—turn to God in prayer, believe in the power and the spirit of prayer, and yet so often we direct our prayers to those problems that are immediate to us, knowing that He has promised His help to us when we turn to Him. And yet in a world today that is so torn with strife, where the divisions seems to be increasing, not people coming together within countries, divisions within the people themselves, I wonder if we have ever thought about the greatest tool that we have, that power of prayer and God's help.

If you could add together the power of prayer of the people just in this room, what would be its megatonnage, and have we maybe been neglecting this and not thinking in terms of a broader basis in which we pray to be forgiven for the animus we feel towards someone in perhaps a legitimate dispute and at the same time recognize that while the dispute will go on we have to realize that that other individual is a child of God even as we are and is loved by God as we like to feel that we are.

This power of prayer can be illustrated by a story that goes back to the Fourth Century. An Asian monk living in a little remote village, spending most of his time in prayer or attending the garden from which he obtained his sustenance—I hesitate to say the name because I am not sure I know the pronunciation, but let me take a chance—it was Telamachus, back in the Fourth Century. And then one day he thought he heard the voice of God telling him to go to Rome and, believing that he had heard, he set out and weeks and weeks later he arrived there, having traveled most of the way on foot. And it was at a time of festival in Rome, they were celebrating a triumph over the gods and he followed a crowd into the Colosseum and then there in the midst of this great crowd he saw the Gladiators come forth and stand before the emperor and say, "We who are about to die salute you," and he realized they were going to fight to the death for the entertainment of the crowds and he cried out, "In the name of Christ, stop," and his voice was lost in the tumult there in the great Colosseum. And as the games began, he made his way down through the crowd and climbed over the wall and dropped to the floor of the arena, and suddenly the crowd saw this scrawny little figure making his way out to the Gladiators and saying over and over again, "In the name of Christ, stop," and they thought it was part of the entertainment and at first they were amused. But then when they realized that it wasn't, they grew belligerent and angry and as he was pleading with the Gladiators, "In the name of Christ, stop," one of them plunged his sword into his body and, as he fell to the sand of the arena in death, his last words were, "In the name of Christ, stop."

And suddenly a strange thing happened: The Gladiators stood looking at this tiny form lying in the sand, a silence fell over the Colosseum, and then some place up in the upper tiers an individual made his way to an exit and left and others began to follow and in a dead silence everyone left the Colosseum. That was the last battle to the death between Gladiators in the Roman Colosseum. Never again did anyone kill or did men kill each other for the entertainment of the crowd. One tiny voice that could hardly be heard above the tumult, "In the name of Christ, stop." It is something we could be saying to each other throughout the world today.

Now, several days ago while I was very concerned about what I was going to say here today and trying to think of something to say, I received through diplomatic channels a message from far out across the Pacific. Some time ago, our ambassador presented to General Romulo of the Philippines the American Medal of Freedom. Not only had he been a great friend of the United States in our time of war, but then he had spent 17 years as an ambassador here in Washington from his country to ours. And for whatever reason, he sent this message of thanks to me for the medal that had been given, and then included the farewell statement that he has made when he left Washington, left this country after those 17 years. And I had to confess, I had never been aware that there had been such a farewell message and I am quite sure that many of you hadn't, and so I am going to share it with you. I think it fits what we are talking about today.

He said: I am going home, America. For 17 years I have enjoyed your hospitality, visited every one of your fifty states. I can say I know you well. I adore and love America. It is my second home. What I have to say now in parting is both tribute and warning. Never forget, Americans, that yours is a spiritual country. Yes, I know you are a practical people. Like others, I've marveled at your factories, your skyscrapers and your arsenals. But underlying everything else is the fact that America began as a God-loving, God-fearing, God-worshiping people, knowing that there is a spark of the Divine in each one of us. It is this respect for the dignity of the human spirit which keeps America invincible. May you always endure and, as I say again in parting, thank you, America, and farewell. May God keep you always and may you always keep God.

Thank you.

[Applause.]

Senator HATFIELD. Will you please remain standing. We will now call upon our colleague from the House of Representatives, the Honorable Daniel Akaka, to lead us in the singing of a closing hymn and then we will have a closing prayer.

Mr. AKAKA. Mr. President, Mrs. Reagan, Mr. Vice President and Mrs. Bush, distinguished friends, let us join together in singing this great classic and universal hymn, "How Great Thou Art."

[Closing song.]

Senator HATFIELD. And now to give us the closing prayer, I would like to call on the Chief of Naval Operations, Admiral James D. Watkins.

Admiral WATKINS. Would you please join me in the closing prayer: Most gracious God, our Creator, King of the Universe, Eternal Father, strong to save. This gathering has been a blessing for all of us. Our bodies have been nourished with daily bread. Our souls have been nurtured with scripture. Our minds have been inspired with wise exhortation. Therefore, Lord God, let us now go forth to our labors in the attitude of prayer, confessing that all authority in Heaven and on Earth has been given to You, conscious that we, like the centurian of old, are men and women under authority, responsible to seek and do Your will, committed to the protection of freedom, the goals of peace, the doing of justice and the love of kindness and called in strength of faith to walk forward into tomorrow and tomorrow's tomorrow, humbly in Your Holy Name. Amen.

Senator HATFIELD. May we request that each of you please remain in your positions until the President and Mrs. Reagan have been escorted from the platform, and the Vice President and Mrs. Bush have been escorted from the platform.

Thank you again, Mr. President and Mrs. Reagan, for being with us this morning.

[Applause.]

DOMESTIC CONTENT: A DISASTER IN THE MAKING

Mr. CHAFEE. Mr. President, there is no softer way to say it, so let us not mince words:

Domestic content legislation would be a disaster for the United States.

Study after study has shown that it would raise the price of every new automobile sold in the United States by a thousand dollars or more; that it would cost a net loss of up to 100,000 American jobs; and that it would lead inevitably to foreign retaliation.

The sponsors of this legislation cannot refute these studies, so they fall back on rhetoric: let us get tough with the Japanese and pass this bill to show we mean business about forcing Tokyo to relax its own trade restrictions on American produce, goods, and services.

I am not here today to defend the Japanese. Heaven knows they impose many unfair trade barriers to American products.

But starting a trade war in which we have far more to lose than we do to gain is hardly the way to solve the problem of unfair trade practices imposed by the Japanese.

If it were to become law, domestic content would almost certainly invite retaliation from the Japanese against American exports. Far from encouraging the Japanese to agree to our pressing demands that they open their markets to more American products, domestic content would likely make the Japanese even more intransigent than they have been in the past.

Mr. President, in December I wrote a lengthy article on the subject of domestic content for the San Diego Union. I ask unanimous consent that it be printed in the RECORD at this point.

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

[From the San Diego Union, Dec. 18, 1983]

AUTO CONTENT BILL BOUND TO BACKFIRE

(By John H. Chafee)

By the end of this year, American automakers will have built 7 million cars, up from 5.8 million in 1982—a 20 percent increase.

Detroit is profitable again:

General Motors has netted more than $2.4 billion through September, including $737 million in the third quarter—the highest quarterly profit in its history.

Ford posted a net profit of nearly $1.1 billion for the first nine months of the year.

Even Chrysler—an economic basket case only a couple of years ago—has reported net earnings of more than $580 million for the first three quarters, a figure that is higher than that reported in any full year in the company's history.

Meanwhile, more than 105,000 auto workers have returned to the assembly lines since January, and more are expected to be called back. Some dealers are even complaining that there is a shortage of American automobiles, and that they could sell more if they could get them.

So why is it, against this success story of a revitalized U.S. auto industry, that the House of Representatives has just passed a bill that would raise the cost of every automobile sold in the United States by a thousand dollars or more, and which would cost the jobs of more than 60,000 hard-working men and women?

The answer lies in the fact that protectionism, fueled by an urge to "get tough" with the Japanese, is back in vogue.

The legislation in question is the so-called "domestic content" bill. Approved by the House on Nov. 3 by a vote of 219 to 199, its objective is to force the Japanese to build a major percentage of their cars in the United States, thus shutting off their exports to this country.

This bill is bad public policy, both in terms of our own economy and in terms of our trade relations with others.

Domestically, it would impose a new and unwelcome burden on American consumers and workers. The President's Council of Economic Advisers has estimated it would increase the cost of every automobile sold in the United States by an average of $1,000, and some estimates have placed that figure as high as $3,000. Meanwhile, the Congressional Budget Office estimates the bill would cause a net loss of 66,000 American jobs by 1990, and that figure is likely conservative.

But it is from the perspective of our trade policy that the greatest damage would be done.

If it becomes law, domestic content would almost certainly invite retaliation from the Japanese against American exports. Far from encouraging the Japanese to agree to our pressing demands that they open their markets to more American products, domestic content would likely make the Japanese even more intransigent than they have been in the past.

The growing importance of trade to our economy is often overlooked by Americans, but the facts speak for themselves.

The produce of one out of every three acres cultivated in the United States is shipped abroad, providing over a million U.S. jobs in the agricultural sector of our economy. Japan alone buys more than $6 billion worth of farm commodities each year.

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.

As the world economy recovers from the global recession of 1981 and 1982, trade will continue to 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 to stem the freer flow of goods and services throughout the world market.

That is why domestic content is a dangerous development, for it symbolizes a growing restlessness in the United States with the snail's pace of negotiations to knock down foreign trade barriers—especially those of the Japanese. Furthermore, the bill is a sign of the increasing political appeal of protectionist measures to shut out foreign goods from the American market.

No one these days admits to being a protectionist; the word remains taboo in the lexicon of politics, and most politicians continue to pay lip service, at least, to "free trade."

The fact remains, however, that Congress and the administration have beeen confronted in recent months with a spate of proposals to restrict foreign imports. These include not only domestic content, but also any number of import quota proposals, so-called "buy American" schemes, and tit-for-tat "reciprocity" legislation to impose tough and inflexible American restrictions in retaliation for foreign trade barriers.

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.

Efforts to protect American goods from foreign competition are nothing new. Beef, textiles and other commodities and goods have long been singled out for protection; recently we've added others, ranging from motorcycles to clothespins. But by and large, Congress throughout the post-war period has tended to resist more egregious protectionist proposals because Democrats and Republicans agreed that our national interest can best be served by promoting generally freer trade throughout the world.

What has changed is that most of the recent proposals on the neoprotectionist agenda are far more sweeping in nature than those of the past. Domestic content, for example, is aimed at Japanese automakers, but precisely because the auto industry is such a major portion of the industrial base of both Japan and the United States, the bill would affect the manufacture and assembly of a host of products, ranging from machine tools to glass, from electronics to steel.

Furthermore, the current complaints about foreign competition are often accompanied by a shrill rhetoric that borders on near-hysteria, especially when it concerns the Japanese. One Democratic senator, for example, complained with more fervor than historical accuracy that the Japanese reluctance to extend existing "voluntary" quotas on their auto exports to the United States amounts to "another Pearl Harbor."

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.

There are many examples of this new political polarization over trade policy.

Last Dec. 15, for example, both the Senate and the House of Representatives voted on two elements of the neoprotectionist agenda. On that day, the House passed an earlier version of the domestic content bill at the same time that the Senate was rejecting an amendment to the gas tax bill to require that 100 percent of steel and cement used in road and bridge construction come from American mills.

In both the Senate and House votes of last December, 75 percent of the Democrats voted for the neoprotectionist position, while 75 percent of the Republicans stood in support of continued free trade. In the Nov. 3 vote, these percentages remained virtually the same.

The two leading candidates for the Democratic presidential nomination—former vice president Walter Mondale and Sen. John Glenn—have both endorsed the domestic content bill. Indeed, it is no coincidence that Mondale, whose candidacy has been endorsed by the AFL-CIO, has been the most strident and outspoken advocate of domestic content among the Democratic presidential candidates.

Meanwhile, President Reagan has been a steadfast opponent of the bill, and would veto it if it should ever reach his desk.

Where does this leave us?

For starters, I believe that House passage of the domestic content bill in the face of a revitalized auto industry indicates that pressure to give final approval to this and other elements of the neoprotectionist agenda will continue to mount. Beyond this, I think it is likely we will see an acceleration of the political polarization of trade, with Democrats seeking to make it a major issue in the 1984 campaign.

Those who support freer trade—especially Republicans—should not flinch from such a development, as the administration did when it sought an extension of Japanese

auto import quotas last month. Instead, Republicans should welcome a wide-ranging debate over trade. It is a golden opportunity to broaden the party's appeal and to win new votes from consumers, farmers and workers.

There is potent political ammunition in free trade.

First, protectionism is blatantly against the interests of consumers. In virtually every case, import restrictions lead to both higher prices and a restricted selection of consumer goods. From the standpoint of the consumer, the "voluntary" quotas on Japanese auto imports have been bad; domestic content would be disastrous. Free traders should take the offensive and demand that the neoprotectionists justify the higher costs they want to impose upon millions of Americans.

Second, 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 a million U.S. jobs dependent upon exports of billions of dollars worth of agricultural commodities, the major farm organizations have been in the forefront of opposition to domestic content and will likely oppose other protectionist moves. Ronald Reagan and Republicans in general were the beneficiaries in 1980 of farm discontent over the Carter administration's Russian grain embargo. In 1984, Republicans can again ask why Democrats want to imperil farm exports.

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 such actions to destroy American jobs.

No one maintains that we do not face serious problems in our trade relations with others, especially with Japan. Japanese trade barriers are both unfair and frustrating to Americans. The question is whether we give in to the frustration by enacting laws which merely aggravate the problem, or whether we will persevere in the slow and tedious process that is needed to overcome Japanese resistance to the opening of their markets to more American goods and services.

In 1984, there will be many who campaign by taking a hard line against Japanese. Shrill rhetoric may well sway voters; that would be nothing new in American politics.

But I am convinced there are more votes to be gained by those who appeal to the proven benefits that have always stemmed from trade as free and unfettered as we can make it: good jobs for America's industrial workers in growing numbers; agricultural prosperity, based in large part on exports; and stable or lower prices for consumers resulting from tough competition in the marketplace.

If trade is thus to be one of the major political issues in 1984, let's go to it. It's an issue on which the Republican Party is on the side of the angels—and the voters.

An historical example, a half-century old, is relevant 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 of Smoot-Hawley was "to protect American labor" from unemployment allegedly caused by imports of foreign goods.

In an impassioned speech remarkably similar to those of latter-day protectionists who champion the domestic content bill, the Republican co-author of the 1930 law—Rep. W. C. Hawley of Oregon—thundered to the applause of his colleagues that "a government would be remiss in its duty that did not, so far as legislation may, protect the people in obtaining employment necessary for their subsistence, comfort and betterment."

For all the cheering, however, the consequences were inevitable: Within months, retaliatory laws had been passed by virtually all of America's industrial trading partners; world trade plummeted by 60 percent in two years; a depression gave way to the Great Depression.

Hawley's words did not help put Americans back to work; rather, they paved the way for higher unemployment, as will domestic content today if it becomes law.

A 13-term congressman, Hawley was defeated in his bid for re-election in 1932, denied even the nomination of his own party in the wake of the economic chaos his efforts had done so much to create.

LITHUANIANS STILL STRUGGLE FOR FREEDOM

Mr. PRESSLER. Mr. President, February 16 marked the 66th anniversary of the Declaration of Lithuanian Independence. We presently have approximately 1 million people of Lithuanian descent residing in the United States. Let us pay tribute to these proud people who continue their struggle to regain a free and independent Lithuania.

Russia and Soviet domination of Lithuania has been prevalent since 1794, except for a brief period of freedom between 1920 and 1940. In 1940, with Hitler's concurrence, the Soviet Union invaded the Baltic States of Estonia, Latvia, and Lithuania, and established them as military bases. Mass deportations followed and Lithuanians were cruelly treated by the Soviet invaders.

Though Soviet dominance continues to this day, the Lithuanian people are to be commended for their fierce independence and strong national identity. The Catholic Church is an important part of Lithuanian culture and human rights protests are not uncommon. It is remarkable that after almost 200 years of suffering, these brave people are able to continue their spirited fight for human decency and personal freedom.

Mr. President, the following is an excerpt taken from "The Violations of Human Rights in Soviet Occupied Lithuania." It is a good indication of the effects of Russian occupation on the Lithuanian people:

1. The rulers in the Kremlin understand very well that sooner or later an end will come to the Russian empire as well. On the basis of the interests of Russia alone, already today in appropriate ruling circles there is preparation to construct a new state on the basis of a more convincing ideology when the communist empire disintegrates. Therefore, it is sought to gradually increase the number of Russians in Lithuania (as in Latvia) so that they would comprise half of the inhabitants. Then this part of the population would have the formal right to demand a voice in deciding the fate of Lithuania, that is, to "merge" it again with Russia when Russia allegedly has chosen the democratic course.

2. It is hoped that a Lithuanian, psychologically brainwashed and persuaded by the advantage of union, could bring upon himself voluntarily a new Russian yoke. The colonists are indispensable in this process of "softening". It has been noted that the Russian mode of thought, Russian traditions are forced upon the collectives where the Lithuanians today comprise a minority. With the aid of Russian colonists an atmosphere of loyalty to the occupational regime is being created.

3. The Russian colonists, averse to anything Lithuanian, do not study our language and, besides, compel others to speak only Russian in various offices. After the Tashkent Conference plans were developed to reduce the rights of the Lithuanian language and to enhance the role of Russian as means of interpersonal relations. The executors of this plan are the Russian colonists. They will teach Russian, disseminate the Russian literature from the kindergarten to the auditoriums of higher schools.

4. The Russians alone are allowed to enjoy the constitutional right of teaching their children in their native language. Some 200,000 Lithuanians in East Prussia (the so-called Kaliningrad region), Latvia, and Siberia do not have a single Lithuanian school at their disposal. But whenever Russians settle in the Lithuanian countryside, their first demand is for Russian schools to educate their children. Special Russian classes are being established in many Lithuanian schools. In this way the interaction with Russians and later mixed marriages are encouraged. Although the children of such families most likely will speak Lithuanian, nevertheless they acquire a Russian mode of thought and remain completely indifferent in respect to the Lithuanian nation.

5. The Russian colonists are weakening the physical potential of the Lithuanian nation. Demobilized Russian soldiers and officers are the first to be provided with apartments. The same privilege is enjoyed by "highly qualified specialists" who come from Russia. Their children have easier access to universities. Because of the housing shortage and insufficient kindergartens, Lithuanian newly-weds are compelled to limit the number of children. This has led to the decline of the natural birth rate, something about which even the Lithuanian Soviet demographers are alarmed.

6. Although we do not consider our nation superior to the Russian nation, under the present conditions certain segments of the Russian colonists demoralize our nation. The immigrants are as a rule people of a low moral profile, motivated by material gain, not excluding the criminal element.

7. The Russian colonists, many of whom come from the Siberian vastness, bring a lack of respect for nature. The devastated woods of our suburbs is their handiwork. Once they get into the leading position, the colonists recklessly decimate Lithuania's forests, pollute the waters, etc.

8. Russian immigrants occupy the so-called "command positions" in Lithuania. They have taken almost complete control of the railroads, of the war industry, and of the system of communications. Under the pretext of job shortage, Lithuanian specialists are sent to work (and to become denationalized) to the "fraternal republics".

9. The raw materials brought from Russia to Lithuania are processed by Russian colonists. (Most of the industrial workers in the Vilnius region are Russians). The processed goods make their way back to Russia. The economic damage is obvious. But it is compensated by political profit—an idea is being nurtured in Lithuanian minds that if Lithuania became independent, all Lithuanian industries would stop without Russian raw materials.

Mr. President, the tragic consequences of Soviet ethnic policies are all too apparent. Let us again pledge our solidarity with and support for the efforts being made by the Lithuanian people to achieve independence and to preserve their national identity.

ESTONIANS RESIST YOKE OF OPPRESSION

Mr. PRESSLER. Mr. President, the people of Estonia ask that we join them in observance of the 66th anniversary of their Declaration of Independence on February 24. Though the Estonians have long suffered from Soviet domination, their spirit remains high. Their dedication to independence remains great. They are truly worthy of our highest respect as they struggle to keep the light of freedom burning.

In 1940, an agreement between Stalin and Hitler preceded a massive Soviet invasion of Estonia, Lithuania, and Latvia. Estonia and her sister Baltic States were turned into massive military bases. Today, their national territory is the site of Soviet submarine, warship, missile, airfield and heavy armor military installations. At the end of 1983, the 1½ million people of Estonia were under the domination of 122,000 Soviet troops.

The Estonians have not accepted the occupation without resistance. Freedom and human rights protests are conducted at the risk of harsh retaliation by Soviet authorities. A 1981 petition calling for a Baltic nuclear-free zone and signed by a group of Estonian, Lithuanian, and Latvian peace activists resulted in massive arrests and labor camp internments.

Mr. President, as Estonians commemorate the 66th anniversary of the Declaration of Independence of the Republic of Estonia, let us again unite in support for their cause. They certainly deserve a better fate than that which has befallen them. We must not rest until their goal of a democratic and free state is realized in its entirety.

SENATE PASSAGE OF THE YELLOW RAIN RESOLUTION—SENATE RESOLUTION 201

Mr. PRESSLER. Mr. President, without fanfare, the Senate took an extremely important step on February 9. On that day, the Senate formally took a stand on the continuing use and/or provision of chemical and toxin warfare agents by the Soviet Union in Southeast Asia and Afghanistan.

Since I introduced this important resolution (S. Res. 201) on August 4, 1983, a total of 36 Senators joined me in cosponsoring this resolution. The use of chemical and toxin weapons is outlawed by two agreements to which the Soviet Union is a signatory. The victims of these atrocities are not exclusively combatants. Indeed, the overwhelming majority are civilians, unfortunate enough to find themselves in the middle of wars that are not of their making. Of the civilian victims, the weakest have suffered most. These include children and the elderly.

Several issues are tied into this heinous form of warfare. The use of chemical and toxin agents raises questions about Soviet compliance with signed and ratified accords. This cannot but have a chilling effect on current efforts to reach arms control agreements. Moreover, the use of this deadly form of warfare represents a violation of the most basic form of human rights. There can be no hope of improved quality of life when the right to life and to live in peace are denied.

There are those who have urged that until we find a "smoking gun" for yellow rain, that the Senate and the U.S. Government remain silent. I cannot but disagree most strongly with this logic. We may not have a smoking gun, but the quantity and quality of evidence is overwhelming. There is a compelling case demonstrating that this deadly and outlawed form of warfare has occurred and continues to occur.

The failure to obtain a smoking gun must be placed at the Kremlin's doorstep. The Soviets have refused to cooperate with all nations and organizations that have sought to investigate the many instances of suspected chemical and toxin warfare. Even an impartial international team created by the United Nations has been met by Soviet refusal to provide access to areas where incidents have occurred. Nevertheless, the United Nations has produced an interim report that adds weight to the charges first raised by the United States. Let us note, that this issue is not one for partisan politics. The original presentation to the United Nations was made by the Carter administration. Under President Reagan's leadership the U.S. investigation has continued. The result was the compilation of two massive reports presenting strong evidence of the atrocities being committed by the Soviets and/or their agents in Afganistan and Southeast Asia.

Fortunately, the United States is no longer alone in pressing these charges. In addition to the U.N. findings, the governments of Canada and France have conducted independent inquiries and have also concluded that chemical and toxin agents are being used. We have been told that other governments have also looked into the case of yellow rain and have come to the same conclusion. It would be invaluable if these governments made their findings public.

As for other governments, Senate Resolution 201 urges that they carefully examine the evidence on yellow rain. Should they remain skeptical, the Senate urges that they conduct independent investigations. Such activities are vitally important if world opinion is to bring an end to this unacceptable situation. Moreover, the weight of international condemnation is a most powerful tool for assuring that arms control agreements will not be violated. Yellow rain is an important litmus test of the international community's responsibility in arms control. Silence serves no nation's interest, especially in the Third World.

It is the Third World that has provided the arena for chemical and toxin warfare. Unless these nations speak out and speak out forcefully, they should not expect help should they become the new testing ground or battle field for yellow rain. Indeed, it is important to note that the U.S. Ambassador to the United Nations yesterday transmitted additional evidence on the situation involving the use of chemical and toxin agents. This report notes an ominous new situation of chemical weapons use in the Middle East war between Iraq and Iran. It is evident from this new report that chemical and toxin warfare is not only an East-West issue, but threatens the security and safety of the entire global community. Therefore, yellow rain must be of concern to all nations. For this reason, I agree strongly with the administration that chemical, toxin, and biological warfare issues must be addressed multilaterally in the Committee on Disarmament in Geneva. If bilateral talks between the United States and the Soviet Union begin, they must be a complement and not a substitute for multilateral discussions. To repeat, chemical and toxin warfare is a global issue. The Third World is most threatened by chemical and toxin warfare.

For this reason, Senate Resolution 201 urges that the Committee on Disarmament focus its attention on the issues raised by yellow rain. It is evident to the Senate that a key failing of current chemical, toxin, and biological accords is their lack of an effective verification system. It is clear that the Soviets and their allies are exploiting the verification loopholes to prevent a thorough investigation which might find the smoking gun. Moreover, Senate Resolution 201 urges that the administration work closely with the

United Nations to obtain unhindered access for its investigators to areas of suspected chemical and toxin warfare. The Soviets have a responsibility to cooperate under the spirit of the current accords. Their failure to assist the United Nations and other investigators cannot but lend support to the view that Moscow has something to hide.

As I have stated, the Senate has now made its position known on this unacceptable situation. I wish to thank the 36 Senators who joined me in cosponsoring Senate Resolution 201. The broad base of cosponsorship makes it clear that the Senate's deep concern for yellow rain is not based upon party or philosophical lines. Credit for passage of Senate Resolution 201 must go to Senator PERCY, the principal cosponsor, who expedited action on this measure in the Foreign Relations Committee. The other cosponsors also assured quick action for Senate Resolution 201 on the Senate floor.

Mr. President, I ask unanimous consent that Senate Resolution 201 together with the list of cosponsors be printed in the RECORD at the conclusion of my remarks.

Mr. President, passage of Senate Resolution 201 did not go entirely unnoticed. It was the subject of a lead editorial in the Wall Street Journal on February 15, 1984. But as that editorial makes clear the debate on yellow rain is far from concluded. It is important to remember that silence is an unacceptable action while people's lives and the future of arms control are at stake. By noting that the evidence on yellow rain is compelling, the Senate has done an important service. I ask unanimous consent that the Wall Street Journal editorial be printed in the RECORD at the conclusion of my remarks.

As I have already noted, Ambassador Jeane J. Kirkpatrick has transmitted a new report on chemical and toxin warfare to the U.N. Secretary General. This report gives further weight to the case pointing to Soviet use and/or provision of these heinous warfare agents.

Mr. President, I ask that Ambassador Kirkpatrick's report to the United Nations be printed in the RECORD, along with Senate Resolution 201 and the Wall Street Journal editorial.

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

S. RES. 201

Whereas the accumulated evidence indicates that the Soviet Union is engaged in the use and/or provision of chemical warfare agents in Southeast Asia and Afghanistan;

Whereas this finding is based upon investigations conducted by the United States Government and by other governments and international organizations such as the United Nations and the Governments of Canada and France; and

Whereas such activities are in contravention of arms control agreements signed and ratified by the Union of Soviet Socialist Repubics: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States should immediately seek to—

(a) urge that other governments carefully assess the evidence and, where possible, conduct their own independent investigations of suspected chemical warfare;

(b) assist the United Nations to gain unhindered access for United Nations investigators to areas where chemical and toxin weapons use is suspected; and

(c) negotiate with the Soviet Union and other nations the strengthening of existing agreements on chemical, biological, and toxin weapons so as to provide effective mechanisms for assuring compliance, to include provision for on-demand, onsite inspection when necessary.

[From Wall Street Journal, Feb. 15, 1984]

SCIENCE AND WINDMILLS

Among men of affairs the "yellow rain" debate is closed. Last Thursday, for example, the U.S. Senate took up a resolution declaring that the Soviet Union and its allies have been waging chemical warfare in Southeast Asia and Afghanistan and violating arms-control agreements. The resolution was offered by 37 co-sponsors from all over the partisan and ideological spectrum, and passed by voice vote without a single dissent.

In the scientific community, however, Harvard biochemist Matthew Meselson and a few allies have managed to keep dissent alive. Indeed, his views have recently received their most extensive airing to date. Chemical and Engineering News, the weekly publication of the American Chemical Society, devoted 27 pages of its Jan. 9 edition to an article by staff writer Lois R. Ember making the brief for Prof. Meselson's doubts.

"The U.S. simply has not proved that toxin warfare has take or is taking place," Ms. Ember concludes. Most if not all yellow-rain samples contain not only the trichothecene toxins the government has identified as the active ingredient of yellow rain, but also pollen, which Prof. Meselson says may be bee feces. From this Ms. Ember concludes that "The government may have unearthed, quite by accident, a very serious public health problem in Southeast Asia."

Ms. Ember's commendably exhaustive research certainly identifies the weak points in the government's case. The number of samples testing positive for trichothecenes is small—five environmental samples from leaves or water and 20 biological samples from blood and tissue of people who said they were attacked. Many other samples were not tested immediately but were saved pending the development of an Army in-house laboratory, which has come up with negative tests of all samples including one that tested positively before. We would be the first to agree-indeed we have been saying from the first-that the government should have been more careful and more energetic in its efforts to investigate.

Still, the conclusion that yellow rain is not only real but a toxin weapon is supported by an impressive web of evidence. Refugees' reports from Laos, Cambodia and Thailand, collected by both the U.S. and the United Nations and sometimes corroborated by intelligence about military activities, tell of chemical attacks, frequently with yellow smoke and most typically causing bleeding, blistering and other bizarre symptoms. These symptoms suggest trichothecene poisoning, the best-known outbtreak of which was in the Orenburg district of the Soviet Union during World War II. Trichothecenes were found in sample collected from attack sites, as well as from a Soviet-made gas mask from Afghanistan. Trichothecenes or their metabolites were found in the blood of people who said they were attack victims. The obvious and consistent explanation is biochemical warfare.

Against this Prof. Meselson and Ms. Ember put up an alternative thesis consisting of a series of ad hoc conjectures: that the various refugees were confused or lying. And that the yellow spots collectd in samples were deposits of bee feces. And that trichothecene-producing fusarium molds grow naturally on bee feces. And that the Soviet gas mask was a forgery or accidentally contaminated in U.S. lab. And that the people who said they were attack victims and had trichothecenes in their blood had eaten food contaminated with trichothence-producing molds.

For this last hypothesis, there is no evidence whatever. None. No trichothecens have been found anywhere in Southeast Asia except from yellow-rain attack sites. No bee feces sample has ever been found colonized by trichothecene-producing fusarium. No scientific literature describes a history of trichothecene poisoning in Southeast Asia prior to the yellow-rain attacks. No one has ever reported getting ill after being hit by bee droppings, in Southeast Asia or elsewhere. No trichothecenes have been found in the blood of Southeast Asians except from people who say they were attacked by yellow rain.

How then, does the mantle of "science" get bestowed on the public health problem speculation? Fundamentally by applying the double standards. The U.S. government's charges of toxin warfare aren't credible because the positive samples, collected under wartime conditions and in the face of an ever-present prospect of deliberate disinformation, are not sufficient in number and rigorous enough in methodology to withstand the scrutiny of a disertation committee. Prof. Meselson's bee theory, by contrast, is credible because the government has not offered evidence sufficient to disprove it.

This double standard is repeated in ways great and small. Ms. Ember refers, for example, to "the enigmatic Amos Townsend," and notes that he "has been on the State Department payroll for more than a year." Dr. Townsend is a retired Air Force surgeon who first got involved with yellow rain as a physician in refugee camps for the International Rescue Committee, and was belatedly given some U.S. government financing. He is also a critic of the bee-feces thesis, among other things making the point that the "primitive hill tribes" are likely to be the best observers of "their own natural phenomena." Ms. Ember dismisses his report because it is "vague," and because he didn't consult the right Thai bee experts.

By contrast, Prof. Meselson is identified as a "biochemist who has counseled the White House, the departments of State and Defense and the Arms Control and Disarmament Agency on biological and chemical warfare issues for the past 20 years." Yet there is no mention of Prof. Meselson's real, if in many ways commendable, personal and intellectual stake in the issue. He has spent these years campaigning to head off biological weapons, and has been recognized as the intellectual godfather of the 1972 biological weapons convention. Princeton physicist

and science philosopher Freeman Dyson has written that biologists, unlike nuclear scientists, have succeeded in restricting the application of their science in warfare; he specifically cited Prof. Meselson as "the man who did more than any other single person to rid the world of biological weapons." But if the Soviets are violating the treaty, the world is not rid of biological weapons, and such heady praise turns to mockery. Prof. Meselson's lifetime crusade starts to look—at best—like an exercise in windmill tilting.

The double standard is even more evident in Ms. Ember's treatment of the refugee testimony. This she seeks to discredit because the interviews in which it was collected do not meet the methodological standards of anthropology or sociology—sort of second cousins to science. In particular, she relies on the work of Grant Evans, who formerly taught at La Trobe University in Melbourne, Australia, and is author of the book "The Yellow Rainmakers: Are Chemical Weapons Being Used in Southeast Asia?"

Ms. Ember's exhausted research failed to discover that Mr. Evans was also a frequent contributor to the Tribune, the newspaper of the Australian Communist Party. According to B. A. Santamaria, president of the National Civic Council, Australia's leading anticommunist labor organization, Mr. Evans has a history of association with extreme left causes and publications reaching back to his student days. In 1982, the Laotian government allowed Mr. Evans into the country for five weeks to research his book—while refusing to accept an investigative team from the U.N. Not surprisingly, he found "no basis in fact" for the yellow-rain charges and concluded that the eyewitness stories are "fabrications." Even Prof. Meselson dismisses the Evans book as "too political for my tastes and too polemic." Yet Ms. Ember's scientific and journalistic standards allow "sociologist Evans" to question the motives of U.S. officials in the yellow-rain affair.

The yellow-rain issue does indeed raise questions about the role of science in public policy. Scientists are not all on one side. Chester Mirocha, the leading authority on trichothecenes, is steadfast for the government. As reported nearby, a Belgian toxicologist has confirmed the yellow-rain conclusions and even offers an independent set of samples showing trichothecenes. It's always useful to have skeptics to make the other case, of course. To our minds, the Chemical and Engineering News article serves to show how much anyone has to strain in any attempt to explain the evidence in any way except biological warfare.

It is quite another thing, though, to lay some sort of exclusive claim to the authority of "science." The byways of science can sometimes serve those who seek to ward off unwelcome conclusions. There is always some new standard of evidence to demand, some new hypothesis yet untested, as the Tobacco Institute has so ably demonstrated. This is an abuse of science against which scientists should guard, or men of affairs will start to wonder whether science can help us when we have to decide important questions of public policy.

U.S. SUBMISSION TO THE U.N. SECRETARY GENERAL ON THE USE OF CHEMICAL AND TOXIN WEAPONS IN AFGHANISTAN AND SOUTHEAST ASIA, FEBRUARY 21, 1984

The Permanent Representative of the United States of America presents her compliments to the Secertary-General of the United Nations and has the honor to provide further information pertaining to the use of chemical and toxin weapons in the continuing conflicts in Afghanistan, Kampuchea and Laos. The United States is sharing its new preliminary findings for 1983 in accordance with its policy of keeping the international community and the public routinely informed in a timely manner about chemical and toxin weapons use in these areas. In view of the concerns of members of the United Nations, as expressed in General Assembly Resolutions 35/144 C of 12 December 1980, 36/96 C of 9 December 1981, 37/98 D and E of 13 December 1982, and 38/187 C of 20 December 1983, I request that this submission be circulated at an early date as an official document of the General Assembly under the agenda item entitled "Chemical and Bacteriological (Biological) Weapons."

The United States of America has long been concerned about the use of chemical and toxin weapons in Afghanistan and Southeast Asia, in violation of the Geneva Protocol of 1925, related rules of customary international law, and the 1972 Biological and Toxin Weapons Convention. The United States has thus carefully monitored the situation in these regions to obtain information about chemical and toxin weapon attacks and has shared the information and evidence with the United Nations and its Member States. The United States has also co-operated fully with the Secretary-General and his Group of Experts in the United Nations' investigations of this problem and in other international efforts to bring a halt to the use of these terrifying weapons.

The United States of America, over the past three years, has submitted a series of reports presenting the evidence of toxic weapons use and relevant technical information in detail. In this context, two major reports were submitted, entitled "Chemical Warfare in Southeast Asia and Afghanistan", dated 22 March 1982 (A/37/157), and "Chemical Warfare in Southeast Asia and Afghanistan: An Update," dated 29 November 1982 (A/C.1/37/10). Most recently, on August 4, 1983, the United States submitted a report (A/38/326) on evidence obtained from victims of toxic warfare attacks which had occurred earlier in Laos and Kampuchea.

Since the submission of the last report, the United States has continued to analyze and review the information and evidence available to it on the use of chemical and toxin weapons in Afghanistan and Southeast Asia. As with the previous submissions, the United States has considered reports of toxic attacks as valid only if they were confirmed from two or more types of sources. These kinds of sources include national technical means, intelligence means, medical and sample data, and direct evidence from a person, other than a victim or refugee, known to have access to a particular attack site. Therefore, while we never discount per se any report or second hand information, our evidence must satisfy those tests of consistency and multiple sources to be considered valid before it is included in our final body of data.

Toxic weapons attacks, deaths and incapacitation continue to be reported. At this point in our analysis, however, the 1983 information shows some differences from that of previous years. Specifically, there appears to have been a diminution of attacks in Afghanistan, and a decrease in the lethality of attacks in Laos and Kampuchea. At the same time, however, there is evidence of continuing use in Laos and Kampuchea of an as yet unidentified, non-lethal agent or agents.

Since December 1980, the international community, the United Nations and private individuals and organizations have been calling attention to chemical and toxin weapons use and bringing substantial international pressure to bear on the users to cease such activities. Although current evidence indicates a decrease in the use of toxic weapons, the international community must persevere in its efforts to bring about a full and permanent cessation. Permanently ending the use of these weapons in Afghanistan and Southeast Asia, however, is only one of our goals. In addition, the Government of the United States will continue to press for strengthening relevant international conventions and for achieving a complete and verifiable ban on all chemical weapons through the Conference on Disarmament in Geneva.

Secretary of State Shultz expressed the concerns of the United States in his letter of submission for our November 1982 report:

"The use of chemical and toxin weapons must be stopped. Respect for existing agreements must be restored and the agreements themselves strengthened. Failure to achieve these goals can only have serious implications for the security of the world community, particularly for the security of smaller nations, like those whose people are being attacked."

Accordingly, the United States will continue to monitor the situation and share with the United Nations what further relevant information it may acquire on prohibited use of toxic weapons. In this connection, the United States will not neglect to monitor other areas in the world where prohibited use of chemical weapons has been alleged. The United States notes with deep concern reports that chemical weapons have been used in the unfortunate ongoing conflict between Iraq and Iran—both parties to the 1925 Geneva Protocol. Such use of chemical weapons would constitute yet another serious breach of the Protocol, and related rules of customary international law, requiring the urgent attention of the world community.

ANNEX

Afghanistan.—The United States has received several reports of Soviet chemical attacks occurring in 1983 but, contrary to previous years, we have not yet been able to confirm these reports as valid, in accordance with our above mentioned standards. For 1982, on the other hand, the United States had strong evidence of several dozen chemical attacks in Afghanistan, resulting in over 300 agent-related deaths.

Laos.—The number of reported toxic attacks in 1983 on which the United States has data is roughly the same as in previous years. While our analysis of these reports has not been completed, our preliminary judgment is that use of toxic agents has actually declined in 1983. Additionally, the number of agent-related deaths and cases of illness resulting from these 1983 attacks appears to be approximately one-third that for 1982. Some deaths associated with toxic attacks occurring in 1983 resulted from secondary effects, such as from eating contaminated animal products after an attack. In some cases, deaths occurred only among the infirm, perhaps caused by exposure to normally non-lethal agents or lethal agents in low concentrations. Additionally, descriptions of the 1983 incidents and medical effects, by victims, doctors and eyewitnesses,

differ from those of previous years. Fewer describe the rapid onset of nausea and vomiting, small blisters; severe irritation of the skin, severe bleeding syndromes, including protracted diarrhea; or vomiting of blood which were common in reports from earlier years. These symptoms, in the past, were associated with exposure to trichothecene toxins, as confirmed by sample analysis and examination of victims by doctors. Methods of delivery of the agents, however, were as reported in previous submissions, with aerial spray occurring most often.

Kampuchea.—The number of reports of toxic attacks in 1983 is close to fifty percent greater than the number in 1982. Based on analysis of these reports to date, however, it appears that the level of use of toxic weapons has not increased, but remained essentially the same as in 1982. We believe that the increase in reports is due in part to better monitoring of the Kampuchea-Thailand border area where most of these attacks occurred. The number of agent-related deaths resulting from attacks in 1983 also appears to have decreased significantly from 1982 levels. On the other hand, victims did experience more short-term, incapacitating effects from which they recovered in hours or days. This may be indicative of the use of non-lethal incapacitating or riot control agents. As with Laos, 1983 reports for Kampuchea contain far fewer descriptions of trichothecene toxin type effects than reports from 1982 and earlier years. Methods of delivery of the agents were as previously reported.

General note.—With regard to environmental and physical samples from Afghanistan, Laos and Kampuchea, the United States has received and analyzed in 1983 one biological sample which was confirmed positive for trichothecene toxins. This was a sample from a March 1983 attack in Kampuchea, reported in the August 4, 1983 U.S. submission. Confirmatory analysis for trichothecene toxins is pending on several other biological samples from early 1983 reported toxic attacks. The United States also has a number of 1983 samples under analysis which contain man-made toxic chemicals and assorted substances other than trichothecene toxins and known conventional chemical agents. The precise composition of these substances has not yet been fully characterized. In keeping with our past practice, the United States will report its results and conclusions when these analyses are completed. Similarly, the United States will report any changes in our overall judgments and findings for 1983 as analysis of the data further progresses.

ALCOHOL ABUSE

Mr. HATCH. Mr. President, private sector initiatives directed at reducing societal tragedies should be recognized and commended. Today, I am pleased to share with you an industry's successful effort in educating our Nation's citizens about the problems of alcohol abuse.

The Distilled Spirits Council of the United States recently corresponded with our First Lady, Mrs. Nancy Reagan. In their letter, they describe their concerns about substance abuse in our country, and their efforts to solve this problem. I would like to share this letter with you. Highlighted are efforts aimed at driving and drinking. Outlined also are their initiatives cautioning youth about alcohol abuse. Their efforts, coupled with public sector support, and the leadership of America's parents comprise an educational movement to warn our citizens not to drink and drive, not to use alcohol during pregnancy, and not to keep the truth about alcohol abuse from reaching our children.

More can be done. More must be done as we calculate the billions of dollars lost to our country because of alcohol abuse. The losses are not just financial. They are also emotionally draining on our country's citizens and their livelihood.

I applaud DISCUS' initiatives, and at this time ask unanimous consent that the full text of their letter to Mrs. Reagan be included in the RECORD.

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

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES, INC.,
Washington, D.C., January 6, 1984.

MRS. RONALD REAGAN,
The White House,
Washington, D.C.

DEAR MRS. REAGAN: As the new year begins, the distilled spirits industry wants you to know of our deep concern about alcohol (liquor, beer, and wine) abuse in our society and about the many programs we sponsor and support to reduce this problem. As president of the Distilled Spirits Council of the United States, Inc. (DISCUS), the trade association for distillers and marketers of distilled spirits, I want you to know of the tremendous efforts the industry is making in dealing with the problems of alcohol abuse, particularly drunk driving and our young people. In 1984 our industry intends to redouble its efforts to promote the responsible use of beverage alcohol.

Social responsibility for the use of our product is taken seriously by the distilled spirits industry. I would like to briefly outline the major activities of the industry during this past year and those planned for 1984 in education, research, and public service as we attempt to reach and educate our population.

EDUCATION

In 1983, DISCUS co-sponsored the first national drunk driving conference held in 10 years with the Department of Transportation (DOT) and other leading traffic agencies. DOT plans to hold another national "Lifesavers Conference" on drunk driving in 1984 and DISCUS, as before, will be a preeminent supporter of the conference.

Through the National Association of State Boards of Education (NASBE), DISCUS is supporting the Alcohol Education Guidelines Project. The Guidelines advocate responsible decision-making about alcohol and will be promoted by the NASBE's professional staff and the individual State Boards of Education. The alcohol responsible guidelines project hopes to establish factual, sound treatment of alcohol use and abuse issues within the public school systems.

The Alcohol and Drug Problems Association of North America (ADPA) is proposing a national education conference be held in 1984 to emphasize responsible decision-making as the basis for preventive education on alcohol abuse. ADPA members include state alcoholism directors, educators and treatment agencies. DISCUS will be financially supporting the ADPA Conference.

As on ongoing project, DISCUS has sponsored through the years independent development of objective source materials for alcohol education in the schools. "Learning About Alcohol" is one of the major source books developed by the National Education Association (NEA) under a series of DISCUS grants.

DISCUS is a continuing major supporter of the BACCHUS (Boost Alcohol Consciousness Concerning the Health of University Students) program and SADD (Students Against Drunk Driving). BACCHUS offers a comprehensive approach to prevention of alcohol abuse on campuses and is in place in over 120 colleges. DISCUS is a co-sponsor of SADD which is recognized nationally as a group dedicated to education on drunk driving. The SADD approach generates affirmative peer pressure among high school students who in turn urge their parents and other elders to avoid drinking before driving. DISCUS is proud to have been instrumental in making BACCHUS a national organization and proud to be a major supporter of SADD.

RESEARCH

Under the auspices of an independent, multi-disciplinary Scientific Advisory Council (SAC) millions of dollars of grants have been provided by DISCUS through the years for alcohol research. To date, over 300 individual research projects on alcohol abuse problems have been funded through the SAC grants. DISCUS considers the financial resources given to the SAC for unsolicited research grants to be one of its most important ongoing activities.

For many years, DISCUS has provided funding and supported various institutions and groups working in the alcoholism field. In 1984, DISCUS will be working with the following major groups:

Rutgers Center of Alcohol Studies, Alcohol and Drug Problems Association of North America, North Conway Institute, Harvard Medical School, American Council on Alcoholism, National Coalition for Adequate Alcoholism Programs, Health Education Foundation, Salvation Army, National Association of Alcoholism Treatment Programs, Boston University of School of Medicine, Pennsylvania State University, Research Society on Alcoholism, Indiana University, and the Cottage Program, Utah.

It is important to note that our research and other grants have "no strings" attached.

PUBLIC SERVICE

Since the mid-1970's DISCUS has co-sponsored public advertisements with the National Football League (NFL). During the 1983-84 season, NFL stars Joe Theismann and Drew Person donated their services to tell parents about a booklet "Straight Talk About Alcohol" via 60 and 30-second public service messages during NFL games. Over 200,000 parents and others concerned about teenage drinking have received "Straight Talk."

"The Contract for Life," a document which both parents and teenagers sign agreeing that either may call home for help at any time they or their driver has had too much to drink to drive safely, is a public service program of the NFL, DISCUS, and SADD. The Contract is rapidly becoming a cornerstone document for parents and young people in the fight against drunk

driving. Both parents and teenagers sign the Contract which then becomes an important family document—a pledge of mutual support and understanding. The Contract is being offered in a series of TV, radio, and magazine ads developed for the program by DISCUS with more than 200 TV and 1,000 radio stations being asked to schedule the public service messages. This is one of the most successful and most satisfying of our programs aimed at young people.

On the New York Times Square electronic billboard in New York City just recently on New Year's Eve, and on last New Year's Eve, the distilled spirits industry sponsored a 15-second public service message "If you're drinking, let someone else drive tonight." Copies of the message, like last year were distributed to hundreds of TV stations across the nation as a 30-second public service advertisement.

A "moderation poster" was recently distributed to 40,000 bars and liquor stores by DISCUS and cooperating retail organizations.

"Know Your Limits" is a perennial campaign sponsored by DISCUS. "Know Your Limits" (KYL) urges people to know and stay within their own personal safe drinking and driving limits. The KYL card shows how the number of drinks a person has, individual body weight, and the time factor relate to driving risks. KYL campaigns are sponsored by local industry associations in cooperation with government traffic safety agencies. More than 10 million KYL cards have been distributed to the public since the program began.

DISCUS also sponsors a cooperative, nationwide campaign of public service advertising. Each year DISCUS has a major ad message on drinking and driving. The educational theme is "If you choose to drink, drink responsibly." These award-winning messages appear in national magazines such as Business Week, Industry Week, Washingtonian, Changing Times and in over 120 newspapers. They are placed in mass transit vehicles and have been reprinted by government and other agencies at their expense.

In 1979, ten national beverage alcohol associations, including DISCUS, formed the Licensed Beverage Information Council (LBIC) to undertake a public and medical education campaign on drinking and pregnancy in cooperation with the U.S. Treasury. During 1983-84, LBIC is co-sponsoring with the Department of Health and Human Services (HHS) the "Healthy Mothers, Healthy Babies" public education campaign aimed at expectant mothers. Tens of thousands of posters and educational materials—in both English and Spanish—have been distributed in clinics around the country. The program's success is evidenced by recent polls showing that some 90% of expectant mothers are aware of the need for moderation in alcohol use and physician consultation on the matter during pregnancy.

In 1982-83, the LBIC in conjunction with the Outdoor Advertising Association of America (OAAA) initiated during the 1982 holiday season (which ran to early May 1983) a "Friends Don't Let Friends Drive Drunk" billboard and radio public service campaign. Another extensive billboard campaign was kicked off during the past 1983 holiday season and will continue through 1984. In 1983, more than 3,000 billboards were posted in 44 states. The same message aired over radio as a public service announcement by 1,800 stations. The 1983 campaign was kicked off on Capitol Hill and attended by Representatives James Howard, Michael Barnes, Jim Wright, Senator Gordon Humphrey and the Honorable John Volpe (chairman of the President's Commission on Drunk Driving). In 1984 the billboard campaign was kicked off at the Department of Transportation with an endorsement by Secretary of Transportation, Elizabeth Hanford Dole.

President Reagan, in his radio address on Saturday, December 17, 1983, noted the joint effort of the LBIC, the OAAA, and Secretary Dole in unveiling the "Friends Don't Let Friends Drive Drunk" campaign. The President applauded the effort as "an excellent example of the private sector and government working together to attack a serious problem."

In 1983, I was honored to serve on the President's Commission on Drunk Driving chaired by John Volpe. The President has just received a copy of the Commission's report. I believe it is basically a balanced report recognizing that there is no one solution to the problem but rather a need for a balanced program of education and enforcement. I have been asked to serve on the Board of Trustees of the private sector drunk driving council which would continue the Commission's work and maintain high visibility on the drunk driving problem.

Lastly, I would like to comment on the recent public concern about liquor advertising. Since 1936—right after Repeal—our industry has voluntarily restricted its advertising of spirits. We avoid advertising to minors. We do not advertise on TV, radio, cable TV, in movie theaters, on the comic pages or in magazines intended for readers too young to legally drink. Althought there is no legal binding document that prevents us from advertising on TV, radio and wherever we want, the industry's own code has stood for almost 50 years and has never been broken by a DISCUS member company.

While we have made great efforts to inform the American people about the need for moderation and about our industry's social responsibility programs we hope that, through your good offices, our programs can reach even more Americans. We would appreciate an opportunity to discuss these programs with you and to help you to highlight them.

For example, we have a DISCUS film "Spirit of Responsibility" (15 minutes) which addresses the subjects of alcohol use and abuse in American society. Its theme is that four proven principles—research, education, moderation, and responsibility—are key to the establishment of a positive, healthy approach to drinking. The content is informative; but the style is highly entertaining. The film is appropriate for a variety of audiences: civic groups, educators, parents, business groups, government officials—nearly everyone interested in learning more about the products we serve and effective approaches to fostering their responsible use. We would like to arrange a viewing for you and any other persons or groups you may want.

We would like to assist you in any way at any time with your own efforts on alcohol abuse so that all individuals, regardless of age, will be educated to the responsible use of alcohol.

Thank you very much.

Sincerely,

F. A. MEISTER,
President.

DRI REPORT ON U.S. MANUFACTURING INDUSTRIES

Mr. BAKER. Mr. President, much of the recent debate on national economic policy has focused on the economy's transition from an industrial to a service or high technology base.

This transition has been heralded as equal in importance with the earlier transition from a predominantly agricultural to a predominantly industrial economy.

But it is essential that in the course of this debate we do not narrow our economic options to a choice between industry and service. Our future economic growth must depend on the growth of both these sectors—and on a strong agriculture as well.

An excellent new study by Data Resources Inc., under the direction of the distinguished economist Otto Eckstein, offers a timely reminder of the enduring importance of the manufacturing sector of the American economy. It concludes that there is great danger in assuming that the difference between an industrial and a service economy is the difference between the past and the future, or between decay and growth.

Indeed, the central finding of this study is that without a well-advancing manufacturing industry, the U.S. economy is not likely to maintain its progress in the decades ahead.

I believe this study makes an important contribution to the national debate on our economic future, and I ask unanimous consent that a summary of the study be inserted in the RECORD at this time for the consideration of my colleagues.

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

[From Data Resources, Inc.]

HIGHLIGHTS FROM THE DRI REPORT ON U.S. MANUFACTURING INDUSTRIES

INTRODUCTION AND SUMMARY

The recent recession has accelerated the relative decline of the U.S. manufacturing industry and established it as a generally recognized public issue. Production and employment in some industries has shrunk one-third from earlier levels. Resultant unemployment has created profound economic problems for families and communities. A regional disparity in economic opportunities not seen in four decades has developed.

This decline of U.S. manufacturing industries is a major development in our history. Beginning with our industrial revolution shortly before the Civil War, manufacturing industry growth has been the principal vehicle of U.S. economic growth. Increasing productivity of goods production facilitated by a capable labor force, innovative management, an exceptionally favorable supply of natural resources and rapidly advancing technology created a growth of total output not previously seen anywhere else in the world. A century-long industrial development process raised U.S. living standards manyfold, made U.S. gross national product nearly 40 percent of world output, and en-

abled the U.S. to become the political leader and military protector of the western world while concurrently fulfilling societal needs of its own population.

By the early 1980s, signs had become unmistakable that manufacturing industries of other nations were surpassing many of our own industries. The U.S.'s traditional role in the world economy was much diminished. Japan has become the principal challenger to our leadership. And other nations—in Europe, Asia and Latin America—are rapidly closing the gap between their manufacturing performance and our own.

Because these trends have not been well understood, nine U.S. corporations commissioned a study by Data Resources, Inc. (DRI) to identify the scope and causes of decline in competitiveness of U.S. manufacturing industries. They are American Telephone & Telegraph Co., Bethlehem Steel Corp., Burlington Industries, Inc., Deere & Company, E.I. du Pont de Nemours & Co., Eastman Kodak Company, Ford Motor Company, The Goodyear Tire & Rubber Co. and Texaco Inc. These corporations represent a broad spectrum, from traditional manufacturing, on which our historical growth was based, to high technology, on which we are betting for the future.

ROLE OF ECONOMIC POLICIES

This study yielded a theory accounting for the relative decline of U.S. manufacturing. This theory does not rely on any particular human failing of U.S. business or political leadership, although these were contributing factors to the dynamics of the decline. Nor does the theory suggest that the speed and pervasiveness of our manufacturing decline was somehow inevitable simply because of the rapid growth of the service sector.

Rather, the principal causes of our industrial malaise lie in fundamental policy-making at the national level. As a nation, we focused our national and international policies on political, fiscal and monentary objectives without consideration of their impact on our industrial sector. Rather than fostering manufacturing competitiveness, we have hampered it through a variety of actions. Specifically:

Domestic tax and regulatory policies and incentives have diverted the nation's saving from productive industrial investment. Capital costs have been high, limiting ability to invest. Seven times in the last three decades damaging credit restraints have disrupted the process of capital formation. At the policy-making level, national economic policy has failed to consider the need for manufacturing industries in critical decisions affecting budget deficits, interest rates and exchange rates.

U.S. manufacturing has been adversely affected by policies aiding development of economies of our free world allies and of newcomers to the industrial scene. For much of the post-war period, U.S. industry has been a victim of an overvalued currency. While other nations aggressively promoted development of their industries, the U.S. made no serious effort to assure that this worldwide industrial development thrust would occur in an environment of fair trade and competition. Although tariff rates declined, non-tariff barriers became more widespread. Serious action has not been taken against persistent protectionism of Japan, which has steadily minimized manufactured imports while seeking to take over many of the world's markets for manufactured products. In international trade policies, the U.S. government placed economic interests second to political goals.

Partly because of this unfavorable environment of economic and financial instability and damaging trade policies, reinforced by the high cost of capital, several critical U.S. manufacturing industries could not develop and execute competitive strategies to keep them in the forefront of technology, product design and international marketing. In many instances, if not most, management has taken a short-term perspective to reflect the political and economic environment.

IMPORTANCE OF MANUFACTURING SECTOR

Without a well advancing manufacturing industry, the U.S. economy is not likely to maintain its progress in the decades ahead. A service economy lacks sufficient opportunities for technological progress and economies-of-scale to sustain the historical growth and political leadership which the U.S. must achieve. To bet the future of our economic system on a service economy is a high-risk gamble not likely to prove successful. The industrial sector must be strong, competitive and productive. The nation's economic health depends on it.

As a part of this study, DRI evaluated two scenarios of future economic performances. One was based on a continuation of present policies which do not foster a strong industrial sector. The other was based on adjustments in national policies that include a more favorable exchange rate, lower interest rates, a more assertive trade policy and greater economic stability. Results were revealing: by actively considering the health of the industrial sector in economic policy, an additional 3.2 million jobs would be created by 1995. GNP would be 7 percent higher, with a substantial improvement in the trade deficit. Regionally, certain areas of the country—particularly the Midwest and the Southwest—would experience significantly healthier regional economies.

POLICY RECOMMENDATIONS

Steps must be taken to promote a healthier development of U.S. manufacturing in the years ahead that would both improve the present general economic environment and encourage a more farsighted approach in business decision-making.

These steps are:

Reduce cost of industrial capital.

Bring about lower interest rates by controlling Federal budget deficits; eliminate or reduce preferential financing of non-industrial investments; provide easier access to long-term debt capital for investment. These measures would improve the climate for industrial investment.

Lower the exchange rate of the dollar to a level more consistent with relative cost positions.

Lower interest rates made possible by a smaller budget deficit would go far to achieve this goal. Greater freedom of movement for capital to other industrial countries, particularly Japan, would also reduce the value of the dollar by reducing the volume of foreign capital seeking investment outlets in the U.S.

Strengthen U.S. international trade policies both in their formulation and in their execution.

Stronger trade policies are needed to open world markets to U.S. goods, particularly in Japan and in newly industrialized countries. Where trade is governed by formal or informal agreements, the U.S. government must be more aggressive in negotiating more equitable trade agreements. The federal government should put a greater emphasis on economic as opposed to political goals.

Establish monetary and fiscal policies to achieve a more stable and sustainable pattern of economic growth.

Effective capital formation and a sufficiently long-range point of view in investment decisions require a greater stability of market growth than government policies have provided.

Preserve U.S. lead in high technology industries.

Public policy must promote a sufficient supply of scientific and technical manpower and adequate support of basic research. Industries should be permitted to engage in joint research projects where world competition makes them necessary. We should insist on full reciprocity in exchange of technical information with trade partners.

To assure continuing development of U.S. manufacturing industries, we must inject an industrial viewpoint into major economic policy decisions. Monetary policy is a major determinant in the cost of industrial capital, the development of domestic markets, and the foreign exchange rate. Budget policy determines the tax burden on industry and affects development of domestic markets. Industrial development should be added to the list of explicit objectives of economic policy.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. HUMPHREY). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEATH PENALTY

The PRESIDING OFFICER. The clerk will state the unfinished business.

The bill clerk read as follows:

A bill (S. 1765) to establish constitutional procedures for the imposition of the sentence of death and for other purposes.

The Senate resumed consideration of the bill.

Mr. BAKER. Mr. President, I have consulted with the minority leader on how we should proceed at this point. It is now almost 12:20 p.m. Under the order, the time between now and 2:30 p.m. will be divided two-fifths and three-fifths—two-fifths to the minority and three-fifths to the majority, on that ratio. The chairman of the Judiciary Committee (Mr. THURMOND), who has been designated to control the time on this side, is not present, but he has authorized me to yield on his behalf 15 minutes to the distinguished Senator from Oregon (Mr. HATFIELD). I now do that.

Mr. BYRD. Mr. President, will the majority leader yield to me?

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Mr. BAKER. Yes, I yield.

Mr. BYRD. Mr. President, I yield, for the present time, control of the time on this side to Mr. MITCHELL and later to Mr. DECONCINI, who is the manager of the bill on this side.

I thank the majority leader.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I have spoken on this subject before, and I am not going to delay the Senate by repeating the arguments that I have used in opposing the death penalty. I have indicated that it does, by the very record of executions, discriminate against minorities and that it resembles little more than a lottery system of justice.

I have indicated that I think there is evidence, too—ample evidence—to indicate that we have executed innocent people. That is a sentencing decision that cannot be retrieved once it is made.

I have indicated that it is my view that the death penalty is, most of all, immoral and that it perpetuates a circle of violence, of bloodletting, of killing.

I have compared it to my views about abortion and about war.

I also have indicated that it is my view that if we impose life imprisonment upon those who have committed heinous crimes and have meant it to be life imprisonment, we would probably have greater success in protecting society than using the so-called death penalty.

Mr. President, throughout the debate it appears the main argument made by those who are the proponents of the death penalty is that it represents the best way to protect the public against heinous crimes. It is argued that once we have the death penalty installed in all the States and under Federal crimes, for this bill would provide an expansion in the list of Federal crimes, that would then do precisely what the public is demanding, that is, provide better protection.

Well, now, Mr. President, if this is accurate and if this argument that is used by the proponents really is valid, then I have an amendment. I would have offered this amendment had the Senator from Michigan called up his amendment in the first degree because it would have been an amendment in the second degree. Senator LEVIN, for purposes of strategy, has not called up his amendment. Therefore, I am reticent to offer this amendment at this time but let me describe it.

If the argument is valid that capital punishment is the finest and the best possible deterrent to criminal action, then this amendment would have provided that the U.S. marshal be given the mandate to provide radio and television access to the executions, provided the State law does not forbid this kind of action. In other words, for those who argue that the death penalty is a deterrent, then we ought to maximize the deterrent value of executions. We cannot have it both ways—and we are getting a lot of doubletalk on this whole argument—we cannot have it both ways, supporting executions but requiring them to be conducted in virtual secrecy.

Having been a Governor and having had to face this problem, I know in my State how they conduct executions at midnight in secrecy. I had a special telephone put in my home directly contacting the execution chamber itself where I could telephone at the last second and give a reprieve in case the circumstances warranted. There is a very macabre kind of activity that surrounds the whole activity of execution. But if Senators really believe there is a deterrent inherent in executions, then my amendment would have provided the authorization to increase this deterrent effect.

I think by televising the executions we would then permit the citizens of this country to witness firsthand the horror of governmentally sanctioned murder which I believe will lead to swift repeal of this grizzly practice. If the public actually saw the ceremony in which we execute prisoners and the ghastly nature of these premeditated exterminations, I believe they would urge the United States to join the rest of the North American and Western Europe in abolishing the death penalty. I will not go through that description again of a recent execution where they had to shoot three bolts of electricity through a convict's body before they could pronounce him dead and by that time smoke was coming out of his ears and everything else that I prefer not to even recall.

Mr. President, this amendment is a repulsive amendment because the matter of legalized executions is repulsive. But I do really believe that the Senate cannot, like Pilate, wash its hands so easily from the passage of this barbaric legislation. We cannot continue to maintain our innocence of what we are saying or doing by passing S. 1765. If we want to execute people, then we should do it in the open. We should maximize the deterrent value if there is such deterrence.

Now, Mr. President, the death penalty is not a deterrent. It is a specious argument—the statistics, the record proves otherwise—that capital punishment really is a deterrent. Let me quote again the Congressional Research Service study which shows that the average murder rate per 100,000 people is almost twice as great in States with the death penalty as in States without the death penalty.

Now, that is the fact of the case. In 1982, the average murder rate in 37 States with the death penalty was 9.80. The average murder rate in 13 States without the death penalty was 5.04.

Hawaii recently did away with the death penalty and its homicide rate did not change. Michigan, which does not have the death penalty, has the same homicide rate as Ohio and Indiana which do have the death penalty.

A prison sentence or a death sentence is not the deterrent. A criminal fears being caught. Let us be mindful that today almost 30 percent of the murders reported each year do not even result in an arrest. This is the risk being assumed by the murderer who calculates his crime; 3 out of 10 that he will not be caught. And for those persons who are ruled by impulse and do not calculate the implications of what they do, neither the fear of arrest nor sentence will deter them.

This is an age-old argument, Mr. President. Let me just close my remarks by denying the deterrent value that is expressed so frequently in this debate by going back to Elizabethan England. In Elizabethan England they had public executions that I would have suggested in my amendment. They executed people for pickpocketing. The greatest field day that pickpockets had in Elizabethan England was at the public executions for pickpocketing. More people got their pockets picked at those public executions for pickpocketing than any other place in England at that time. So I think from that period on it has been proven, time and time again, that public executions or capital punishment or whatever it is called does not have the deterrent value that the proponents claim it to have.

Mr. President, I am a realist and I know the votes are not here to halt this kind of barbaric legislation, but I at least must speak out my conscience and my mind one last time before we take action on this grizzly matter.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MITCHELL. Mr. President, I yield myself time from the three-fifths of the time that has been allocated to the control of the minority leader.

Mr. President, in 1972, in the case of Furman against Georgia the Supreme Court held that because the death penalty is a punishment different in kind, not just severity, its application must be strictly defined by constitutional standards so as to avoid arbitrariness and caprice in its use. In subsequent cases, the Court has refined the limits within which the penalty can be applied.

Mandatory sentencing schemes, such as the ones in the 1974 antihijacking law, have been found unconstitutional. The death penalty for crimes in which death does not result has been rendered constitutionally suspect. And

other recent rulings, including those which upheld some State statutes, have all carefully sought to define the procedural protections that must be followed for any death penalty to be constitutionally imposed.

Despite these rulings, the outcome of sentencing practices in the real world leads to the conclusion that it is only a matter of time before the Supreme Court, although perhaps not this one, will conclude that no statutory sentencing scheme can avoid the arbitrary and capricious nature of the old invalidated statutes.

In 1958, in the case of Trop against Dulles, the Court said:

> The basic concept underlying [the Cruel and Unusual Punishment Clause] is nothing less than the dignity of man. While the State has the power to punish, the [Clause] stands to assure that this power be exercised within the limits of civilized standards.

Standards by which punishment is imposed have evolved substantially since the late 18th century. We no longer consider physical mutilation to be an acceptable form of punishment. We no longer demand that prisoners serve their terms in chains. We no longer tolerate the death penalty for children.

These practices were accepted and known to the Founders of our Nation, along with public hangings. The mindset of the times can be best illustrated by the words used then. During the debate over the Bill of Rights in the First Congress, one Member said:

> * * * It is sometimes necessary to hang a man, villains often deserve whipping and perhaps having their ears cut off; but are we in future to be prevented from inflicting these punishments because they are cruel?

Is this the basis on which the constitutionality of punishments should still be contemplated? Public opinion, which has been used to justify the imposition of the death penalty in this debate, would truly be aroused at such a return to 18th century views of appropriate punishments.

So the constitutional underpinnings of the death penalty are no more sacred than the constitutional basis of limited suffrage.

The fact that death is an unusual punishment is statistically demonstrable. Of the 33,000-odd convicted murderers on our Nation's jails, barely more than 1,000 are currently considered worth executing. There is nothing usual about the imposition of the death penalty.

Whether or not it is cruel in a constitutional sense, in my judgment has not been determined with finality. In Woodson against North Carolina, a 1976 case following the Furman decision, the Court specifically found that death is "qualitatively different from a sentence of imprisonment, however long." And in its decision, the Court said:

> Because of that qualitiative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

The Court has said that even though a death penalty statute may not be invalid on the face of it, if it were so vague that jury sentencing decisions resulted in the same arbitrary and capricious sentencing which Furman found unconstitutional, then that outcome itself could render them subject to challenge.

And there are very serious grounds for finding that the post-Furman outcome is as violative of reliability as was the prior situation.

A Northeastern University study in 1980 reported:

> In the first five years after the Furman decision, racial differences in the administration of capital statues have been extreme in magnitude, similar across states and under different statutory forms, pervasive over successive stages of the judicial process and uncorrected by appellate review * * * differential treatment by race of offender and victim has been shown to persist post-Furman to a degree comparable in magnitude and pattern to the pre-Furman period.

When the killer of a white victim is 18 times as likely to receive the death penalty in Texas as the killer of a black victim; and when the murderers of whites in Georgia receive the death penalty 10 times as often as the murderers of blacks, there is legitimate cause for concern.

The 1980 decision of the Massachusetts State Supreme Court to overturn a State penalty statute rested on certain fundamental facts.

Those facts are clear, and every Member of the Senate ought to recognize them. Under statutes which may meet the most recent Supreme Court standards, the 1976 Gregg against Georgia standards, the outcomes are no more rationally balanced than before. From 1976 to 1980, in Florida, 286 blacks killed whites; 111 whites killed blacks; 48 blacks got the death sentence. No whites did.

In Texas, 344 blacks killed whites; 27 were sentenced to death; 143 whites killed blacks. None of them were sentenced to death.

In Ohio, 173 blacks killed whites and 37 of them were sentenced to death. Of the 47 whites who killed blacks, none received the death penalty.

Thus, in just these three States of Florida, Texas, and Ohio, 112 of the 803 blacks who killed whites received the death penalty, while not a single one of the 301 whites who killed blacks did.

Every Member of the Senate ought to consider these figures as they vote upon this bill.

It is immaterial whether this kind of outcome stems from unconscious bias or not. It is the outcome that counts.

The bill before us requires that the jury be instructed not to consider race, color, national origin, creed, or sex in its deliberations. That is a very minimal standard which all judges invoke when they caution that prejudice not affect jury deliberations.

Jurors in voir dire proceedings are routinely asked if they harbor racial prejudice when the defendant is nonwhite. Those who have observed the operation of the courts, as I have, know that jurors rarely admit such bias.

The bill before us will require jurors to certify that bias against classes or races did not affect their judgment. That is a precaution about whose value individuals may disagree. But there can be no disagreement with factual outcomes, and the factual outcomes today becoming apparent all indicate that the best intentioned sentencing scheme does not eliminate the bias which bias which results in discriminatory and arbitrary use of the death penalty.

I believe that it cannot.

One reason for that is obvious. Neither the judge nor the jury can review the discretionary decision of the prosecutor as to whether to prosecute a case as a capital offense or not.

The Supreme Court has already ruled that mandatory capital sentencing laws are not constitutional. Neither the Congress nor the State legislatures may mandate death as the only punishment for a given offense. So the ability of legislatures to construct acceptable limits or definitions for imposing the death penalty is curtailed. Indeed, the legislatures are virtually forced to develop procedures which cannot eliminate arbitrariness or bias in operation.

Given that fact, the discretion of prosecutors is the basis on which each case is pursued. A case which in one prosecutor's judgment calls for capital punishment may, in another's, not warrant more than a long jail sentence. By virtue of that fact, the random infliction of the death penalty is not a potential problem; it is practically guaranteed from the outset.

When disparate prosecution of like crimes affects noncapital cases, it results in a degree of disparity for which our system has some adjustments and whose aggregate effect our society can tolerate. But when that disparity affects life and death, the Supreme Court has ruled that this is the kind of punishment that cannot be arbitrarily inflicted.

The reality of prosecutorial discretion is fundamental to the arbitrary outcomes we see in capital cases. And no legislative enactment, either Federal or State, can eradicate that factor.

That is one of the reasons why I believe that the final judgment on the death penalty in this country will inevitably be the one that virtually all the industrialized nations have ren-

dered: That it is a barbaric, inappropriate and ineffective penalty for the State to impose.

It is ironic that our Nation shares with the Soviet Union, South Africa, and Japan the distinction of being among the few modern industrial states which still claims the moral authority to execute some of its citizens.

The inclusion in this bill of the death penalty for nonhomicidal crimes has been addressed by others. I would like only to highlight the sheer illogic of the so-called deterrent effect in that connection.

In the Coker case, the Court ruled that the death penalty was unconstitutional when it:

> Makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering.

One of those goals is deterrence. And one of the crimes for which this bill authorizes death is an attempt to assassinate the President and other officials.

Can anyone imagine that a John Hinckley, with his bizarre affection for a movie actress, or Arthur Bremer, with his stalking of the President before he shot Governor Wallace, could have been deterred by any conceivable statute? In fact, Hinckley himself explicitly stated that he expected to die in his attempt. No one can credibly claim any deterrent effect in adding the death penalty for these attempted assassinations.

Attempted assassination is a serious offense and should be seriously dealt with. We have already amended the insanity defense to prevent its abuse by assassins and others. Federal law already carries a life sentence for an attempt on the life of a President or his staff. The death penalty will add no deterrence.

In fact, the theory of deterrence which has been advanced for the reimposition of a Federal death penalty is untenable for virtually all the kinds of murders to which it is specifically addressed.

The bill provides, for example that an individual convicted of an arson, a burglary, a robbery, a kidnapping, a rape, an airplane hijacking, a train wrecking, or the mailing of dangerous articles can be sentenced to death if anyone dies, whether that was an intentional outcome or not.

Obviously, all these are serious crimes which demand the swiftest and surest imposition of punishment. But the Supreme Court has said that a penalty is unconstitutional if it makes no measurable contribution to acceptable goals of punishment. Obviously, you cannot deter someone from doing something he did not intend to do in the first place.

The principle of intentional action is the principle that underlie negligent manslaughter statutes. Through them, society recognizes that the intent to kill is a vital component of the crime of murder. Conduct which results in unintentional death—even criminal conduct—has not been equated with deliberate, intentional murder by our system. Yet this bill does just that.

The bill before us also contains serious procedural shortcomings which render it constitutionally suspect.

It eliminates a unanimous jury agreement in the sentencing phase of the trial by allowing all jurors to find different aggravating circumstances without necessarily agreeing on even one.

In Bullington against Missouri (1981) the court said that "in all relevant respects" a capital sentencing hearing is "like the immediately preceding trial on the issue of guilt or innocence." Yet the sentencing procedures in this bill do not provide for jury unanimity on what constitutes the particular aggravating circumstance. The bill specifically invites jurors to consider aggravating circumstances, which are not listed in the statute and which need not be identified. And it does not require evidence of aggravating circumstances to be subject to the same evidentiary rules that govern the trial itself.

The Court held, in Godfrey against Georgia (1980), that the standards guiding sentencers must be such as to "make rationally reviewable the process for imposing the sentence of death."

But where you have aggravating factors that are not identifiable in the statute but which the jury may take into account, and where neither the nature nor the weight given those factors need even be identified, there can surely be no rational basis for appellate review and certainly not any rational basis.

Additionally, a factor in Gregg which the Court specifically identified as making that statute valid was the automatic review by the State supreme court which requires that the court compare similar crimes and the penalties imposed on them to assure that the death penalty is being proportionately applied. Such a requirement is entirely absent from the bill before us.

I want to make clear that I do not believe that the correction of any of these procedural defects would make the bill acceptable.

I continue to believe that death is an unconstitutional penalty.

The complete absence of any demonstrable deterrent effect has been decisively demonstrated by statistics in this and other nations. The death penalty neither causes more crime nor does it reduce crime. And because of the kinds of crimes to which it is addressed, it must logically fail in any deterrent effect. More of the kinds of individuals who commit most of the kinds of crimes punishable by death do so for the kinds of reasons that no rational deterrent could ever hope to reach.

The testimony of experienced law officers is clear: The worst killers—the kinds of crimes we are presumably trying to deter—are not lucid thinkers. They do not make a cost-benefit calculation and conclude that murder is too risky. The kind of murders to which this bill does not go—the true crimes of passion—are virtually undeterrable by definition. An individual so enraged as to kill is not deterred by the existence of a death penalty whose provisions, under this bill and by Supreme Court rulings, will not apply to him in any event.

The testimony of convicted murderers who faced the death penalty, as well as those who did not, simply reinforces what logic can demonstrate: We cannot stop deranged killers with rational deterrents. We cannot induce murderously angry individuals to fear a penalty that does not apply to them. We cannot hope to affect the thinking of any drunken or drugged individual.

The Supreme Court, in Gregg, said of deterrence theories that:

> There is no convincing empirical evidence either supporting or refuting this view. * * * The value of capital punishment as a deterrent of crime is a complex factual issue the resolution of which properly rests with the legislatures * * *.

No member of this legislative body has offered a single piece of evidence, other than personal opinion, that a Federal death penalty would reduce the number of murders, either at the Federal level, where roughly 75 occur each year, or at the State level, from which most of the descriptions of repulsive crimes have been drawn.

The Court has identified retribution as a valid goal of punishments. Since the legislative judgment we are exercising does not go to public policy in crime control, we are clearly engaged in making social policy, not public policy.

Are we proposing to put certain criminals to death because that will make other members of society recognize that crime is wrong? If that is the purpose, the death penalty is excessive for that purpose.

Or are we considering the death penalty purely to respond to popular discontent with the failures of our criminal justice system? If so, then this would be a form of human sacrifice, where, because we are unwilling to provide the resources needed to control crimes of various kinds, we will offer up to the collective public anger the heads of several individuals each year.

But the appropriate outlet for the expression of public discontent and anger in our Nation is the political process, not the system of criminal

justice. We do not further justice or public order or any other social goal by executing a few particularly violent murderers to make up for the failure to apprehend and punish other violent criminals.

The only other basis for this legislation is vengeance.

These has been a startling claim made over and over again throughout this debate that some individuals have forfeited their right to live. Leaving aside the moral arrogance of any human being to make that judgment of another, the basis of both our public and our private morality in this Nation has always been grounded in the idea of individual regeneration and renewal. Our religious faiths all hold out the possibility of redemption through personal will. And our public institutions are based on controlling the mistakes, not extolling the perfection, of human beings.

Moreover, the fact remains that we cannot give to government a moral right which we do not have ourselves. We, as individuals, may not morally kill, except in self-defense. And when we individuals form ourselves into a community, we cannot grant that community a moral authority we cannot claim for ourselves. We can and do ask members of our community to kill and risk life in our joint defense. But just as we have no individual right to exact vengeance, so also can we not give such a grant of authority to the state we have constructed in our own behalf.

I would like to comment on a more mundane side to this debate over crime and its control from Washington.

It must be very clear to every member of the Senate that Federal laws affect the most minimal number of violent criminals. Yet all this anticrime legislation has been characterized by the President, just this past Saturday, as a rejection of the idea of "coddling criminals."

The political purpose of such exaggerated rhetoric is too obvious to need comment. The purpose of this exercise has been to permit a certain amount of righteousness over who is the more anticrime.

I feel no need to make an impassioned public claim that I personally do not approve of coddling criminals. No responsible person approves of coddling criminals.

I do not feel called upon to ardently assure our people that "nothing in our Constitution gives dangerous criminals a right to prey on innocent law-abiding people." As if anyone ever suggested that it did.

Like other Members of the Senate, I agree with some of the provisions of these anticrime bills, and I disagree with others. But I deeply resent the clear and intentional implication that any disagreement on these bills is based upon a desire to coddle criminals.

According to both the New York Times and the Washington Post, last Saturday President Reagan described the issue of crime as "a prolonged partisan struggle." Of all the false and outrageous statements made by this President or any of his predecessors, this is one of the worst. Crime is not now a partisan struggle. It has never been a partisan struggle.

Fourteen years ago another President tried to label one political party as being soft on crime. This is not a new political tactic. And it has not become a better tactic with time. It continues to be one of the most intentionally divisive ways of preying on legitimate public concerns. And it is cynically recognized as such by most of the Members of this Senate.

I have devoted a good portion of my life to the criminal justice system in this country, and I can tell you without hesitation that both Republicans and Democrats throughout the system of justice, in our political life, and in our Nation share an abhorrence of crime and a dedication to reducing it in our Nation.

There is not a Republican kind of criminal justice and a Democratic kind of criminal justice. Nor should there be. What the American people want is an American kind of criminal justice and one that works.

It does no service to the debate over the constitutional ways our community can control crime to inject a baseless and mischievous inference that political affiliation plays some sort of role in determining how many murders will be committed in America next year.

It is a disservice to the goal of reducing violent crime—which is a mutual goal, shared by people of all political persuasions—to suggest that one or another political party can somehow be blamed for the problems faced by our overworked police forces and our understaffed court systems.

Crime indicators have been moving down, and responsible expert opinion says that is the result of demographic factors, not political ones.

Republican Presidents in the 1920's did not create the wave of lawlessness in Roaring Twenties. And Democratic Presidents in the 1930's did not stop it. Nothing has changed. It is a serious abuse of the truth for anyone to suggest that crime is a partisan issue.

The death penalty does not work as a deterrent. It does not promote more equal justice. And it has no moral foundation. This bill should be defeated.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time in this quorum call be equally divided between the two sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ABDNOR). Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I can understand the feeling of Christian people to hesitate to put another person to death. On the other hand, some cases cry out as a matter of justice for the most severe penalty possible. I have a few cases which I want to call to the attention of the Senate. When I mention these matters, it is not with any intention of inflaming Senators but with the intention of informing them of some of the brutal crimes which I think justify capital punishment.

For instance, on a night in July 1966, Richard Speck broke into a townhouse which served as a dormitory for student nurses. He crept upstairs to the bedroom of Corazon Amurao, a 22-year-old Philippine exchange student and awakened her. He was carrying a small black pistol in one hand and a butcher knife in the other. According to Miss Amurao's account, Speck made her go down the hall to the next bedroom, where he awakened the three girls there. The four were then herded into the back bedroom where two more girls were sleeping. Speck told the girls that he would not hurt them and only wanted money.

While Speck was tying up the girls, the three remaining nurses returned home. They, too, were forced to join the others and were bound and gagged. Then, one-by-one, Speck began leading the girls out of the bedroom and returning alone. None of the girls uttered more than a little scream. While he was gone on one trip, Miss Amurao managed to roll under one of the beds and hide. It was in this way that she escaped death. After spending hours under the bed terrified, Miss Amurao finally managed to free herself and summon help. The picture the police found was one of horror:

Gloria Davy lay nude and face down on a divan, strangled and mutilated;

Sue Farris was stabbed nine times and strangled;

Mary Ann Jordan was stabbed five times, including one thrust in the left eye and one in the heart;

Pat Matusek was strangled;

Pam Wilkening was stabbed in the heart;

Nina Schmale was stabbed four times in the neck and strangled;

Merlita Gargullo was dead of a 6-inch-deep thrust in the side of her neck;

Valentina Pasion was knifed four times and strangled.

Aided by Miss Amurao's description, Speck was caught shortly after the murders. He is now serving a life term.

Mr. President, here is a man who went into the home. This did not happen on the street. This did not happen on the highway. It did not happen in some desolate place. It happened in the home of these young women, eight of them. I repeat: Eight young women, studying nursing, were killed by this brute.

How do their parents feel about this? How would a Senator feel if his or her daughter was killed in such a fashion? Does this deserve capital punishment? Mr. President, maybe something has to happen to people in public life and their families before the magnitude of this type of crime comes home to them.

I suggest that Senators consider the death of those eight nurses and whether or not a man who committed such a heinous and barbaric crime should be allowed to continue in society, rather than be punished in an appropriate manner.

Mr. President, I have here information on a crime committed by Robert Allen Bailey.

On the night of October 9, 1973, David Doyle and Debra Hawley, who were high school sweethearts and both age 16, went to a pizza parlor after attending a hockey game at the Roanoke Civic Center. Before the young couple got out of their car, Bailey and two companions, reportedly members of a motorcycle gang, forced them at gunpoint to drive to a secluded and heavily wooded area outside the city limits. There Bailey raped the girl in the back seat of the boy's car and forced her to commit sodomy while her date watched. Bailey took the boy's wallet and then shot him once in the head with a pistol, while one of Bailey's companions was forcing Debra to commit sodomy again.

When Debra saw David shot, she tried to escape. She didn't get very far. Bailey caught up with her and fired two bullets into her head at point blank range. He then returned to the car to find the Doyle boy writhing in pain. Bailey's pistol jammed when he tried to shoot the youth again, so he took out a straight razor and slit the boy's throat and cut his whole body.

Bailey was found guilty of the above offenses on January 24, 1974.

Mr. President, this is another horrible crime. Murder. Took everything they had. When he took their life, he took it all. Yet, he did not receive the punishment he deserved.

Another case: Lawrence Sigmond Bittaker, and Roy Lewis Norris.

Lawrence Sigmond Bittaker and Roy Lewis Norris began the planning of some of the most gruesome murders ever to hit California while prisoners at the California Men's Colony in San Luis Obispo. They put the scheme into motion on June 24, 1979.

The first victim was 16-year-old Lucinda Schaefer, who was walking home from church. Bittaker and Norris kidnaped her in their van they called the Murder Mack. They took her to an old mountain fire road they had previously planned on. Upon reaching the road, they stripped her of her clothing and took turns raping her repeatedly, then talked for more than an hour about killing her. Miss Schaefer pleaded with the two to be allowed to pray before they killed her. She was denied this, and they proceeded to strangle her with their hands, finishing the job with a coat hanger.

Andrea Hall, 18, was one of the next. She was killed in the same mountain area by having an icepick driven into her brain through both ears. She was also strangled.

Jacqueline Gilliam, 15, also had an icepick driven into her brain, and was raped and strangled like the others. Jacqueline Leah Lamp, 13, was also raped and strangled.

The last of the known murders involved Miss Shirley Lynette Ledford, 16, whose story was placed in the RECORD sometime ago by Senator HATCH. At trial, a tape was played with the recording of Bittaker and Norris raping, torturing, and sodomizing Miss Ledford. Bittaker twisted her breasts and nipples with pliers while his accomplice, Roy Norris, smashed her elbows and other joints with a sledgehammer "to get her to scream."

After being arrested Bittaker bragged of the murders to fellow inmates at the county jail and signed autographs for them as "Pliers Bittaker." While being held in the Los Angeles County Jail, Bittaker bragged to fellow inmates of murders of other girls—as many as 19.

Testimony during the trial revealed that Bittaker took instant developing pictures of his victims and showed them to friends. Bittaker supposedly has buried tapes and photographs of the victims at a local cemetery, but he refuses to state where.

Further testimony at the trial showed that Bittaker planned to use acid on his next victim and that acid was found in his hotel room after he was arrested.

Bittaker was given the death penalty. He now awaits appeal. Norris was given 45 years to life instead of death in exchange for a guilty plea and testimony against Bittaker.

Mr. President, that was taken from the Los Angeles Times of January 20, 1981, between then and March 25, 1981.

Mr. President, how can society countenance such cruel, barbaric conduct on the part of people?

This 16-year-old girl was taken out in a van they called "The Murder Mack," stripped of her clothing, and the defendants took turns raping her and then talked for more than an hour before killing her.

They strangled her and took a coat hanger, a coat hanger, a piece of wire, and chocked her to death. This was a 16-year-old girl.

Suppose that was your daughter or your neighbor's daughter. Is there no sympathy for humanity toward humanity?

These are not people. They are more like animals. And when you have individuals in society more like animals than humans, they have to be dealt with in the most severe manner.

This 18-year-old girl had an ice pick driven into her brain through both ears. Just imagine this—a sister, a daughter, or a wife—having an ice pick driven into her.

And this 16-year-old Bedford girl who was tortured, raped, and sodomized. Her breasts were twisted. They took a pair of pliers, and pulled her nipples and twisted them.

Mr. President, is death too harsh for people like that? I do not think so.

Now, Mr. President, there was Pamela Carpenter, sister of Mark Moseley. You know who Mark Moseley is. He is a well-known member of the Washington Redskins. What happened to his sister? Mark Moseley, the great football kicker, the star of the Redskins—listen to this. This is Mr. Moseley testifying May 19, 1983, before the Subcommittee on Criminal Law.

Our only sister in the family was brutally raped and murdered in October of 1979. The person who committed this crime was a man who, at the age of 23, had served many years of his life in prison for various other crimes, the last being of rape of three other women for which he had been sentenced to 5 years and then served 2 years of that sentence and had been paroled. He had been let out on the streets only a month and a half, when he perpetrated and raped my sister and brutally murdered her.

* * * * *

She was married and she had no children, but they were hoping to have children shortly. The person who instigated the rape and murder had been out on parole only a month and a half and had been around the city, around Livingston, a small community of only about 2,500 people, had been around trying to find a job and was working for a company delivering some appliances on just a day-to-day basis, and had delivered a refrigerator to my sister's home only 2 weeks earlier and, at that time, decided he liked my sister and plotted and had been seen for the last week and a half prior to my sister's rape, had been seen riding his bicycle around the block early in the mornings, scoping out and planning his attack. And on the morning of the rape, she was there alone in the home, had been working on some Halloween costumes for my two daughters who lived there, and when he came to the door saying that he was there to check the appliance, kicked in the door

when she said that she had not called about it.

* * * * *

She was at the time working on the Halloween costumes and she had a pair of scissors, and they were sitting on the kitchen table. And as soon as he broke in, she ran and grabbed the scissors and he took them away from her and stabbed her with them. And then she actually died from the beating that she took from him. He had evidently been wearing boots and kicked her repeatedly and did so much damage to her that she died only an hour and a half later.

Mr. President, it can happen to anybody. Mark Moseley, a big strong athlete, could protect himself against most anybody, but his helpless sister in her own home had this scoundrel break in, take a pair of scissors, and rape and killed her.

Mr. President, is capital punishment too bad for a man like that? We have always been told that our home is our castle. The criminals today do not respect that anymore. It is dangerous to even be in your own home, as this young woman was. Mark Moseley's sister was in her own home. Yet, she was attacked. She had scissors rammed in her body. She was killed by this brute. What other penalty than death does this person deserve?

In S. 1765, we are trying to give the Federal Government a constitutional procedure for imposition of capital punishment in heinous Federal crimes. It would permit a jury to say that this crime was so barbaric, it was so cruel, it was so heinous, that the defendant deserves capital punishment.

Are we going to deny the jurors at the Federal level that opportunity to exercise that judgment?

They could, of course, give life if they want to; but if the crime is so bad that they feel the death penalty is justified under the criteria in the bill, then the jury should not be denied the right to do that.

Now, Mr. President, here is another case that happened not far from Washington only 2 years ago. The name of the young lady was Stephanie Roper. Her mother, Roberta Roper, has been waging a campaign for better sentencing laws because of her daughter being killed in such a horrible way.

According to the Washington Post of October 15, 1982:

The murder occurred during the early morning hours of April 3 after Jones and codefendant Jerry Lee Beatty, 17, who will be tried separately, happened upon Roper in her disabled car on a rural Prince Georges County road. Instead of dropping her off at a friend's home as promised, they drove her to an abandoned house in St. Marys County, where she was raped, hit over the head with a chain, shot in the head and set afire.

Mr. President, on May 19, 1983, the mother of this murdered young woman who, incidentally was a talented 22-year-old Frostburg State College art honor student, testified before the Subcommittee on Criminal Law. Mrs. Roper described the crime as follows:

On April 3, 1982, our daughter Stephanie became a victim in Maryland, a State that ranks fourth in this Nation in violent crime. She was kidnaped, brutally and repeatedly raped. She was tortured, she was shot to death. Her body was burned and mutilated to prevent identification. Her murderers were convicted of first degree murder, felony murder, first degree rape and kidnaping. They were given sentences that make them eligible for parole in less than 12 years.

Mr. President, she was kidnaped, brutally and repeatedly raped. She was tortured, she was shot to death. Her body was burned and mutilated to prevent identification.

Now what did they do to those people who did that? They were given sentences that make them eligible for parole in only 12 years.

Mr. President, Senator KENNEDY was conducting that hearing on the question of sentencing and parole. And I will just quote his words from the RECORD:

I certainly do not want to relive that extraordinary terrible evening, but this kind of tragedy which happened to your daughter where she was raped and then, was chased through the woods and then beaten with a chain and her body was burned, is a horrendous crime. And the perpetrators of this crime, as I understand what happened to them in terms of the sentencing, they were given two concurrent life sentences, which made them eligible for parole in only 12 years.

And the campaign Mrs. Roper is waging is a campaign to try to get something done about sentences in crimes of this kind.

Mr. President, if these two people get out in 12 years, what other young women are they going to rape? What other young women are they going to terrorize, torture, and kill?

Mr. President can anyone feel that this crime does not deserve capital punishment? I realize some people just say you should not execute anybody for any purpose. Well, when a person becomes so depraved and so barbaric in his conduct and so cruel to his fellow man, I think it is a different story.

Last week I recited here about two men who had been detected recently who have killed 78 people. And they have evidence, they think, of many other murders they have committed. And yet, Mr. President, if you do not have capital punishment at the Federal level, which we do not have now, they could not get the death penalty for such crimes committed within Federal jurisdiction.

A few years ago we had constitutional capital punishment in the Federal law. Then the Supreme Court required new procedures. Congress enacted such procedures for one crime in 1974—plane hijacking resulting in death. A broader bill similar to S. 1765 also passed the Senate in 1974, but the House failed to act.

Most States have remedied the constitutional defects in their capital punishment procedures. My State has remedied them. Thirty-nine States now have effective capital punishment statutes. But the Federal level does not. This legislation would finally provide the necessary procedures to impose the death penalty in the Federal system for the most heinous crimes.

And that is what we are trying to do here, to give the Federal Government the right to impose capital punishment if a jury—a jury composed of one's fellow citizens—concludes that the defendant deserves it.

Mr. President, some years ago, a good many people had qualms about capital punishment. I believe the polls showed then that the majority of the people of this country did not favor it. But sentiment has now changed. In view of violent crime today that has spread over this country, a lot of people now have changed their minds. And now the polls show a substantial majority in favor of capital punishment.

Mr. President, I want to again just remind the Senate that a violent crime is committed in this country every 25 seconds; a murder is committed every 25 minutes; a forcible rape every 7 minutes; a robbery every 59 seconds.

The PRESIDING OFFICER. All the time for the Senator from South Carolina has expired. The remaining time goes to the Senator from Arizona.

Mr. THURMOND. Will the Senator yield me about 10 minutes?

Mr. DECONCINI. Yes. First, I yield 1 minute to the Senator from Hawaii.

Mr. INOUYE. Mr. President, I join those who oppose S. 1765. The reasons for my opposition mirror the arguments already presented on this floor: the absence of evidence regarding the penalty's deterrent effect; the possibility of error in identifying the guilty; and the probability that the application of this form of punishment will reflect our society's prejudices and fears. It is to this last point which I would like to briefly speak.

It is the requirement of law and conscience that a societally-sanctioned killing be based on cold reason and objective circumstance. The death penalty formulation before us takes great pains to attempt to satisfy this mandate and isolate the decision of life or death from prejudice, hysteria or discrimination. The bill provides that the sanctioning jury is to be instructed that race, color, creed, national origin and sex are not to be considered in determining whether a sentence of death is appropriate. Aggravating circumstances identifying each case as extraordinary must be found and enumerated mitigating circumstances must be considered. By these requirements and admonitions the decision of

life and death is ostensibly to be rationally determined.

But can it seriously be expected that this decision will truly be made in a rational and objective fashion? Will these requirements genuinely insure that juries will not naturally tend to favor or forgive those most like themselves and condemn those most different and therefore threatening? Will this formula guarantee that angry citizens ignore their prejudices in valuing the life of a man they may fear or hate? I think not.

Mr. President, my faith in man's rationality and objectivity is tempered by the lessons of history. Rarely, to my knowledge, have men demonstrated the ability to put aside our prejudices and passions in circumstances as powerful as those accompanying capital crimes. On the contrary, it is precisely at such times that the darkest of human emotions control. Nary a culture or people armed with the right of societally sanctioned death has avoided the temptation of wielding it against those who are most hated or feared. And, as every people seem tempted to do, America has in its history formally executed disproportionate numbers of racial minorities, foreigners, and political dissidents. I fear that we will contine to do so.

I do not believe that we, individually or as a people, are beyond this potential. Indeed, studies presented before us clearly suggest that the race or ethnic origin of the perpetrator and victim have a demonstrable effect on the decision to impose the death penalty in those States which already possess constitutionally acceptable formulas. And if the application of the penalty becomes sufficiently acceptable, who here is prepared to guarantee that this same trend will not be reflected in the cases of Communists, homosexuals, or other racial, social, or political minorities who bear the residue of society's fear or scorn?

Mr. President, no genuine need to take up this flawed and dangerous weapon has been demonstrated. In the absence of proof of a compelling need for the Federal Government to again sanction the taking on the basis of the necessarily flawed and impassioned judgment of men, I believe that the risk to our own promise and humanity is simply too great to take.

Mr. DECONCINI. Mr. President, I also yield 1 minute to the Senator from Rhode Island.

Mr. CHAFEE. I thank the Senator from Arizona very much.

Mr. President, I oppose S. 1765. As a constitutional matter, as a practical matter, and most importantly as a public policy matter, I believe this legislation is wrong.

I will not prolong debate on this bill with a lengthy discussion of the constitutional concerns surrounding it, as its possible constitutional defects were set forth earlier in detail by several of my colleagues.

Let me say simply that in its effort to constitutionalize the application of the death penalty in existing Federal law, the Judiciary Committee raises many additional constitutional issues.

The constitutionality of the bill's provision for imposition of the death penalty even when all of the jury cannot agree on the existence of a specific aggravating factor, its provision for capital punishment for certain nonhomicidal crimes, and its appellate review procedures are seriously in doubt.

As a practical matter, capital punishment is not necessary as a deterrent to violent crime. Indeed, there is no clear evidence that the death penalty has a greater deterrent effect than other forms of punishment. States that do not impose the death penalty, including my own State of Rhode Island, do not have higher rates of homicide than those that provide for capital punishment.

Mr. President, I firmly believe that we must act immediately to address the alarming, indeed appalling, rate of violent crime in our Nation. But while the death penalty may have a cathartic appeal for some and it may provide a satisfying sense of "getting tough" on crime, it provides no real crime reducing advantage. I believe it is greater certainty rather than severity of punishment that will provide enhanced deterrent effect. The likelihood of an actual life sentence will do more to deter a homicide than the remote possibility of capital punishment.

I believe some of the Criminal Code reforms passed by the Senate just prior to the recess will contribute to this goal. I think legislation banning handguns would be another major contribution toward reduction of homicides.

Mr. President, my greatest objection to the death penalty lies in its absolute irrevocability.

Rhode Island does not provide for capital punishment for homicides generally. Why? Largely because in 1844 the State executed the wrong man for the murder of Amasa Sprague, a prominent Cranston, R.I., citizen.

The wrong man, Mr. President. But there was nothing to do about it—except to make certain such a tragedy could not occur again.

The error committed in Rhode Island is unfortunately not unique. Indeed, my colleagues have detailed a number of cases in which the wrong person was convicted, even on the basis of eye-witness accounts. Some argue that an occasional mistake is the price we must pay for deterrence. But even if we were willing to accept such a price for the sake of deterrence, the fact remains that capital punishment offers no demonstrable deterrent advantage over other punishments. I ask, how then can we even contemplate the death penalty.

For these reasons, Mr. President, I will vote against S. 1765, and I urge my colleagues to join with me in opposing the bill.

Mr. DECONCINI Mr. President, I intend to yield some time to the distinguished President pro tempore. I did want to see if anybody here on the opposition wanted some more time so they would have notice that we have approximately 30 minutes and all of that, I believe, is reserved for the opponents of the bill managing that time.

I am glad to yield 10 minutes to the Senator from South Carolina.

The PRESIDING OFFICER (Mr. EVANS). The Senator from South Carolina.

Mr. THURMOND. Mr. President, I wish to thank the able Senator from Arizona.

Mr. President, as I stated, sentiment in this country has changed on this question. Now the great majority of the people, according to the polls, do favor capital punishment if a jury so finds.

One writer for the Washington Post, a very able writer, George F. Will, is one of those who has changed his mind on this subject.

On March 12, 1981, he wrote an article on this subject which I want to present to the Senate. Mr. Will said:

> According to his lawyer, Steven Judy was intelligent, witty and kind in conversation but had "this thing about beating up women." The story of how Judy did his thing should stir doubts in those opponents of capital punishment whose minds are not closed as tight as eggs.
>
> Judy, who was executed March 9 by Indiana, committed his first rape when he was 13. Pretending to be selling Boy Scout raffle tickets, he forced his way into a woman's house, raped her, stabbed her more than 40 times (hard enough to break his knife), smashed her on the head several times with a hatchet and cut off her thumb. Miraculously, she survived.
>
> Such is the criminal incompetence of America's criminal justice system, Judy was on parole in Illinois (he had served just 20 months for viciously beating a stranger—a woman) and was free on bond in Indiana (the offense was armed robbery; the bond was just $750, in spite of his lurid record) when he committed what he says was his 13th rape. It certainly was his last.
>
> Pretending that his car was disabled, he got a passing motorist to stop. He raped her, killed her, then drowned her three small children in a creek. He never expressed remorse, and advised the jury to impose the death sentence, lest he someday be released and kill again.
>
> Until recently I opposed capital punishment, categorically, in writing and actions. (I initiated the campaign that culminated in Connecticut's first commutation of a death sentence.) However, the categorical nature of my position—I believed that evidence was irrelevant—certainly was wrong. And I may have been wrong on the issue itself.

This is George F. Will speaking, Mr. President:

One of two serious arguments for capital punishment is that it almost certainly can be a significant deterrent of significant crimes. If that is so, then refusing to execute killers in certain kinds of cases amounts to refusing to prevent the deaths of innocent persons, and is clearly immoral.

There now is sophisticated research that strongly suggests a deterrent effect. Furthermore, the principal argument against the deterrent effect is weak. The argument is that in most jurisdictions where capital punishment has been abolished there has been no immediate, sharp increase in what had been capital crimes. But in those jurisdictions, the actual act of abolition was an insignificant event because for years the death penalty had been imposed rarely, if at all. Common sense—which deserves deference until it is refuted—suggests that the fear of death can deter some premeditated crimes, including some murders.

The second powerful argument for capital punishment concerns a need for moral symmetry between crime and punishment. A society practices self-indulgent humanitarianism when it spares the likes of Judy in order to spare itself the unpleasantness of contemplating and administering capital punishment. The visceral reaction most humane people have against capital punishment actually is relevant to the case for that punishment.

Capital punishment is indeed horrible. That is why it can deter, and why, deterrence aside, it is a proper expression of virtuous sentiments. In his book, "For Capital Punishment," Walter Berns argues that the purpose of punishment and dramatic poetry can be similar:

"Capital punishment, like Shakespeare's dramatic and Lincoln's political poetry . . . serves to remind us of the majesty of the moral order that is embodied in our law and of the terrible consequences of its breach . . . The criminal law must be made awful by which I mean awe-inspiring, or commanding 'profound respect or reverential fear.' It must remind us of the moral order by which alone we can live as human beings, and in our day the only punishment that can do this is capital punishment."

Whether the authority to impose the ultimate punishment serves the expressive and teaching function that Berns correctly assigns to the law suggests an empirical question. But his position is plausible. And in a society suffering an epidemic of murder and other serious crime, the burden of proof is on opponents of capital punishment.

Rather than dispatch that burden with evidence and argument, many opponents simply assert the impropriety of the sentiments that Berns wants the law to teach by expressing. Part of the program of liberalism involves making people feel ashamed of sentiments essential for a decent society—sentiments such as anger about crime, and the desire for vengeance against criminals. Those are virtuous sentiments when grounded in a sense that the important laws express more than calculations of social utility. Those laws express a natural, life-enhancing moral order.

Mr. President, here is a man, George F. Will, one of the ablest writers in this country, who a few years ago opposed capital punishment and now has shifted his thinking and now favors capital punishment. This article eloquently tells us why.

Mr. President, I hope the Senate will think carefully about this matter. There is so much crime today. So many people are being killed. So many people are being injured in various ways. I feel that the time has come when we should reinstate capital punishment in the Federal law as we had it a few years ago by curing the procedural defects found to exist by the Supreme Court over the past 12 years.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, does the Senator from Maryland want some time in opposition?

Mr. MATHIAS. Mr. President, will the Senator yield 2 minutes?

Mr. DECONCINI. Mr. President, I yield 2 minutes to the Senator from Maryland.

Mr. MATHIAS. Mr. President, over the past few days that the Senate has been in session, we have witnessed an unusual debate. The pages of the CONGRESSIONAL RECORD are filled with graphic descriptions of sickening crimes. They also ring with the moral outrage of Senators, directed both toward the crimes themselves, and toward the ultimate punishment which some suggest ought to be applied.

These issues have long occupied the attention of many of our civilization's best minds. Historians, sociologists, philosophers, and theologians have debated them. We all know that debate will continue, no matter what action we take on S. 1765.

With no disrespect to the eloquent speakers on both sides of this issue, I suggest that much of the debate in which we have been engaged is beside the point. Our job here is not merely to debate the abstract question of whether capital punishment is morally right or morally wrong; it is to decide the very practical question whether or not to revive those provisions of the United States Code—unused since the 1972 Supreme Court decision in Furman against Georgia—that provide for imposition of the death penalty. We are not here to determine how best to punish the most heinous crimes that the annals of our recent history present to us; we are here to determine whether or not death is an appropriate punishment for the narrow class of crimes that prior Congresses have ranked as the most serious offenses against the United States. If we answer that question in the affirmative, we must then determine whether this bill provides appropriate means for the imposition of that punishment.

In our Federal courts, such cases arise relatively rarely. For example, in the year ending June 30, 1981, a total of 119 persons were convicted of homicide in the U.S. district courts. Only 45 of these convictions were for first-degree murder. By contrast, during calendar year 1981, a total of 22,520 murders were reported to police throughout the United States.

It is important to remember that the commission of murder itself is not enough to constitute a "Federal crime." It is prosecutable in the Federal courts only if accompanied by some element of Federal jurisdiction; if, for example, the crime took place on a Federal reservation, or the victim was engaged in the duties of a specified Federal office. In light of our limited jurisdiction, and of the fact that only about one-half of 1 percent of homicides are prosecuted in the Federal courts, it may not be very useful to focus our attention on the particulars of the more gruesome murders of recent years. Few, if any, of them were prosecuted in Federal courts; consequently, S. 1765 would have no effect whatever on the punishment meted out in these shocking cases.

It may be helpful, too, to disabuse ourselves of the notion that the action of the Congress in this area will set an example, good or bad, for the States to follow. The majority of the States have not waited for Congress to act. The legislatures in most States have already completed the same kind of task that is before us today: to consider whether death is an appropriate punishment for the most serious of crimes within their jurisdiction. Most States have answered that question in the affirmative; a sizable minority have answered it the other way. But nearly all of them have already answered it in a way that only the people of the several States have the power to change.

The task before us is a relatively limited one. With one notable exception—the attempted assassination of the President—S. 1765 contains no new authorization to impose the death penalty as punishment for a Federal crime. Previous Congresses have already determined certain Federal offenses to merit the ultimate punishment. We must assure that the procedures provided by this bill for the imposition of this punishment conform to constitutional standards, as elucidated by the Supreme Court of the United States. And we should, out of a decent respect for world opinion, examine the experience of other, comparable jurisdictions—other sovereign states—when faced with the same questions.

Mr. President, I have considered S. 1765 from this perspective, and I have concluded that it should not be enacted. I leave to one side some of the more philosophical questions that have occupied my colleagues during the debate on S. 1765. I accept, for these purposes, the bounds within which our predecessors have seen fit to prescribe capital punishment for

crimes against the United States. But I have concluded that, despite the sincere efforts of its proponents, this bill fails to establish procedures for death penalty cases which can pass constitutional muster. Furthermore, a comparison with the situation of other countries reveals that, with few exceptions, the death penalty is shunned by democracies and embraced by dictatorships. This fact reinforces my antipathy to bringing the death penalty back to life in the Federal courts.

I. DO THE PROCEDURES ESTABLISHED BY S. 1765 PASS CONSTITUTIONAL MUSTER?

Mr. President, the constitutional protections surrounding the imposition of the death penalty are complex and comprehensive. The elaboration of these standards has been the intention of the Supreme Court in dozens of cases decided over the past decade. The matrix of protections which have resulted demonstrates an extraordinary concern for human life, and an extraordinary effort to purge any taint of unfairness from the system by which the decision to take a life is made. The restrictions include not only the prohibition against cruel and unusual punishment, contained in the eighth amendment, but also a panoply of protections derived from other provisions of the Bill of Rights, including the guarantees of a fair trial by jury, effective assistance of counsel, and due process of law. If we are not satisfied that S. 1765 provides these protections in every relevant particular, then we must conclude that the bill is unconstitutional and should not be enacted.

I know that the proponents of S. 1765 have made a sincere and concerted effort to conform to these constitutional standards. But I seriously doubt that they have succeeded in doing so. I believe that there are at least three serious constitutional flaws in this bill, any one of which provides a powerful argument against its enactment.

First, S. 1765 explicitly authorizes the death penalty for at least three crimes which do not necessarily result in the death of another human being. For two of these crimes—espionage and treason—the defining provision of the United States Code already authorizes capital punishment. The third such crime marks the sole instance in which S. 1765 creates a new capital offense: Attempted assassination of the President, if the attempt "results in bodily injury to the President or comes dangerously close to causing the death of the President." In my view, espionage and treason can be the justification for capital punishment only if death results. Attempted assassination, in which, by definition, no death occurs, is an offense for which the death penalty would constitute cruel and unusual punishment.

My conclusion is based upon the 1977 Supreme Court decision in Coker against Georgia. Coker held the death penalty unconstitutional as a punishment for nonhomicidal rape. Justice White's opinion for the Court expressed the "abiding conviction" that death "is an excessive penalty for the rapist who . . . does not take human life." The Coker decision does not lay down an explicit rule that capital punishment may not be imposed for a crime from which death does not result, but the whole tenor of the opinion supports that conclusion. That, certainly, was the reading given it by Chief Justice Burger, who, in his dissent, noted that it "casts serious doubt upon the constitutional validity" of a statute such as S. 1765 which would authorize the Government to take the life of one who has taken no life.

This conclusion in no way discounts the seriousness of the crimes of espionage, treason, or attempted assassination of the President, any more than the Court's opinion in Coker discounted the seriousness of rape. These offenses are among the most grievous known to Federal law, and persons guilty of them ought to receive severe punishment. But the eighth amendment sets a limit on how severe that punishment may be, at least in a case in which there is no causal link between an act of espionage or treason and the death of a human being.

This bill's addition of attempted assassination as a capital offense is particularly troubling. The motivation behind this provision is one we all share. An assault on the Chief Executive tears the fabric of our society to a degree unmatched by any other nonhomicidal violent crime. Yet the authorization of the death penalty for such an act flies in the face of the Coker decision. It also would set a disturbing precedent that we would, I predict, find it difficult to limit. The history of 18 U.S.C. 1114 may be instructive. This provision makes it a Federal offense to assault or kill specified Federal officers engaged in the performance of official duties. Originally, the list of federally protected officials was quite short; but in recent years, the addition of further titles to the list has become an annual legislative exercise. It is hard to believe that a similar phenomenon could be avoided in the jurisdiction covered by this bill. Once the door is opened to capital punishment for attempted assassination, each step expanding the exception will become easier to take. Certainly it is a depressing reality that there will probably be, in the not too distant future, attempts on the lives of other high-ranking officials, which will speed the process on its way.

The second and third constitutional infirmities of S. 1765 concern the application of the aggravating factors which must be found if a conviction of any capital offense is to result in a death sentence. These aggravating factors are listed in some detail for the various categories of relevant offenses. What troubles me is the phrase which appears at the end of each such list, authorizing the trier of fact to "consider whether any other aggravating factor exists." This grants the jury in each case the power to determine whether a factor not listed in the statute justifies the death penalty.

The authority to base a death sentence on a nonstatutory aggravating factor runs counter to the entire thrust of eighth amendment jurisprudence, which focuses on limiting the jury's discretion in order to avoid arbitrary and capricious results. In a capital case, the existence of an aggravating factor is analogous to the existence of an element of the underlying offense. Either fact must be found to exist beyond a reasonable doubt. I have great faith in the jury system, but it is as great an abuse of the jury function to permit it to define for itself the aggravating factors as it would be to permit it to define for itself the elements of the offense. In neither case should the trier of fact be permitted to extemporize the rules.

The Supreme Court may never have explicitly held that the use of nonstatutory aggravating factors violates the Constitution. But in my view, to hand such a blank check to the trier of fact, when a life hangs in the balance, is at least highly suspect, and certainly unwise.

Finally, S. 1765 permits a nonunanimous jury finding on the existence of an aggravating factor—whether or not listed in the statute. Every juror must agree that some aggravating factor exists, but only a simple majority need to agree on what that factor is. This is another invitation to arbitrary and capricious decisionmaking. The Constitution permits nonunanimous jury verdicts in some instances, but it is impossible to believe that the finding of facts on which to base a sentence of death is one of them.

When the ultimate penalty is at stake, it is not too much to demand that the Government convince each member of the jury beyond a reasonable doubt of the existence of a specific aggravating factor; it is not enough simply to direct the jury to a menu of possible choices and convince each of them to pick at least one. Here again, the Supreme Court has never been confronted with precisely the system proposed by S. 1765; but, when such a system is before the Court, I have serious doubts that it will be upheld as consistent with the extraordinary requirements imposed in previous death penalty cases.

II. HOW OTHER NATIONS VIEW THE DEATH PENALTY

Mr. President, the document which announced our Nation's birth professed a "decent respect for the opin-

ion of mankind." As the Senate considers whether or not to reinstate the death penalty for Federal crimes, it is worth our while to consider the actions of other sovereign nations in this field. I suggest this, not, of course, because the United States should slavishly imitate the policies of other nations, but because we may have something to learn from such a survey of "the opinion of mankind." I do not think that the results of this inquiry can give much comfort to the proponents of S. 1765.

The French Minister of Justice, Robert Badinter, summarizes the findings in an arresting image. The map of freedom in the world, he has said, fits almost exactly together with the map of abolition of the death penalty. The map of nations which retain the death penalty nearly coincides with the map of tyranny. The most glaring exception to this general principle is the United States.

Ours is the only non-Communist industrialized country, except for Turkey, in which the ultimate penalty is imposed. Even those democracies which confront the most severe problems of terrorism—for example, West Germany, Italy, Israel—abstain from the death penalty as punishment for violation of their laws.

Nor is there any indication of much interest within the Western democracies in a change of course on this issue. In recent years, two of our allies have debated a change in policy on capital punishment. In 1981, the French National Assembly voted to abolish the death penalty, which previously had been applicable to a wide range of offenses under the French penal code. Only last year, the United Kingdom, where no one has been sentenced to death for many years, considered whether or not to reinstate capital punishment. The proposal to do so was decisively defeated in the House of Commons.

A look at the other side of the coin ought to make us decidedly uncomfortable. About 30 other nations around the world now authorize capital punishment. Heading that list are the Soviet Union, South Africa, Iran, and the Peoples' Republic of China. M. Badinter does not exaggerate when he states that "everywhere that dictatorship and contempt for human rights prevail, the death penalty exists in the law and is practiced in fact."

The French Minister of Justice goes one step further, arguing that "even when it is utilized in a democratic county, capital punishment implies a totalitarian conception of justice." I reject that viewpoint. Although our system of justice shares with totalitarian systems the option of capital punishment, it stands alone in its dedication to due process and equal justice. But the prevalence of the death penalty in our country does, it seems to me, undermine our ability to condemn its use in countries where it is applied indiscriminately or arbitrarily. At the very least, we ought to think long and hard about any policy which appears to place us in such unsavory company.

Mr. President, I urge my colleagues to consider these arguments against the bill before us. Of course, S. 1765 raises many other important issues as well. Our votes may be based on those issues, as well as on the strongly held moral beliefs that motivate many Senators on the question of capital punishment. But in my view, the constitutional infirmities of S. 1765, along with my reluctance to add the United States to the list of nations which have approved capital punishment on the national level, are persuasive. This bill should not be enacted.

Mr. DECONCINI. Mr. President, I would like to inquire if there is anyone else present who wishes to speak in opposition to the capital punishment bill.

Mr. President, may I ask the Chair approximately how much time remains?

The PRESIDING OFFICER. Is there any Senator who wishes to speak in opposition to the current bill?

Mr. DECONCINI. May I ask the Chair how much is left?

The PRESIDING OFFICER. Ten minutes remain.

Mr. DECONCINI. And no time left for the proponents?

The PRESIDING OFFICER. That is correct.

Mr. DECONCINI. In that case, if there is no one in opposition, I am glad to yield 5 minutes to my friend, the distinguished Senator from Pennsylvania (Mr. SPECTER).

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator.

I take the floor today in support of S. 1765. I note preliminarily that I spoke on the subject at some length when the matter was before this body on February 8, 1984, but I believe it appropriate to make a few additional comments as we near time for a vote on this measure.

In my judgment, Mr. President, it is appropriate for the Congress of the United States to reinstate the death penalty under the carefully selected standards of S. 1765. It is my view that this legislation will have substantial significance as a model for the 50 States. Many of the States have not reinstated the death penalty and some did not have the death penalty prior to the case of Furman against Georgia and the Supreme Court decisions which have followed.

In supporting the death penalty, Mr. President, I do so based upon some 14 years of experience as a prosecuting attorney, including 8 years as district attorney of Philadelphia, on my experience as a defense attorney, and from the hearings which have been held before the Committee on the Judiciary. The essential reason that I support the death penalty is that, in my judgment, it is a deterrent against murder and a deterrent against crimes such as burglary, robbery, rape, and arson, which are likely to result in murder.

My experience as a district attorney has placed me in contact with many cases which illustrate the deterrent effect of capital punishment. I have known of many professional burglars and robbers who have stated that they will not take a weapon along in the course of a robbery or burglary for fear that someone will die and that they might face the death penalty.

One case which is the best illustration of this deterrent effect was a murder prosecution in Philadelphia, Pa., involving three young defendants—Williams, Cater, and Rivers, aged 19, 18, and 17. Williams was the ringleader and had a gun. When he brandished his gun shortly before the three young men set out to undertake a robbery, Cater and Rivers, 18 and 17 respectively and with marginal IQ's, said they would not go if a revolver were to be taken because of their fear of facing the death penalty. These facts were set forth in confessions by Williams, Cater, and Rivers, and were clearly established on the record. Williams then said he would not take the revolver and slammed it shut into a drawer. The three then began to leave the room when Williams, unbeknownst to Cater and Rivers, slipped the gun out of the drawer, put it in his pocket, and set out on the robbery.

In the course of the robbery, the victim resisted, and Williams shot and killed the victim. All three were charged with robbery and murder.

All three were sentenced to death in the electric chair under Pennsylvania law. Williams was, in fact, executed in the early sixties. Cater and Rivers ultimately received reprieves, although technically guilty, because they were not equally culpable as Williams. As coconspirators in the crime who did not themselves commit murder, they received reprieves from the death penalty and had their sentences reduced to life imprisonment.

I cite the Williams, Rivers, and Cater case because of its illustrative value. I realize full well there are statistics on these decisions which go in all directions. It is my own legal judgment that the statistics are inconclusive.

It is my further legal judgment that the death penalty is in fact a deterrent to murder, and to robbery, rape, arson, and burglary offenses which may lead in the course of their commission to murder.

The statistics for murder rates are set forth in the CONGRESSIONAL RECORD on page 2229: in each of the years 1982, 1981, 1980, and 1979, the number of murders in the United States exceeded 20,000, with a high point in 1980 of 23,044 murders. It is my thought that there are many victims who would not have been murdered had the death penalty been in effect and had the deterrent quality of the death penalty been in effect. It is obviously not subject to any precise mathematical determination how many fewer people would have been murdered had the death penalty been in effect, but it is my view, my opinion, and my legal judgment that there would have been substantially fewer people murdered had the death penalty been in effect and carried out with reasonable promptness.

A concern that I have, and it has been eloquently articulated by those in opposition to the death penalty, is the problem of mistake. My thought is that with the refinements in the imposition of the death penalty and with the split verdict procedure now in effect, the chance of mistake is greatly diminished. It used to be that a defendant's prior record was submitted to the jury at the same time that the jury considered innocence or guilt. The instruction to the jury not to consider the prior record until the jury had decided innocence or guilt was obviously impossible for jurors to follow, and the unitary trial procedure has been abolished. There is now a verdict as to guilt and then there is a separate proceeding as to prior record and other aggravating or mitigating circumstances; this has substantially refined the procedures for the determination of guilt and the imposition of the penalty.

With the extensive safeguards now available to criminal defendants, including identification through the use of the lineup, we have gone a substantial distance toward eliminating the possibility of error. But I do not believe it can be said with assurance that it is ever possible in any judicial proceeding, however careful we may be and however meticulous the procedural safeguards may be, to eliminate all possibilities of error. But I do think that the errors are few and that, on balance, when considering the desirability of a public policy and legislation on this subject, the balance stands in favor of protecting the numerous innocent victims of murders whose lives would be saved were this deterrent procedure in effect.

I note the elaboration on mitigating factors or aggravating factors which is encompassed in S. 1765 in response to the decision of the Supreme Court of the United States in Furman against Georgia. I believe that, on balance, it is desirable that the Congress of the United States reinstate the death penalty at the Federal level as a signal to those who would murder or those who would rob, rape, burgle, or commit arson, or other serious offenses which might lead to murder. It will place those violent criminals on clear notice that, in the cases involving aggravating circumstances of horrendous crimes, the death penalty is in effect. Its deterrent capability, therefore, ought to be substantial.

I thank the distinguished Senator from Arizona for yielding me the time. I thank the Chair.

I yield the floor.

Mr. DECONCINI. Mr. President, once again I appeal to anyone who wants to speak in opposition to the present legislation. The vote will be at 2:30. If not, at this time 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. DECONCINI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DECONCINI. Mr. President, I ask for the yeas and nays on the pending legislation.

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

The yeas and nays were ordered.

Mr. DECONCINI. I thank the Chair.

Mr. President, during the course of debate on the capital punishment bill, we have heard comment suggesting that many of the mainline churches in America oppose the death penalty on moral grounds. I certainly do not question the deep felt beliefs and the study that may have led some theologians to conclude that the Judeo-Christian tradition forbids any taking of life. However, there is another point of view held by other theologians of these same faiths who feel that the death penalty is not necessarily precluded by the principles of their faith.

Recently, I received a letter from the Reverend James Leonard of the United Methodist Church in which he outlined his reasons for support of the death penalty and in which he outlined the Biblical underpinnings for his reasoning.

I ask unanimous consent, Mr. President, that in the RECORD at this place appear following my statement the Reverend James Leonard's letter.

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

CAPITAL PUNISHMENT: THE WIDER HORIZON

(The Reverend F. James Leonard)

In the Washington Post article "Killing Enigmas" (February 20, 1984), criminology professor Marc Riedel said "the greater degree of randomness entering violent crimes" suggests that "our social order is coming unglued" especially in our inner cities. He added "There's an implicit message of urban disintegration and terror which should be quite disquieting." I am a United Methodist clergyman who is deeply concerned about the social disintegration now afflicting our common life. One indicator of the spreading chaos is the fear of many Americans that they will become victims of violent crime. There is growing concern that the government is unwilling or incapable of protecting them from it. Because a political system can retain its justification only to the extent it protects the lives of its citizens and distributes justice, the issue of capital punishment touches our most fundamental social bonds. Senate Resolution No. 114 represents a significant strengthening of our social framework and it accords well with the basic tenets of our Judaeo-Christian heritage.

The Bible offers a powerful testimony to the sacredness of human life. As human beings we were created by God to be stewards of the natural world, and we are supremely destined to be guided by his perfect and invincible will. God's will is manifested in the cultic and ethical laws of the Old Testament, as well as in the dramatic record of his continuing intervention on behalf of his people. The Psalms speak eloquently of God as the protector of life and the guarantor of justice, and it is clear from the historical record that capital punishment was a common practice in ancient Israel. Chapter 20 of the Book of Leviticus provides a detailed list of capital crimes. More interesting still is the 35th chapter of Numbers, which is a series of legal definitions of homicide, each one ending in the injunction "the murderer shall be put to death." The passage, remarkable for its succinctness, also distinguishes between crimes of passion, premeditation and manslaughter.

The central event of the New Testament is of course the life, death and resurrection of Jesus Christ. There God demonstrated for all time his loving concern for us as his children by becoming one of our own kind. Christian thought has always understood the cross to represent God's compassionate sharing of human suffering. It is this same compassion which led Jesus to suffer the most fearful fate any person can endure—a painful and violent death brought on by premeditated malice. Thus the Bible discloses a God who is forever allied with the victims of this world. From his faithful attention to struggling Israel, to the life and teachings of Jesus Christ, God's tender regard is forever extended to the most vulnerable members of society; the very feeble, the young and the neglected. These are people that the world sees as expendable, but in the eyes of God are supremely worthwhile.

In the modern age, it is the murder victim who is most often viewed as expendable. She has no one to speak on her behalf, with the exception of grieving relatives and friends. There was a time when she walked this earth like the rest of us, feeling the sun on her skin and air in her lungs. Fine and perfectly formed as any child of God, she was placed here to love, to work and to share in the fulness of life. Now, suddenly she is here no more, her life snuffed out by a brutal action.

The significant point here is that while we might be momentarily touched by the facts of murder, there are overwhelming odds that we will experience it only vicariously through TV news and newspaper accounts. The chances are exceedingly small that it will be your wife, your husband or child

that is a murder victim. Thus from the standpoint of crude self-interest, which is—like it or not—a strong motivating factor, when we speak of murder victims we are referring to a group of people who matter very little to us. Our civilized impulses move us to deplore their fate, but the censure carries no weight of personal involvement. Add to this the fact that most who serve in public life are well protected by relatively quiet neighborhoods, secure working environments and safe schools for their children. The implications of capital punishment are qualitatively unlike other laws such as the tax code because they affect only a very few.

One of the ethical principles which is common to all great religions is the golden rule—do unto others as you would have them do unto you. Suppose for a moment that it was your loved one that was found bludgeoned and raped—now of course the situation is different. Who but the most ardent pacifist would fail to cry out for swift and certain justice? My intention here is not to appeal to the viscera but to suggest that it is simple human nature to desire retribution when our kith and kin have been brutalized. This has always been a universal aspect of our emotional structure as men and women, and any political entity must take this into account if it is to retain its legitimacy. One of the most basic components of the social contract is the responsibility of the state to protect the lives of its citizens. Along with the capture of territory, the killing of citizens by an alien government is universally understood to be an act of war. Any nation which fails to protect its people from the fury of war whether inside or outside its borders will soon find its laws and its social order disintegrated. It is therefore the responsibility of government to protect its people and to take decisive retributive action when those lives are violated. It is the willingness to meet this responsibility that ensures the commonweal.

I am aware that the United Methodist Church has declared itself opposed to capital punishment in its Social Principles. But I am also aware that my denomination prides itself on its pluralism and willingness to tolerate various points of view, and that these same Social Principles have never been treated as dogma binding for all United Methodists. My own experience of rank and file Methodists suggests that many have a deep ambivalence about this and other aspects of the Social Principles. They are not, in my view, an accurate reflection of the sentiments of the people who sit in the pews on Sunday mornings.

One of the most imponderable aspects of our existence is the end of life. Death is something that our thinking faculties cannot process. Thought cannot encompass the annihilation of thought. We shrink back from it instinctively—it is a primordial movement away from the darkness and toward the light. It simply goes against our better nature to wish death upon another human being regardless of what they have done. But it is equally against our nature to allow our minds to dwell upon the savage actions which earned a death sentence for a murderer. Dismemberment and brutal killing are too painful to hold in our imagination for any period of time. How much more decent and hopeful it seems to think of the future and give the killer a second chance! In so doing we follow those life-affirming impulses which our religion teaches us to pursue.

While the bulk of our productive energies as a race are directed toward the flourishing and uplifting of life, murder thrusts us into a circumstance where these positive energies have no place to go. In every other instance of wrongdoing, we seek to replace what was lost with something of equal value. A single human life cannot be replaced, however. It is a gift of God, given once and never to be given again. To maliciously deny this creative work of God is to declare oneself at war with all of human life and creation. With such an individual there is only one course of action which will properly honor what has been lost, and that is to end the life of the murderer.

For this reason I believe that arguments about deterrence or rehabilitation of the offender are inherently spurious. Even if it could be shown that capital punishment can never deter murder and that every murderer could be rehabilitated, there remains the broken body of the victim which can never be rehabilitated. It can only be mourned. The death penalty is not indicative of a disregard for human life. It is an expression of outrage at the tremendous loss which we all sustain when a brother or sister is wantonly cut down.

Mr. DECONCINI. Mr. President, ultimately, the conclusion in favor of the implementation of capital punishment has its basis in the belief that the primary responsibility of society is the protection of its members so that they might live out their lives in peace and safety. Where the safety of its citizenry can no longer be guaranteed, society's basic reason for being disappears. In providing its members protection, society must do what is necessary to deter those who would break its laws and punish those who do so in an appropriate manner.

I would like to briefly discuss the issues presented by this bill and the justification for its use in sentencing persons convicted of capital crimes under Federal criminal code.

The question of the deterrent effect of capital punishment has probably been the one point most debated by those favoring the abolition of the penalty and those desiring its retention. I discussed the question of the deterrent value of capital punishment at length on the floor yesterday. Without repeating that discussion, let me just say that in the absence of conclusive proof as to whether the death penalty does deter violent crime, I believe we should decide the question on the side of the innocent victim, not the violent criminal.

That those who take lives of others in an unjustified manner may be subject to the extreme sanction of capital punishment reflects a social consensus that places great sanctity on the value of human life. It is a consensus that holds that individual offenders are responsible and accountable beings, having it within themselves to conduct themselves in a civilized manner. It is also a consensus that holds that there is no offense more repugnant and more heinous than the deprivation of an innocent person's life.

Murder does not simply differ in magnitude from extortion or burglary; it differs in kind. Its punishment ought to also differ in kind. It must acknowledge the inviolability and dignity of innocent human life. It must in short, be commensurate with the crime. I have concluded that, in the relatively narrow range of circumstances outlined in this bill, the penalty of death satisfies that standard.

Apart from its legitimacy as one of the purposes of punishment, questions have arisen with respect to the constitutional validity of retribution as a basis for punishment, specifically capital punishment. This question was addressed by the Supreme Court in the Gregg case:

> In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.
>
> The instinct for retribution is part of the nature of man, and channelling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a free society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they "deserve", then there are sown the seeds of anarchy—of self-help, vigilante justice, and lynch law.

It is my conclusion that it is not enough to proclaim the sanctity and importance of innocent life. This must be, and can only be secured by, a society that is willing to impose its highest penalty upon those who threaten such life.

An argument that is often asserted in favor of abolition of capital punishment concerns the dangers of executing the innocent. The argument is made that, since the cost of such a mistake is so great, the risk of permitting the death penalty to be imposed at all is unacceptable.

Upon more thorough examination, I find this argument to be unconvincing, particularly in light of the procedural safeguards for criminal defendants mandated by the Supreme Court. The Court's decisions with respect to the rights of the individual, together with the precautions taken by any court in a capital case, have all but reduced the danger of error in these cases to that of a mere theoretical possibility. Admittedly, however, due to the fallible nature of man, this possibility does continue to exist, but it is my opinion that this minimal risk is justified by the protection afforded to society by the death penalty.

The incapacitating effect of capital punishment is clear. Obviously those who suffer this penalty are unable to commit similar crimes in the future. The question then becomes one of necessity. Is the death penalty necessary to adequately protect society in the future from the possible actions of those who have already committed

capital crimes? I am of the opinion that, in certain circumstances, it is.

In some cases, imprisonment is simply not a sufficient safeguard against the future actions of criminals. Some criminals are incorrigibly antisocial and will remain potentially dangerous to society for the rest of their lives. Mere imprisonment offers these people the possibility of escape or, in some cases, release on parole. Even if they are successfully imprisoned for life, prison itself is an environment presenting dangers to guards, inmates, and others. In each of these cases, society is the victim. Basically, there is no satisfactory alternative sentence for these individuals. Life imprisonment without parole, although at first appearing to be a reasonable answer, is in reality highly unsatisfactory. Such a sentence greatly increases the danger to guards and to other prisoners who come into contact with those who have been so sentenced. S. 1765 creates a new capital crime of homicide by an inmate serving a life sentence. The Judiciary Committee held hearings on this particular provision of S. 1765 late in 1983. The testimony concerning a recent incident in the maximum security institution in Marion, Ill. was particularly compelling. Two inmates seemingly in a race with one another to see who could kill the most people, committed particularly brutal murders on the same day. Even though they were housed in the most secure area in our Federal corrections system, they were able to repeatedly stab their victims. In the case of someone serving a life sentence, execution is the only sanction which could possibly serve as a deterrent. Individuals like these two, and others in similar circumstances, have little or nothing to lose by carrying out their depraved and horrible actions. We must impose the death penalty on prisoners sentenced to life who murder guards or other inmates in order to bring some semblance of security to our Federal prison system.

Regardless of whether or not the imposition of the death penalty would have deterred either of these two murderers, it must be obvious to anyone that these are two depraved individuals who will go on killing people until they die. It is our job as protectors of society at large, particularly those whom we employ to work in our Federal correctional system, that these individuals do not kill again.

It cannot be overemphasized that it is not my desire to see capital punishment utilized as an alternative to efforts at rehabilitation. This simply is not the case. We should recognize that still greater attempts must be made to enable our prison system to achieve its goal of restoring productive and useful individuals to society. We here discuss only a minute class of extremely dangerous persons.

In arriving at a decision to support the death penalty, considerable weight was given to public opinion on the acceptability of the death penalty. Contrary to the frequently asserted statement that there is growing public opposition to capital punishment, examination of public opinion polls over the last 10 years shows a remarkable rise in the number of Americans in favor of the death penalty. A fall, 1982 Gallup opinion poll revealed that public support for the death penalty for murder has reached its highest point in 30 years. Seventy-two percent—more than 2 out of every 3 Americans—favor the death penalty for persons convicted of murder. In 1971, 49 percent of the public approved of capital punishment for murder. It appears from the polls that a demand for the death penalty coincides with a greater public awareness of the crime problem.

S. 1765 is drafted to meet the constitutional requirements of guided discretion based on rational criteria. The bill would provide that, after a conviction for an offense for which a penalty of death is authorized, the court must hold a separate hearing on whether to impose the death penalty. The hearing would normally be before the same jury which sat for trial, or, if both parties agreed, before the judge. After both sides have an opportunity to present all relevant evidence, the jury would be asked to make special findings as to whether any mitigating or aggravating factors existed. The mitigating factors specifically listed in the amendment include such things as the youthfulness of the defendant, the extent of such person's involvement in the offenses, emotional problems or pressures affecting the defendant, and the unforeseen nature of a resulting death; this list of mitigating factors is not exclusive and the sentencer clearly may consider all mitigating factors. The aggravating factors would vary depending on whether the offense is one relating to treason, espionage, or murder.

The jury would be required to determine by unanimous vote whether aggravating or mitigating factors exist. If aggravating factors are found not to exist, the court would impose a sentence other than death. If one or more aggravating factors were found to exist, the jury would then determine, in light of all the evidence, whether the aggravating factors found to exist sufficiently outweigh any mitigating factors found to exist, or in the absence of mitigating factors whether the aggravating factors were, themselves, sufficient to justify a sentence of death. If the jury finds by unanimous vote that the death penalty is justified, the Court is directed to impose a sentence of death.

If the sentencing hearing is held before a jury charged with determining if the sentence of death is appropriate, the Court will be required to instruct the jury that in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate, signed by each juror, that they followed this instruction.

The bill further provides that the defendant shall have a right to appeal the sentence and that such review shall have priority over all other cases. In order to affirm the sentence, the appellate court must determine that the sentence of death is not imposed under the influence of passion, prejudice, or other arbitrary factor; and that the information supports the special finding of the existence of an aggravating factor or the failure to find any mitigating factor required or permitted to be considered.

The Senate, when it passed S. 1401, indicated that it believed that the death penalty was a proper punishment for certain crimes, and that a rational, constitutionally permissible criteria for its imposition was needed. The Supreme Court, in recent cases, has indicated that capital punishment is constitutionally allowable. And the American public has indicated that without it the Government does not adequately fulfill its duty to protect them.

As Dr. Ernest Van Haag has said:

> I think it is simply unjust that we guarantee murderers that what they have done to their victims will never be done to them, that the murderer is guaranteed a continuous life, the kind of life he took from his victim. That seems to me unjust, immoral and repulsive.

Mr. MOYNIHAN. Mr. President, S. 1765 establishes the death penalty for two crimes not previously punishable by death: Murder in prison by a person already serving a life sentence, and attempted assassination of the President where serious bodily harm results or where the attempt comes dangerously close to succeeding.

The bill removes rape from the list of Federal crimes punishable by death.

It also limits the scope of the availability of the death penalty for espionage or treason.

It is, in my view, a narrowly drawn and prudent statute, which addresses issues of legitimate public concern. Its effects, if any, will almost surely be minor. The committee report speaks of the inherent logic of the deterrent power of the threat of death. That may be. But there has been no statistical demonstration of any such effect. On the other hand, the statistical problems of establishing a correlation between one set of rare events—execution—and a lessened incidence of another set of rare events—certain capital crimes—are near to insuperable.

I would emphasize the rarity of the events. It has been 21 years since anyone was executed under Federal civil authority. The crime involved was kidnaping that resulted in death. Since 1930 there have been 33 executions altogether.

What we can say is that there are some crimes we deem punishable by death, and that is about all we can say, or in truth need to say.

I will accordingly vote "Aye."

Mr. DOLE. Mr. President, I take this opportunity to outline the reasons why I would vote in favor of passage of S. 1765, SENATOR THURMOND's bill to establish a constitutionally sound procedure for imposing the penalty of death for the commission of certain Federal crimes. This Senator has long advocated the restoration of the death penalty for the more serious Federal crimes of treason, espionage, premeditated murder and felony offenses resulting in death. The bill reported from the Judiciary Committee would achieve this objective, and the chairman of that committee is to be commended for taking the lead in introducing the legislation and going forward with it in this Congress.

I. CONSTITUTIONAL QUESTIONS

Mr. President, there are many arguments raised today against capital punishment on philosophical, sociological, religious, and legal grounds. Many take the position that capital punishment is cruel and unusual punishment by today's standards; that mores and values have changed and that it is no longer an appropriate penalty for the crimes specified in the bill we have reported out of committee. I believe, however, that a brief examination of the history of capital punishment in our society refutes this view. At the time of the adoption of the Bill of Rights in 1789, capital punishment was employed for a variety of crimes, including crimes which did not result in the taking of another life. In the case of *Trop* v. *Dulles*, 356 U.S. 86, the Supreme Court noted that:

> The death penalty has been employed throughout our history, and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty.

This view has been repeatedly stated by the Court, and was restated in the landmark of Furman against Georgia, the 1972 decision which analyzed once again the circumstances under which the penalty could be imposed, and which is the impetus for this bill.

The proscription of the eighth amendment ban upon cruel and unusual punishments is toward the employment of penalties which involve unnecessary cruelty, or which are so disproportionate to the offense as to be unjust. The acceptability of the death penalty as appropriate punishment for certain crimes was implicitly approved in the language of the 14th amendment, adopted in 1868, which provides that no State shall deprive any person of life, liberty, or property except by due process of law. Of course, the question of whether or not the use of the death penalty for a given offense is disproportionate to the crime for which it is imposed is one which is constantly subject to scrutiny as the attitudes of society develop in the light of modern experience. But this Senator would affirm, Mr. President, that the crimes for which the penalty is imposed in S. 1765 are those which, in conjunction with the aggravating factors which may be considered under the bill, are regarded by all civilized societies as being of sufficient gravity to justify a sentence of death upon conviction. And, when we look at contemporary public opinion, not only in this country but in others, and indeed in my own State of Kansas, we find that it is overwhelmingly in favor of capital punishment in principle. In the United States, two-thirds of the States have reenacted capital punishment statutes designed to comply with the Court's decision in Furman, by mandating bifurcated hearings for the imposition of the the penalty. Public opinion polls have consistently shown the public majority to be in favor of capital punishment in limited circumstances. Indeed, it is only a vocal minority which has raised the charge that the penalty is, per se, cruel and unusual.

I would submit, Mr. President, that the use of the death penalty for the crimes set forth in S. 1765 is neither cruel nor unusual by today's standards of public opinion and public practice; and that the procedures set forth in the bill before this body today insure the due process of law and equal protection required by the Constitution as interpreted by the Supreme Court in Furman and subsequent decisions.

II. DETERRENT EFFECT

While the arguments against capital punishment—as contemplated in this bill—on the cruel and unusual punishment theory—seem unfounded, in my opinion, we are still left with the fundamental, more important question: Is capital punishment just and useful? Does it accomplish any purpose which benefits society, and if so, do the advantages outweigh the disadvantages?

It seems to me, Mr. President, that there are two fundamental purposes which any criminal penalty should serve if it is to be deemed just and useful: First, it should protect society from the predations of criminals; and second, it should help to reinforce social mores which deem crime to be wrong per se. Both purposes abound around the principle of deterrence. When a society ceases to believe that criminal acts will be punished adequately, the moral sanction against killing and other heinous offenses diminishes. If people see murderers repeatedly given life sentences and released on parole after 15 years or less, the absolute credibility of the malum prohibitum surrounding heinous crimes disappears. And this must have an effect upon the thinking processes of an individual who contemplates committing the most serious crimes which we punish.

Sadly, Mr. President, we have recent evidence that supports that conclusion. In hearings held before the Criminal Laws Subcommittee, of which this Senator serves as a member, representatives of the Federal Bureau of Prisons detailed certain events that transpired last year at the Federal correctional facility at Marion, Ill. Apparently, two inmates at that institution were engaged in a contest, in effect, to see who could commit the most murders. Both were serving multiple life sentences, and were thus immune to further Federal punishment of any significance. One killed a prison guard simply for the thrill of it, and the other inmate killed another guard simply to keep pace with his fellow inmate. This is shocking. It is sick. But in the absence of legislation to reinstate the Federal death penalty, there is nothing we can do to punish these individuals nor prevent them from committing similar crimes in the future. We cannot even keep them in true solitary confinement—that is, isolate them from all other individuals—because the courts have held that correctional officers must provide all inmates with opportunities for exercise, recreation, and access to library facilities. So as surely as the Sun rises tomorrow, one or both of these individuals will kill again.

There have been endless articles written concerning the statistical evidence for the deterrent consequences of capital punishment statutes, many have argued that there is no conclusive statistical evidence that capital punishment deters murder. On the other hand, many have argued the opposite. Prof. Isaac Ehrlich, for example, conducted a statistical study of the years 1933 through 1969, and concluded that "an additional execution per year * * * may have resulted on the average in seven or eight fewer murders."

The Ehrlich study is very important to our deliberations, because it refutes previous investigations, highly publicized, which did not find any deterrent statistical evidence arguing in favor of capital punishment. In the June 1977 issue of the American Economic Review, Professor Ehrlich published a new cross-sectional analysis of the data, which confirms the conclusions of his original study.

With regard to the validity of those studies which deny any correlation between capital punishment and the in-

cidence of murder, it is important to realize that those individuals who are in fact deterred by the presence of capital punishment statutes are not actually included in the data, because there is no way to determine their number. And while the statistical evidence on the deterrent effect of capital punishment is not conclusive, the general opinion of those in law enforcement who deal with murderers on a day-to-day basis is that the death penalty does deter these crimes when consistently and fairly applied. And those opinions, some of which were brought out in committee testimony, carry considerable weight for this Senator.

There is a larger point, however, beyond the numbers of theories on deterrence of the penalty to other criminals in society, which must not be overlooked. And that is, Mr. President, that capital punishment is most certainly, and undeniably, a deterrent to that criminal who is executed. He will not be coming out on parole in 10 or 15 years to commit yet another assault on society; he will not be in a position to threaten the lives of prison personnel, or other prison inmates. He will be gone. And in light of the tragic incidence of heinous crimes committed by persons already convicted once for such a crime, who are unregenerate upon reentering society, this is perhaps the most compelling consideration. Some would say, how can we take a life to demonstrate the importance of our laws, without degrading the laws we are trying to enforce? My answer is, it is a question of societal self-defense.

No one among us would hesitate, we would presume, to kill a criminal who was attacking ourselves or our family members with intent and capability to kill. It would be necessary self-defense. Does not society have the same right and even obligation to defend itself against those who infringe upon the most fundamental right of a citizen—the right to live? If we take the logic of those who would abolish the penalty to its conclusion, then our law enforcement agencies could not act to defend a citizen whose life was threatened by riot or criminal act if that defense necessitated the killing of the persons creating the threat, because to do so would undermine the sanctity of life.

I, for one, reject that view. I believe that capital punishment is a powerful deterrent, if administered consistently and fairly. Assuming that potential assailants value their lives, it is rational to assume that they will think more than once before taking action that would lead to the electric chair.

On this psychological point, Mr. President, this Senator is aware of certain opinions of sociologists and others who contend that many murderers are really self-destructive, suicidal personalities who seek to commit murder in order to provoke the State to kill them, which is what they wish to do to themselves. While some murderers may in fact fit this description, it is far from clear that the majority do. Moreover, the existence of such individuals strengthens the argument for capital punishment, as their physical destruction is the only way of protecting society from their violence.

The psychological apologist argument against capital punishment, while warning us about suicidal psychotics, also contends that murder is frequently a crime of passion, and that no cold calculation is involved before the act, thus rendering deterrence impossible. Statistical evidence does not clearly reveal what proportion or murders are in fact crimes of passion. S. 1976 imposes capital punishment for offenses which clearly involve premeditation, however, so the argument lacks persuasiveness with regard to the legislation before us today.

III. PROVISIONS OF S. 1765

Mr. President, the bill we have reported out not only specifies the death penalty for the basic offenses, but also spells out a clear, bifurcated procedure for the judge and jury to follow after a person is convicted of a crime for which the penalty may be imposed. A separate hearing must be held to determine whether the penalty will be invoked, with all jurors—or the judge, where the case is tried to the court—finding that aggravating factors outweigh mitigating factors in the individual case.

The burden of proof on the government to establish aggravating factors is greater than that on the defendant to establish mitigating circumstances. In addition, the defendant is allowed to appeal his sentence of death. Thus, one cannot argue that the bill does not give defendants a fair chance to argue for mitigating factors which militate against capital punishment.

Mr. President, this procedure is fair, it is objective, it is just. And it meets the constitutional requirements of the law as enunciated in Furman and later decisions. It cannot be said to constitute cruel and unusual punishment, nor to give judges and juries unfettered discretion as to whether to impose the death penalty. I believe the protections it embodies are more than sufficient to eliminate the possibility that mistakes will be made in imposing the penalty.

For these reasons, I will vote in favor of the bill.

Mr. LEAHY. Mr. President, at the heart of many of today's proposals to update and reform our criminal laws is the issue of capital punishment, the intractable question of who may live and who will die. A bill to restore capital punishment for certain Federal criminal offenses is again before Congress. I oppose the bill.

My objections to capital punishment are moral and practical. The moral issue overrides all others because officially authorized killing, even of those who have taken human life, offends the deepest of our shared spiritual values. Whatever feeling of retribution or enhanced personal security we may enjoy because of the use of death as a penalty, we enjoy at a high price, the price of admitting and affirming that the ultimate power in governing our affairs is the power to kill.

But beyond personal moral concerns, the death penalty makes no practical sense. The death penalty tends to drain the resources of the entire criminal justice system, from prosecutor to the Supreme Court, and to focus what should be a massive force to combat and deter crime on relatively few cases, with inevitable costs to the efficiency of the system as a whole.

The death penalty, even with the most carefully drafted standards, is designed to kill and will remain controversial. The appellate courts will continually grapple with the enormity and irreversibility of the penalty and its implications for a nation espousing a reverence for human life. In the midst of appeals, it inevitably will be accompanied by the spectacle of shuffling human beings back and forth between death row and temporary reprive during months, and even years, of delay.

A second reason the death penalty is a futile gesture from a practical standpoint is that it will not have any noticeable effect on crime statistics or our sense of safety and well-being. Support for capital punishment is a quick, shorthand method for appearing to be tough on crime, but a simple perusal of recent criminal justice statistics and crime rates demonstrates convincingly the fallacy that capital punishment can somehow have an impact on the Nation's soaring crime rate. Even if the death penalty might deter specific persons from contemplating homicide in given instances—and I suspect it probably does—the example of officially sanctioned violence may, in the long run, actually contribute to the overall levels of violent crime.

Capital punishment does little to alleviate the fears of the American people caused by the increase in the number of robberies, muggings, burglaries, and assaults. It is these crimes that the American people fear most.

Third, it is common knowledge that those who have been sentenced to death overwhelmingly come from the poor and the minorities. As a result, the restoring of the death penalty will have the practical effect of killing a significantly higher proportion of criminals from these groups than others.

Fourth, people, and institutions run by people, make mistakes. No matter what procedures are used to determine the appropriate cases for the ultimate penalty of capital punishment, innocent people will be condemmed to die. If there had ever been a demonstration that the death penalty was required as essential to civilization, that risk might seem justifiable. But the best evidence has been to the contrary.

To the extent capital punishment deters, the question must be asked whether it is an effective deterrent. I believe that a real life sentence—life imprisonment without the possibility of parole—would be far more effective in deterring violent crime than the death penalty. A clearly constitutional sentence of life imprisonment without the possibility of parole will be a more certain means of allaying the public's fears than the death penalty.

The other goals of the death sentence, incapacitation of the defendant and retribution, are achieved very well under my proposal for a real life sentence. The prospect of life without freedom is a chilling and haunting one. It is devastating retribution.

I will be candid that as a former prosecutor, as a U.S. Senator, and as a father, I have no easy answer to the growing threat of violence in our society. But the more I ponder, the more certain I become that the answer is not to add killing to killing.

Mr. DURENBERGER. Mr. President, I rise today to speak in opposition to S. 1765, a bill to establish constitutional procedures for the imposition of the death penalty.

Let me begin by sharing with my colleagues a few paragraphs that appeared on January 24 in Time magazine.

> The chair is bolted to the floor near the back of a 12-ft. by 18-ft. room. You sit on a seat of cracked rubber secured by rows of copper tacks. Your ankles are strapped into half-moon-shaped foot cuffs lined with canvas. A 2-in.-wide greasy leather belt with 28 buckle holes and worn grooves where it has been pulled very tight many times is secured around your waist just above the hips. A cool metal cone encircles your head. You are now only moments away from death.
>
> But you still have a few seconds left. Time becomes stretched to the outermost limits. To your right, you see the mahogany floor divider that separates four brown church-type pews from the rest of the room. They look odd in this beige Zen-like chamber. There is another door at the back through which the witnesses arrive and sit in the pews. You stare up at two groups of fluorescent lights on the ceiling. They are on. The paint on the ceiling is peeling.
>
> You fit in neat and snug. Behind the chair's back leg on your right, is a cable wrapped in gray tape. It will sluice the electrical current to three other wires: Two going to each of your feet, and the third to the cone on top of your head. The room is very quiet. During your brief walk here, you looked over your shoulder and saw early morning light creeping over the Berkshire Hills. Then into this silent tomb.
>
> The air vent above your head in the ceiling begins to hum. This means the executioner has turned on the fan to suck up the the smell of burning flesh. There is little time left. On your right, you can see the waist-high, one-way mirror in the wall. Behind the mirror is the executioner, standing before a gray marble control panel with gauges, switches and a foot-long lever of wood and metal at hip level.
>
> The executioner will pull this lever four times. Each time, 2,000 volts will course through your body, making your eyeballs first bulge, then burst, and then broiling your brains. * * *

This description brings home what we are debating today. It is not neat, clean, and painless. Society putting another human being to death is messy, painful, and inhumane.

My opposition to this bill is a manifestation of my belief in the unique worth and dignity of each person from the moment of conception, a creature made in the image and likeness of God. It is particularly important that this belief be affirmed with regard to those who have failed or whose lives have been disturbed by suffering or hatred, even in the case of those who by their actions have failed to respect the dignity and rights of others. This recognition of the dignity of all human beings is a compelling factor in my decision to oppose this measure—we should be unwilling to treat as expendable the lives of even those who have taken human life.

By enacting this legislation, we would be refuting the dignity of human life and sanctioning the current trend of the State's toward increased executions. If we extend this trend to the level necessary to make the capital system viable, the execution rate would have to rise significantly above that countenanced in modern times. Before there could be any reduction of the death row population, which is now over 1,000, it would be necessary to kill 200 defendants each year just to offset the new arrivals on death row. In the decade of the 1960's, prior to the moratorium on execution, there was an average of 19.1 executions per year. The sixties were atypical, however, because of the developing moratorium and the large number of steps leading up to it. Potentially more representative are the 1950's, when the average number of executions per year was 72, or in the 1940's, when it was 128. The 1930's had the highest annual rate, with an average of 152 executions per year. During this period, from 1936-66, the public support for the death penalty fell consistently. Is it going to be different when as a nation we begin to approach 200 executions per year? No; the moral consensus of society will be an abhorrence of these executions, and today, we have a chance to be in the vanguard of public opinion and send a message to the States against capital punishment.

I regret that the vehicle to send this message is a bill that would reinstitute capital punishment. We should be debating a measure that would abolish capital punishment. As the U.S. Catholic Bishops stated:

> Abolition would send a message that we can beat the cycle of violence, that we need not take life for life, that we can envisage more humane and more hopeful and effective responses to the growth of violent crime. It is a manifestation of our freedom as moral persons striving for a just society. It is also a challenge to us as a people to find ways of dealing with criminals that manifest intelligence and compassion rather than power and vengenance. We should feel such confidence in our civic order that we use no more force against those who violate it than actually required.

Although the compelling reason I oppose this bill is my commitment to the value and dignity of human life, other grounds exist for rejecting this measure.

The first reason is the language of the bill itself. The bill is drafted so as to be unconstitutional. The bill makes it a capital crime to engage in espionage, treason, or the attempted assassination of the President. Participants in these crimes should be punished, no question about it. However, the Supreme Court has stated in the case of Coker against Georgia that the imposition of the death penalty for the rape of an adult woman where death did not result was "grossly disproportionate and excessive punishment" forbidden by the eighth amendment as cruel and unusual punishment.

The Judiciary Committee did consider the constitutionality of attempted assassination of the President. The best opinion that they could come up with that supported their position was issued by the Department of Justice and stated:

> We believe that such a statute, if drafted narrowly and with extreme care, might well be upheld by the Supreme Court.

The committee adopted, as part of the provision, language to the effect that an attempt that comes "dangerously close" to causing the death of the President but does not cause injury to the President can be punished by death. It would seem to me that the "dangerously close" language is too vague to withstand constitutional scrutiny, and was not drafted "narrowly and with extreme care."

Beyond the fact that the bill as written can be construed as unconstitutional, I oppose the bill because a compelling rationale for the death penalty does not exist. Proponents of the death penalty say that the presence of the possibility of death will deter criminals from their murderous acts. There is no solid evidence to support this contention, and commonsense should tell us that this is not the case.

We are talking about murderous criminals. People who have the capacity to kill another human being are not held by the rational constraints that bind the rest of us. Can you honestly say that a person who is about to pull the trigger will pause and say to himself that he should stop because of the remote possibility that he could be put to death? You and I know that just does not happen.

Since deterrence is not a basis for capital punishment, what about an eye for an eye or in technical terms the retribution theory? Admittedly, capital offenders should be punished for their crimes, but is one murder vindicated by committing a second murder? I think not. In fact, it has been argued that the second murder is more reprehensible because it is officially sanctioned and done with great ceremony in the name of us all. This second killing is worse than the first. Murder committed by the psycopath or the cold-blooded killer is a random event not subject to control, but a well-orchestrated modern execution is well thought out and is horrible because the Government is always in control; it knows better, but kills anyway.

The legal history of our country's struggle with the death penalty is well known. Significant progress has been made to eliminate the imposition of the death sentence in an unfair and discriminatory manner. Currently, if specific evidence of bias or discrimination in sentencing can be provided for particular cases, the higher courts will not uphold sentences of death in these cases.

But we must also reckon with a legal system which, while it does provide counsel for indigent defendants, permits those who are well off to obtain resources and the talent to present their case in as convincing a light as possible.

The legal system and the criminal justice system both work in a society which bears in its psychological, social, and economic patterns the mark of racism. These marks remain long after the demolition of segregation as a legal institution. The end result of all this is a situation in which those condemned to die are nearly always poor and are disproportionately black. Thus, 47 percent of the inmates on death row are black, whereas only 11 percent of the American population is black.

Admittedly, abolition of the death penalty will not eliminate racism and its effects, an evil which we are called to combat in many different ways. But it is a reasonable judgment that racist attitudes and the social consequences of racism have some influence in determining who is sentenced to die in our society. This I do not regard as acceptable.

In advocating my opposition to this bill, the argument about the possibility of mistake cannot be overlooked. As Senator LEVIN has so thoughtfully reiterated our judicial history contains examples of people sentenced who later were proven to be innocent of the crimes for which they were convicted. Carrying out the death sentence leaves no margin for error where errors have been proven to exist. Additionally, inflection of the death penalty extinguishes possibilities for reform and rehabilitation for the person executed. It cuts off the possibility of a new beginning and of moral growth in a human life which has turned away from the inherent capacity for good, which we are born with, to evil.

In concluding, I would like to reiterate my concern over the unchecked growth of violent crime in America. I am willing to work hard to check the growth of violent crime, and I believe the sentencing reforms that I cosponsored, and the Senate passed last week as part of S. 1762, will be a great aid in deterring violent crime. However, as so ably stated by the minority in the committee report on this bill, I believe that:

> Capital punishment places incredible strains on our criminal justice system, far outweighing any marginal benefit that arguably is gained. The death penalty in our society is so controversial that it inevitably will be accompanied by the spectacle of shuffling a human being back and forth between death row and temporary reprieve during months, and even years of delay while the appellate courts grapple with the enormity and irreversibility of the penalty and its implications for a nation espousing a reverence for human life. It is a divisive penalty that expends emotions and resources out of all proportion to any impact it could possibly have on the real problem of violent crime in the United States.

I vote no on S. 1765, thereby affirming my commitment to the sanctity of human life in all its stages. I do not wish to equate the situation of criminals convicted of capital offenses with the condition of the innocent unborn or of the defenseless aged or infirm, but I do believe that the defense of life is strengthened by eliminating the possibility of judicial authorization to take human life.

Mr. LEVIN. Mr. President, yesterday the floor manager, Senator THURMOND, and I engaged in what I thought was a very useful colloquy on this bill. I do not expect that my colleagues in the Senate or in the House of Representatives have had time yet to fully examine the RECORD of yesterday. Instead, I expect that the vote today will largely be based on the broader issues and feelings involved in the bill.

Nevertheless, when the House of Representatives and the courts look to the colloquy which the floor manager and I had yesterday, I believe it will be clear that there were serious questions raised as to the legislative consistency and constitutionality of the legislation before us now. Questions about the standard of proof, the form of notice, the requirement of intent, and the balancing of aggravating and mitigating factors revealed that this bill is flawed in its drafting and its constitutional underpinnings.

I urge our colleagues in the House to look to the RECORD of yesterday and weigh it carefully before passing on the merits of this bill.

Mr. LAUTENBERG. Mr. President, in a short while the Senate will decide whether to impose the death penalty on a small number of criminals who commit crimes abhorred by us all. But, the broader question before the Senate is whether or not our society finds capital punishment an effective, acceptable punishment, consistent with our moral and religious values.

There is no question that all of us here in this Chamber, and throughout the land, share a common revulsion against crime, but particularly against violent and brutal crimes, or those that strike at the heart of our Nation's political stability or national security. Crimes falling in this category are a shocking, horrifying, and all-too-common phenomenon in our country. Innocent victims and their families suffer untold pain from these crimes for which they can never be compensated or made whole.

The immediate reaction upon hearing of a particularly heinous crime is outrage; the desire to mete out the harshest possible punishment. The death penalty has been proposed as a means for society to express this outrage, as a means of seeking retribution in kind.

What we are called upon to decide today, Mr. President, is whether, after this first rush of rage, our society should take the next step and impose the death penalty. We must decide if this is consistent with the foundations of our criminal justice system. We must decide if this is the best way to exert our moral authority. We must decide if this is the only way to deter crime.

Mr. President, most other nations have viewed the death penalty as unacceptable and unnecessary. Why have other nations turned away from the death penalty? They have turned away from it for reasons of morality. They have turned away from it because of the foibles of any criminal justice system, and the possibility of a mistaken conviction. They have turned away from it because it has not been an effective deterrent to crime.

Mistakes are possible under our system of justice and indeed many have been rehearsed in recent days in this Chamber. In the course of this debate, 48 examples have been cited of people who have been found guilty of murder, sentenced to death, and later proved to be innocent. For some the truth was revealed too late; the hang-

man had already done his work. In the last 10 years, at least six cases have been uncovered in which people have been convicted on insufficient or perjured evidence and sentenced to death. These errors have been discovered in time for the sentences to be overturned.

These people have been wrongly convicted, often on what appeared to be the strongest evidence. If such a person is executed, there is no way to correct the error. A just society cannot allow this to happen.

The death penalty has not been shown to be an effective deterrent to criminals bent upon violent or treasonable acts. States which have the death penalty have a homicide rate which is about twice that of States without it.

As we have seen, Presidential assassins or would-be assassins are unstable people, not concerned with the repercussions of their acts. People capable of the crimes for which the death penalty would be imposed are frequently heedless of their personal safety and the rules of society. Murderers often act out of the passion of the moment. Either they believe they will not be caught, or they do not care what will happen to them.

Killing, even when sanctioned by law as a punishment for heinous crimes, is viewed throughout the developed world as barbaric. It is a perpetuation of the very violence which it is intended to counteract. In truth, one violent act cannot wipe out another.

These considerations—the possibility of a mistake, the ineffectiveness of the deterrence, and the barbaric nature of the sentence—must be weighed against our goal of preventing crime, and the alternative means which are available for achieving it. I continue to feel that the best way for society to maintain order and deter crime is to let those who break its rules know that their punishment will be swift and certain. If this knowledge could be established as a reality in this country, then we would not need to take the further step of imposing the ultimate penalty of death.

The Senate has recognized that our criminal justice system is not fully meeting the needs of our society. By passing a major revision of the Federal Criminal Code, the Senate has moved to establish the principle of swift and certain punishment. Many States have done the same. The most important changes in the Criminal Code approved by the Senate are: Provisions to keep accused criminals in jail awaiting trial if they are considered a danger to the community; the establishment of uniform guidelines for sentencing so that people who have committed similar crimes will serve similar sentences; the abolishment of parole; a shift in the burden of proof to the accused in insanity pleas; and the establishment of a mandatory sentence for the use of a firearm in a crime of violence.

A separate bill, the Armed Career Criminal Act, will be considered soon. This bill would create a new Federal crime, which could be used to prosecute people at the Federal level for armed robberies or burglaries if they have a history of prior convictions. This will be another useful tool for assuring more rapid prosecution of violent criminals and the certainty of mandatory sentences for potentially dangerous criminals.

These criminal law changes are intended to provide greater protection for society by making sentences more consistent and predictable and making it more difficult for dangerous criminals to go free on bail or to avoid punishment. They reinforce society's condemnation of antisocial, criminal actions.

Society must continually reassert its values and punish those who break its rules. Only in this way can it hope to maintain order. The Senate has taken steps to improve the criminal justice process with the passage of the Comprehensive Crime Control Act and will take further steps when it passes the Armed Career Criminal Act. We need to continue these steps to reduce the high rate of violent crime in this country. Swift and sure punishment is the most effective means to this end. The death penalty which strikes at the foundations of our moral and religious values does not need to be part of this arsenal.

Mr. President, I have received an eloquent letter from the pastor of a Catholic church in my State arguing against the death penalty bill. I ask that the text of the letter be inserted in the RECORD.

The letter follows:

Senator FRANK LAUTENBERG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LAUTENBERG: I write in opposition to S. 1765, a bill which would permit a federal death penalty.

We can surely agree that the level of violence has risen in the world. We see the abuse of human rights by individuals and by governments, of both the left and the right. We see revolutions and civil wars and crime in the streets.

We can also agree that we should do what we can to reduce the level of violence. Some claim that we can reduce crime and violence in the streets by imposing capital punishment on criminals convicted of certain crimes. I do not share that opinion.

I maintain that when the state puts an end to a criminal's life it undermines the very sanctity of life which it claims to protect. It is the duty of the state to treat the life of every citizen with reverence, including the life of criminals. Though they have offended the just order of the state, they do not cease to be human; their life is still sacred. Upon conviction they forfeit some of their rights, but certainly not the most basic right to life itself. It is not wise for us to give to the state the power of deciding who may live, whose life must be protected, and whose life may be taken. It is not within the competence of the state to decide that. I think that it can be fairly said that this is part of the Judaeo-Christian tradition.

There are, of course, cases of conflict, and through the centuries Christians have differed about the best way to preserve the sanctity of each human life. One branch has viewed that sanctity to be of such paramount importance that it can never be taken, under any circumstance. Another, and more dominant, branch, supports the sanctity of human life, but also recognizes that in some cases life may—sadly and reluctantly—be taken. Those Christians in the former branch—often called pacifists—must clearly oppose capital punishment. It is interesting to note, however, that more and more Christians who identify themselves with the second branch, are also coming to the same conclusion and now oppose capital punishment. They find it increasingly difficult to find a circumstance so grave that it would warrant the taking of a criminal's life. By and large the American Catholic Bishops belong to the second, more dominant, branch of the tradition, and since 1974 they have called for the abolition of the death penalty.

It is clear, of course, that society has a right to protect itself against criminal and violent behavior. It has the right to apprehend, try, convict, and incarcerate criminals: (1) in order to maintain respect for the law and just order; (2) in order to protect its citizens; and (3) in order to rehabilitate the criminal, in the interest of returning him/her to society as a better citizen. Hatred and vengeance, however, are not worthy motives for incarceration. Retribution breeds violence instead of reducing it.

I do not see how capital punishment (1) maintains respect for the law (—studies have not been able to prove its deterrent value—); (2) protects citizens better than incarceration; or (3) rehabilitates the prisoner, for the ending of his life ends all chances of reform. As far as I can see, capital punishment serves only the meanest of motives—hatred and vengeance.

Pope John Paul II recently pleaded with the State of Florida for clemency on behalf of a convicted criminal. I am sorry that the State of Florida did not heed his plea. I do not believe that the citizens of Florida now sleep more securely because of that criminal's death.

I hope, on the other hand, that you will be more sensitive to the need for the abolition of the death penalty, and that, even though it proves to be politically unpopular, you will oppose S. 1765.

Mr. President, I also insert in the RECORD two editorials which appeared in the New York Times and Washington Post opposing death penalty legislation.

[From the New York Times, Feb. 9, 1984]

WHO NEEDS FEDERAL DEATH?

When the Supreme Court struck down virtually all capital punishment laws in 1972, nearly 600 prisoners were spared. None were Federal prisoners, for the United States had no need for the death penalty. Only one Federal prisoner had been executed during the 1960's and only a few in the 1950's. Yet suddenly, on no new showing of need, the Senate is seriously considering a measure that would bring back death as punishment for numerous Federal crimes.

Congress has enacted a Federal death penalty for aircraft hijacking during which

death results, but there's no showing even here of capital punishment's vaunted deterrent effect. Hijackings continue, and to the extent they are deterred, that has far more to do with effective airport security than a hijacker's fear of execution.

Some argue that the ultimate penalty must be available for crimes like treason, espionage, sabotage and violence against Federal officials. When in recent years would the nation have needed that extreme remedy? Was it needed in the nuclear spying case of Julius and Ethel Rosenberg? Their execution in 1953 was the first in history for Americans convicted of espionage in a Federal court. Electrocuting them, once they were convicted, added nothing to national security. Instead, it created an enduring boil of moral questions.

Some argue that a national example must be set for states concerned about crime. Right, and the Federal example should be of civilized government behavior. Even if our Constitution, as currently interpreted by the Supreme Court, permits states to execute for murder, the Federal Government need not follow the 38 states that do so. Especially should it not lead the way to capital punishment for the 12 states without it.

A vote to cut off Senate debate on a death bill is scheduled for today. A vote against cloture will be a vote to keep talking—until after a recess and until the Senate can start sifting for sense instead of rushing for blood.

[From the Washington Post, Feb. 12, 1984]

FATAL MISTAKES

Ten years ago this week, William Velten was murdered and left in a ditch near Albuquerque, N.M. He had been castrated, slashed repeatedly with a knife and shot five times. The state pathologist said the victim had been sodomized and that the cuts had been made with a heated knife. A woman testified at the trial that she had been forced by the killers to watch this torture and murder, after which she was raped and slashed with the same hot knife. Four members of a motorcycle gang were convicted of the crimes and sentenced to die. They deserved it, right? Only one problem: after they spent 18 months on death row it was discovered that the witness had lied. Someone else later confessed and was convicted of the murder.

Others have escaped the hangman more narrowly. Will Purvis, sentenced to death in Mississippi, survived hanging because the knot slipped; J. B. Brown, a Florida convict, was spared at the gallows because his execution warrant mistakenly carried the name of the jury foreman. Both men were later pardoned when someone else confessed to the crime. This week's Senate debate on a bill to restore the death penalty for some federal crimes contains almost 50 such stories of 20th century American cases in which a person was unjustly convicted of a capital crime and sentenced to death. In many cases, the sentences were carried out before the truth was uncovered.

Sen. Carl Levin (D-Mich.), who led an unsuccessful filibuster against the capital punishment bill, made a powerful case that imposing an irrevocable penalty when mistakes are a certainty is unjust. It is also ineffective. Those states that have a death penalty statute—supposedly a deterrent—on average report more homicides than states without this sanction. Why doesn't the specter of the electric chair or the gas chamber stop a killer? Because, says the former warden of San Quentin, in his personal experience of interviewing thousands of convicted murderers, not one had stopped to think of the possible punishment for his crime. Either they did not expect to get caught or the crime was committed in a fit of passion, jealousy, rage or temporary insanity.

In the end, the strongest argument to be made against government-sanctioned killing is that it is wrong. The taking of a life by collective decision is no less odious than a similar act by an individual. It is a primitive response by a supposedly advanced society, brutalizing the executioners as well as the condemned. The Senate's apparent determination to proceed with this legislation is shameful.

Mr. HELMS. Mr. President, the Senate has been debating the merits of a bill to restore the death penalty for heinous crimes under Federal law. A vote on this question will occur shortly, at 2:30. This legislation is necessitated by Supreme Court rulings and is long overdue. I am happy to join Senator THURMOND and others in cosponsoring this important bill.

Mr. President, although the infliction of the death penalty is always a personal tragedy for the convicted criminal, it is necessary in a civilized society in the interest of just punishment, deterrence of others, and protection of society from the offender himself. Without capital punishment for heinous crimes, the Government fails in its primary duty to administer justice, and in the process it endangers all law-abiding citizens.

Treason and murder for hire, for example, are two crimes for which the death penalty is the traditional punishment. They are utterly despicable acts; they are deliberate and calculated. Treason totally disregards the life of the Nation and the lives of all citizens. Murder for hire totally disregards the life of the victim.

Perpetrators of these and other traditionally capital crimes wilfully risk the forfeiture of their lives. They have shown themselves unfit, through their own deliberate and voluntary conduct, to participate in civilized society because they have, in effect, declared war on that society. Under such circumstances, the death penalty is proportionate to the crime, it fits the crime, and no other punishment would really do justice.

Mr. President, in considering the justice of the death penalty, what must not be overlooked is the fact that the guilty act by definition, is always a voluntary act. Under traditional Anglo-American law on this subject, an essential element in every capital crime is that it be a free act of the will. That is, the offender was free to do, and could have done, other than to commit the crime.

Opponents of the death penalty, however, would have us believe that capital crimes are mostly a product of one's background, upbringing, environment, childhood, and so forth. In their opinion, people who commit capital crimes are not properly educated or conditioned—or "socialized" as they say. As a result, it is really a neglectful society, not the offender himself, who is responsible for capital crimes. Naturally, given such a view, to inflict the death penalty becomes "cruel and unusual punishment" in every case.

This view represents a profound misunderstanding of human nature. It assumes that we do not act, in the most serious matters, with free will and freedom of action. It implies that we are not responsible for what we do. Indeed, it reduces the meaning of human action to a level little better than that of draft animals. Like them, we supposedly chew our cuds, do what comes naturally, and die; and that is all there is.

Fortunately, Mr. President, this view of human nature, while it may be held by some psychologists, penologists, and academics, is rejected out of hand by the overwhelming majority of Americans. They know, from ordinary experience, that they can control whether or not they murder someone else, and they know that virtually everyone else can do so as well. That is why they strongly support the death penalty and why they expect Government to use it without delay for heinous crimes.

Mr. President, in addition to serving justice, capital punishment is, in my view, a strong deterrent. It simply stands to reason that in societies where there is a swift and sure application of the death penalty for heinous crimes, there will be less heinous crimes. Life imprisonment is a fearful thing, and therefore is too is a strong deterrent, but the threat of execution has no parallel in getting the attention of the criminal element and conveying to them the inadvisability of committing a capital crime.

This Senator is not unaware of the volumes of literature debating the issue of deterrence. Some persuasive arguments are made on both sides. Suffice to say, however, that I am satisfied with the statements made on deterrence in the Judiciary Committee's report on this bill. The committee concluded that the available evidence on deterrence is inconclusive at best. For further material on this issue I refer my colleagues and the public to Walter Berns' well-reasoned book, "For Capital Punishment."

Mr. President, in addition to serving justice and deterring others, capital punishment protects society, including the prison population, from further heinous crimes by the offender. This aspect of capital punishment is self-evident, but it is important nonetheless because it is a genuine and effective safeguard by society against proven violent offenders. One example on this point should suffice.

In his book, "For Capital Punishment," Walter Berns relates the following story about one Henry Jarrette from my own State of North Carolina:

Jarrette was a double murderer, but he was not executed. Instead, he was given a long-term prison sentence and then allowed to leave the prison in order to attend the state convention of the Junior Chamber of Commerce in Raleigh, North Carolina. He was a duly elected officer of the prison chapter of the state Jaycees, so why shouldn't he be allowed to attend the convention? While in Raleigh, he eluded his guard and escaped. Two days later he seized a sixteen-year-old black girl, bound her hands behind her back, threw her in a car he had stolen, drove off to a secluded place in the woods, raped her, threw her back in the car, and drove back to town; there he stabbed and killed a sixteen-year-old white boy who had the misfortune to be sitting at the wheel of another car to which Jarrette took a fancy. (p. 103).

Mr. President, no innocent citizen should ever be the victim of such a dangerous proven offender, and this is another compelling reason for restoring the death penalty.

Mr. President, on the overall issue of the morality and wisdom of capital punishment in our time, there has been much debate by various religious groups. Some religious spokesmen have recently even condemned capital punishment as the same kind of violation of the human person as abortion.

Nothing, however, Mr. President, could be further from the truth. As I have said on many occasions to show the fundamental distinction between capital punishment and abortion, I favor capital punishment for all unborn babies who have committed capital crimes.

The crucial point here is that unborn children are perfectly innocent of any crime, having committed no voluntary act whatsoever—much less a culpable one. On the other hand, capital punishment is only imposed when an offender has committed the most egregious crimes against innocent human life.

Reserved in this way as the ultimate punishment for ultimate crimes, the death penalty does not violate our religious and cultural value of protecting innocent human life. Indeed, it actually vindicates this value by applying the ultimate sanction for unconscionable attacks on innocent citizens.

Traditionally both Judaism and Christianity have affirmed the authority of the state to use capital punishment for heinous crimes. Without belaboring this point, I will simply add three short items. First, the Mosaic code mentions murder, kidnaping, witchcraft, idolatry, sodomy, adultery, incest, blasphemy, and several other offenses as punishable by death. Second, St. Paul said the ruler "beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil." (Romans 13:4). And third, St. Thomas Aquinas made this classic defense of the death penalty:

If a man is a danger to the community and corrupts it through some sin or other, it is right and just that he should be put to death in order to safeguard the common good. . . . As God himself does, so should human justice put to death those who are a danger to others and reserve punishment for those who do not seriously endanger others. (Summa Theologica, II-II, 64, art. 2.)

Mr. President, I ask unanimous consent that an essay supporting capital punishment, entitled "The Humanitarian Theory of Punishment," by the eminent 20th century Christian thinker C. S. Lewis, be printed in the RECORD.

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

[From "Essays on the Death Penalty," edited by T. Robert Ingram (St. Thomas Press, 1963)]

THE HUMANITARIAN THEORY OF PUNISHMENT

(By C. S. Lewis)

In England we have lately had a controversy about capital punishment. I do not know whether a murderer is more likely to repent and make a good end on the gallows a few weeks after his trial or in the prison infirmary thirty years later. I do not know whether the fear of death is an indispensable deterrent. I need not, for the purpose of this article, decide whether it is a morally permissible deterrent. Those are questions which I propose to leave untouched. My subject is not capital punishment in particular, but that theory of punishment in general which the controversy showed to be almost universal among my fellow countrymen. It may be called the humanitarian theory. Those who hold it think that it is mild and merciful. In this I believe that they are seriously mistaken. I believe that the "humanity" which it claims is a dangerous illusion and disguises the possibility of cruelty and injustice without end. I urge a return to the traditional or retributive theory not solely, not even primarily, in the interest of society, but in the interests of the criminal.

According to the humanitarian theory, to punish a man because he deserves it, and as much as he deserves, is mere revenge, and, therefore, barbarous and immoral. It is maintained that the only legitimate motives for punishing are the desire to deter others by example or to mend the criminal. When this theory is combined, as frequently happens, with the belief that all crime is more or less pathological, the idea of mending tails off into that of healing. Punishment becomes therapeutic.

Thus it appears at first sight that we have passed from the harsh and self-righteous notion of giving the wicked their deserts to the charitable and enlightened one of tending the psychologically sick. What could be more amiable? One little point which is taken for granted in this theory needs, however, to be made explicit. The things done to the criminal, even if they are called cures, will be just as compulsory as they were in the old days when we called them punishments. If a tendency to steal can be cured by psychotherapy, the thief will no doubt be forced to undergo treatment. Otherwise, society cannot continue.

My contention is that this doctrine, merciful though it appears, really means that each one of us, from the moment he breaks the law, is deprived of the rights of a human being.

The reason is this. The humanitarian theory removes from punishment the concept of desert. But the concept of desert is the only connecting link between punishment and justice. It is only as deserved or undeserved that a sentence can be just or unjust. I do not here contend that the question "Is it deserved?" is the only one we can reasonably ask about a punishment. We may very properly ask whether it is likely to deter others and to reform the criminal.

But neither of these two last questions is a question about justice. There is no sense in talking about a "just deterrent" or a "just cure." We demand of a deterrent not whether it is just but whether it succeeds. Thus when we cease to consider what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether; instead of a person, a subject of rights, we now have a mere object, a patient, a "case" to be treated in a clinic.

The distinction will become clearer if we ask who will be qualified to determine sentences when sentences are no longer held to derive their propriety from the criminal's deservings. In the old view, the problem of fixing the right sentence was a moral problem. Accordingly, the judge who did it was a person trained in jurisprudence; trained, that is, in a science which deals with rights and duties, and which, in origin at least, was consciously accepting guidance from the law of nature, and from Scripture. We must admit that in the actual penal code of most countries at most times these high originals were so much modified by local custom, class interests, and utilitarian concessions, as to be very imperfectly recognizable. But the code was never in principle, and not always in fact, beyond the control of the conscience of society. And when (say, in eighteenth century England) actual punishments conflicted too violently with the moral sense of the community, juries refused to convict, and reform was finally brought about.

This was possible because, so long as we are thinking in terms of desert, the propriety of the penal code, being a moral question, is a question on which every man has the right to an opinion, not because he follows this or that profession, but because he is simply a man, rational animal enjoying the natural light. But all this is changed when we drop the concept of desert. The only two questions we may now ask about a punishment are whether it deters and whether it cures.

But these are not questions on which anyone is entitled to have an opinion simply because he is a man. He is not entitled to an opinion even if, in addition to being a man, he should happen also to be a jurist, a Christian, and a moral theologian. For they are not questions about principle but about matter of fact; and for such, cuiquam in sua arte credendum (to each his last). Only the expert "penologist" (let barbarous things have barbarous names), in the light of previous experiment, can tell us what is likely to deter; only the psychotherapist can tell us what is likely to cure. It will be in vain for the rest of us, speaking simply as men, to say, "But this punishment is hideously unjust, hideously disproportionate to the criminal's deserts." The experts with perfect logic will reply: "But nobody was talking about deserts. No one was talking about

punishment in your archaic, vindictive sense of the word. Here are the statistics proving that this treatment deters. Here are the statistice proving that this other treatment cures. What is your trouble?"

The humanitarian theory, then, removes sentences from the hands of jurists whom the public conscience is entitled to criticize, and places them in the hands of technical experts whose special sciences do not even employ such categories as rights or justice. It might be argued that since this transference results from an abandonment of the old idea of punishment, and therefore, of all vindictive motives, it will be safe to leave our criminals in such hands. I will not pause to comment on the simple-minded view of fallen human nature which such a belief implies. Let us rather remember that the "cure" of criminals is to be compulsory; and let us then watch how the theory actually works in the mind of the humanitarian.

The immediate starting point of this article was a letter I read in one of our leftist weeklies. The author was pleading that a certain sin, now treated by our laws as a crime, should henceforward be treated as a disease. And he complained that under the present system the offender, after a term in jail, was simply let out to return to his original environment, where he would probably relapse. What he complained of was not the shutting up but the letting out. On his remedial view of punishment the offender should, of course, be detained until he was cured. And of course the official straighteners are the only people who can say when that is. The first result of the humanitarian theory is, therefore, to substitute for a definite sentence (reflecting to some extent the community's moral judgment on the degree of ill-desert involved) an indefinite sentence terminable only by the word of those experts—and they are not experts in moral theology nor even in the law of nature—who inflict it. Which of us, if he stood in the dock, would not prefer to be tried by the old system?

It may be said that by the continued use of the word punishment and the use of the verb "inflict" I am misrepresenting humanitarians. They are not punishing, not inflicting, only healing. But do not let us be deceived by a name. To be taken without consent from my home and friends; to lose my liberty; to undergo all those assaults on my personality which modern psychotherapy knows how to deliver; to be re-made after some pattern of "normality" hatched in a Viennese laboratory to which I never professed allegiance; to know that this process will never end until either my captors have succeeded or I grow wise enough to cheat them with apparent success—who cares whether this is called punishment or not? That it includes most of the elements for which any punishment is feared—shame, exile, bondage, and years eaten by the locust—is obvious. Only enormous ill-desert could justify it; but ill-desert is the very conception which the humanitarian theory has thrown overboard.

If we turn from the curative to the deterrent justification of punishment we shall find the new theory even more alarming. When you punish a man to make of him an "example" to others, you are admittedly using him as a means to an end; someone else's end. This, in itself, would be a very wicked thing to do. On the classical theory of punishment it was of course justified on the ground that the man deserved it. That was assumed to be established before any question of "making him an example" arose. You then, as the saying is, killed two birds with one stone; in the process of giving him what he deserved you set an example to others. But take away desert and the whole morality of the punishment disappears. Why, in heaven's name, am I to be sacrificed to the good society in this way—unless, of course, I deserve it?

But that is not the worst. If the justification of exemplary punishment is not to be based on desert but solely on its efficacy as a deterrent, it is not absolutely necessary that the man we punish should even have committeed the crime. The deterrent effect demands that the public should draw the moral: "If we do such an act we shall suffer like that man." The punishment of a man actually guilty whom the public think innocent will not have the desired effect; the punishment of a man actually innocent will, provided the public think him guilty. But every modern state has powers which make it easy to fake a trial. When a victim is urgently needed for exemplary purposes and a guilty victim cannot be found, all the purposes of deterrence will be equally served by the punishment (call it "cure" if you prefer) of an innocent victim, provided that the public can be cheated into thinking him guilty.

It is no use to ask me why I assume that our rulers will be so wicked. The punishment of an innocent, that is, an underserving, man is wicked only if we grant the traditional view that righteous punishment means deserved punishment. Once we have abandoned that criterion, all punishments have to be justified, if at all, on other grounds that have nothing to do with desert. Where the punishment of the innocent can be justified on those grounds (and it could in some cases be justified as a deterrent) it will be no less moral than any other punishment. Any distaste for it on the part of a humanitarian will be merely a hangover from the retributive theory.

It is, indeed, important to notice that my argument so far supposes no evil intentions on the part of the humanitarian and considers only what is involved in the logic of his position. My contention is that good men (not bad men) consistently acting upon that position would act as cruelly and unjustly as the greatest tyrants. They might in some respects act even worse. Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end, for they do so with the approval of their own conscience. They may be more likely to go to heaven yet at the same time likelier to make a hell of earth. Their very kindness strings with intolerable insult. To be "cured" against one's will and cured of states which we may not regard as disease is to be put on a level with those who have not yet reached the age of reason or those who never will; to be classed with infants, imbeciles, and domestic animals. But to be punished, however severely, because we have reserved it, because we "ought to have known better," is to be treated as a human person made in God's image.

In reality, however, we must face the possibility of bad rulers armed with a humanitarian theory of punishment. A great many popular blue prints for a Christian society are merely what the Elizabethans called "eggs in moonshine" because they assume that the whole society is Christian or that the Christians are in control. This is not so in most contemporary states. Even if it were, our rulers would still be fallen men, and, therefore, neither very wise nor very good. As it is, they will usually be unbelievers. And since wisdom and virtue are not the only nor the commonest qualifications for a place in the government, they will not often be even the best unbelievers.

The practical problem of Christian politics is not that of drawing up schemes for a Christian society, but that of living as innocently as we can with unbelieving fellow-subjects under unbelieving rulers who will never be perfectly wise and good and who will sometimes be very wicked and very foolish. And when the are wicked the humanitarian theory of punishment will put in their hands a finer instrument of tyranny than wickedness ever had before. For if crime and disease are to be regarded as the same thing, it follows that any state of mind which our masters choose to call "disease" can be treated as crime; and compulsorily cured. It will be vain to plead that states of mind which displease government need not always involve moral turpitude and do not therefore always deserve forfeiture of liberty. For our masters will not be using the concepts of desert and punishment but those of disease and cure.

We know that one school of psychology already regards religion as a neurosis. When this particular neurosis becomes inconvenient to government, what is to hinder government from proceeding to "cure" it? Such "cure" will, of course, be compulsory; but under the humanitarian theory it will not be called by the shocking name of persecution. No one will blame us for being christian, no one will hate us, no one will revile us. The new Nero will approach us with the silky manners of a doctor, and though all will be in fact as compulsory as the *tunica molesta* or Smithfield or Tyburn, all will go on within the unemotional therapeutic sphere where words like "right" and "wrong" or "freedom" and "slavery" are never heard.

And thus when the command is given, every prominent Christian in the land may vanish overnight into Institutions for the Treatment of the Ideologically Unsound, and it will rest with the expert jailers to say when (if ever) they are to re-emerge. But it will not be persecution. Even if the treatment is painful, even if it is lifelong, even if it is fatal, that will be only a regrettable accident; the intention was purely therapeutic. Even as in ordinary medicine there were painful operations and fatal operations, so in this. But because they are "treatment," not punishment, they can be criticized only by fellow experts and on technical grounds, never by men as men and on grounds of justice.

That is why I think it essential to oppose the humanitarian theory of punishment, root and branch, wherever we encounter it. It carries on its front a semblance of mercy which is wholly false. That is how it can deceive men of good will. The error began, perhaps, with Shelley's statement that the distinction between mercy and justice was invented in the courts of tyrants. It sounds noble, and was indeed the error of a noble mind. But the distinction is essential. The older view was that mercy "tempered" justice, or (on the highest level of all) that mercy and justice had met and kissed. The essential act of mercy was to pardon; and pardon in its very essence involves the recognition of guilt and ill-desert in the recipi-

ent. If crime is only a disease which needs cure, it cannot be pardoned. How can you pardon a man for having a gumboil or a club foot?

But the humanitarian theory wants simply to abolish justice and substitute mercy for it. This means you start being "kind" to people before you have considered their rights, and then force upon them supposed kindnesses which they in fact had a right to refuse, and finally kindnesses which no one but you will recognize as kindnesses and which the recipient will feel as abominable cruelties. You have overshot the mark. Mercy detached from justice grows unmerciful.

That is the important paradox. As there are plants which will flourish only in mountain soil, so it appears that mercy will flower only when it grows in the crannies of the rock of justice. Transplanted to the marshlands of mere humanitarianism, it becomes a man-eating weed, all the more dangerous because it is still called by the same name as the mountain variety. But we ought long ago to have learned our lesson. We should be too old now to be deceived by those humane pretensions which have served to usher in every cruelty of the revolutionary period in which we live. These are the "precious balms" which will "break our heads."

There is a fine sentence in Bunyan: "It came burning hot into my mind, whatever he said, and however he flattered, when he got me home to his house, he would sell me for a slave." There is a fine couplet, too, in John Ball:

Be ware ere ye be woe;
Know your friend from your foe.

Mr. HELMS. Mr. President, we are debating capital punishment today because Supreme Court rulings in recent years have cast doubt upon the constitutionality of the death penalty. The Court's treatment of this issue presents a classic case of judicial usurpation of congressional and State power. Harvard Law School Prof. Raoul Berger has even written a whole book about it, portions of which I will shortly seek to place in the RECORD.

Mr. President, when the Supreme Court first announced in *Furman* v. *Georgia*, 408 U.S. 238 (1972), that certain death penalties as applied violated the cruel and unusual punishment provision of the eighth amendment, it inflicted a severe blow against both law and order and the Constitution itself. Since that time, confusion and uncertainty have become a regular feature of any prosecution in this country in which the death penalty was sought. Time after time we have seen cases drag on and on while Federal judges issue all manner of stays of execution and conflicting interpretations and refinements of the original Furman decision. In short, the Federal judiciary has made absolutely impossible a regular and predictable application of the death penalty.

Mr. President, the fact of the matter is that there is nothing in the text of the Constitution requiring the passage of this legislation before inflicting the death penalty. The death penalty provisions now in Federal law are constitutional. Their defect, however, is that they do not comply with the erroneous additional criteria established by the Supreme Court under the guise of constitutional interpretation.

Under these circumstances, Congress could remove the Supreme Court's appellate jurisdiction over capital punishment cases and then have the executive branch enforce current law in State courts. Congress could propose to the States constitutional amendments to correct the Supreme Court's misinterpretations. Congress could even consider impeachment. And there are other things Congress could do to provide a check on the Court in this matter of capital punishment.

But, Mr. President, the Senate at this juncture has decided to exercise extreme restraint and simply consider legislation to establish the procedures the Court claims are necessary. Whether it finally passes Congress or not, no one should construe this legislative action as an endorsement of the jurisprudence of Furman and subsequent cases. That jurisprudence can only stand or fall on the basis of whether it is faithful to the Constitution, and, Mr. President, the fact is it is not.

Mr. President, the injury done to our constitutional system by Furman and the other cases on the death penalty has been laid out in great detail by the distinguished constitutional scholar Raoul Berger in his book, "Death Penalties: The Supreme Court's Obstacle Course," published by Harvard University Press in 1982.

Mr. President, I ask unanimous consent that the introduction and conclusion of Professor Berger's book, including footnotes, be printed in the RECORD at the conclusion of my remarks.

Mr. President, I also ask unanimous consent that a most insightful article on the death penalty, written by Karl Spence, which appeared in the September 16, 1983, issue of National Review be printed in the RECORD at the conclusion of my remarks.

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

[Excerpts from "Death Penalties: The Supreme Court's Obstacle Course"]

DEATH PENALTIES: THE SUPREME COURT'S OBSTACLE COURSE

(By Raoul Berger)

INTRODUCTION

(All authority that is not approved by true reason seems weak. But true reason, since it rests on its own strength, needs no reinforcement by an authority.—Johannes Scotus Erigena, A.D. 867*)

One hundred eighty-one years after the adoption of the Bill of Rights a sadly divided Supreme Court, in *Furman* v. *Georgia*, discovered that the sovereign power of the States over death penalties had been curtailed by the Eighth Amendment's "cruel and unusual punishments" clause.[1] Prior to June 1972 an unbroken string of cases, including *McGautha* v. *California*[2] only fourteen months earlier, had "unswervingly"[3] recognized the States' power. *Furman* was a case, said Justice White, in which "we strongly disagree among ourselves."[4] A plurality of three ruled against discretionary jury sentencing and was joined by Justices Brennan and Marshall, who flatly held death penalties unconstitutional. The reasons for the judgment, Justice Powell noted, "are stated in five separate opinions, expressing as many different rationales",[5] four dissenting opinions were better attuned; and the whole required 232 pages of explication. Justice Douglas, one of the *McGautha* dissenters, considered that a 5 to 4 decision "meant it barely passed muster as a constitutional procedure."[6] Still less does such a decision afford solid footing for repudiation of long-standing precedent rooted in historical fact[7] and well-nigh universal approval by the State legislatures. It is a paradox, moreover, that despite their own divided counsels and resultant uncertainty, the five should condemn the uncertainty allegedly arising from the absence of standards to govern jury sentencing.

"The immediate effect of *Furman*," wrote Hugo Bedau, a leader in the movement to abolish death penalties, "was to overturn the entire prevailing system of capital punishment in this country." Out of a total of "fifty-two criminal jurisdictions . . . only five . . . had totally abolished capital punishment for all crimes." "No death sentence had ever been voided as a violation of due process, equal protection," or "cruel and unusual punishments." "Most commentators," Bedau observed, "expressed dismay and bewilderment at the close ruling, at the inability of the majority Justices to join in any one rationale for their decision, and at the resulting uncertainty over the modes of capital punishment that might still be constitutionally imposed."[8] "Predictably," Chief Justice Burger later wrote, "the variety of opinions supporting the judgment in *Furman* engendered confusion as to what was required in order to impose the death penalty in accord with the Eighth Amendment."[9]

This constitutional earthquake resulted from the labors of a small band of dedicated abolitionists, led by a few top-flight lawyers in the service of the NAACP—fully one-half of the occupants on death row are blacks.[10] "Until fifteen years ago," Bedau wrote, "save for a few mavericks, no one gave any credence to the possibility of ending the death penalty by judicial interpretation of constitutional law." "Save for a few eccentrics and visionaries," he remarked, the death penalty was "taken for granted by all men . . . as a bulwark of the social structure."[11] The abolitionists, however, enjoyed a priceless advantage: they appealed to Justices who "abhorred" death penalties,[12] among them Justice Douglas, who was "a visible and unswerving opponent of the death penalty,"[13] joined by the no less committed Justices Brennan and Thurgood

*Will Durant, *The Age of Faith* 477 (1950). "What makes a thing true is not who says it, but the evidence for it." Sidney Hook, *Philosophy and Public Policy* 121 (1980). Chief Justice Taney declared that the Court's "judicial authority" should "depend altogether on the force of the reasoning by which it is supported." The Passenger Cases, 48 U.S. (7 How.) 283, 470 (1849), dissenting opinion.

[1] Footnotes at end.

Marshall. The campaign had the aura of a moral crusade; opponents were not merely ill-advised, they yielded, in the words of Justice Douglas, to "deep-seated sadistic instincts."[14] He relied rather on his own "gut reactions," disclosing in a burst of autobiographical candor that "the 'gut' reaction of a judge at the level of constitutional adjudication, dealing with the vagaries of due process . . . and the like, was the main ingredient of his decision."[15] Why, one wonders, should millions of Americans prefer his "gut reactions" to their own attachment to death penalties.

When the Court, faced by an immediate "backlash against judicially imposed abolition,"[16] strayed from the abolitionist path in *Gregg v. Georgia*,[17] though undertaking to supervise the sentencing process, Bedau lamented that the Justices "have put aside their personal scruples against the death penalty in the name of federalism, judicial restraint, legislative deference,"[18] an astonishingly topsy-turvy view of the judicial role. "Federalism," basic to our constitutional structure,[19] ought to yield to the "personal scruples" of the Justices! Nevertheless, the ongoing abolitionist campaign, as past performance indicates, is not to be taken lightly. A phalanx of counsel for the NAACP and the Civil Liberties Union, who for years have served as architects of the new order and created a "death-row logjam," appear in selected death penalty cases. By one stratagem or another they have succeeded in keeping convicted murderers, guilty beyond a doubt and under State law subject to the death penalty, alive for ten years.[20] In Bedau's words, they regard *Gregg*, for example, as opening up "a virgin field of argument . . . for defense lawyers to explore in future cases . . . new possibilities that with imaginative and resourceful litigation may avoid or nullify many death penalties."[21]

The abolitionist arguments, picked up by the Court, I propose to show, are spun out of thin air; they are evangelistic and hortatory, substituting ringing condemnation of an "attitude of vengeance"[22] for constitutional analysis. What passes for analysis seeks to pour into the terms "cruel and unusual punishments" what the abolitionist would make them mean today for the defeat of capital punishment.[23] It is largely woven from disputed empirical considerations plus stray utterances from a few inapposite cases that themselves are open to question. The counterconstitutional arguments have not in my judgment been adequately explored; and that exploration needs to be placed in the larger setting of what Louis Lusky admiringly describes as the Court's "assertion of the power to revise the Constitution, bypassing the cumbersome procedure prescribed by Article V."[24] As if the Court is absolved of compliance with the Constitution because it is "cumbersome!" By that logic, a burglar may defend a break-in through a window because the door was barred. Of course there must be room for change, but the "real issue," as Willard Hurst perceived in 1954, is "who is to make the policy choices in the twentieth century: judges or the combination of legislature and electorate that makes constitutional amendments,"?[25] The veritable "stampede of state reenactments of the death penalty" on the heels of *Furman*[26] evidences with unmistakable clarity that the issue is nothing less than the right of the people to govern themselves.[27]

The Court's revision of the "cruel and unusual punishments" clause is but one more arrogation of power under the aegis of the Fourteenth Amendment, but another chapter in the tale of judicial make-believe. Back in 1937, in the midst of Franklin Roosevelt's Court-Packing Plan, Professor Felix Frankfurter wrote to him, "People have been taught to believe that when the Supreme Court speaks it is not they who speak but the Constitution, whereas, of course, in so many vital cases, it is they who speak and not the Constitution. And I verily believe that that is what the country needs most to understand."[28] It is a lesson the people have yet to learn. Thirty years later a sober scholar, Paul Kauper, wrote respecting the "stuffy and bland clinch that what the Court is doing is 'required' by the Constitution. Such statements, however, cannot obscure or conceal that these texts mean just what the Court makes them mean and that Charles Evans Hughes went to the heart of the matter when he said that . . . the Constitution is what the judges say it is."[29]

It is the purpose of this study to show that there is a wide gap between what the Justices say the "cruel and unusual punishments" clause "requires" and the limited purpose the Framers meant it to serve. Control of death penalties and of the sentencing process, it may confidently be asserted, was left by the Constitution to the States. Once the people realize that they are wrongfully being deprived of the right to decide for themselves whether or not to enact death penalties, they will not be at a loss for corrective measures.

FOOTNOTES

[1] 408 U.S. 238 (1972); hereinafter cited as Furman. "The presumption is powerful that such a far-reaching, dislocating construction . . . was not uncovered by judges, lawyers and scholars for seventy-five years because it was not there." Romero v. International Terminal Operating Co., 358 U.S. 354, 370-371 (1959), Frankfurter, J., concurring opinion.

[2] 402 U.S. 183 (1971), hereinafter cited as McGautha.

[3] Justice Powell referred to "the unswerving position that this Court has taken in opinions spanning the last hundred years. On virtually every occasion that any opinion has touched on the question . . . it has been asserted affirmatively, or tacitly assumed, that the Constitution does not prohibit the penalty." Furman 428; and see id. 417, dissenting opinion. "The several concurring opinions" in Furman, said Justice Blackmun, "acknowledge, as they must, that until today capital punishment was accepted and assumed as not unconstitutional per se under the Eighth Amendment or the Fourteenth Amendment." Id. 407, dissenting opinion. It cannot be controverted that, as Chief Justice Burger stated, "In the 181 years since the enactment of the Eighth Amendment, not a single decision of this Court has cast the slightest shadow of a doubt on the constitutionality of capital punishment." Id. 380, dissenting opinion.

[4] Furman 314. Chief Justice Burger remarked, "The widely divergent views of the Amendment expressed in today's opinions reveal the haze that surrounds this constitutional command." Id. 376.

[5] Id. 414. Justice Powell alluded to "the shattering effect this collection of views has on the root principles of stare decisis, federalism, judicial restraint and—most importantly—separation of powers." Id. 417. This was scarcely the "mighty counterthrust" that activist Hugo Bedau considered would "be required to alter the direction of those decisions." Hugo A. Bedau, "The Courts, the Constitution, and Capital Punishment," 35 (1977), hereinafter cited as Bedau.

[6] McGautha 231.

[7] "Unfortunately, the decision beclouds more than it clarifies regarding the constitutionality of capital punishment per se and the scope of the eighth amendment in general."—Malcolm Wheeler, "Toward a Theory of Limited Punishment II: The Eighth Amendment After Furman v. Georgia," 25 Stan. L. Rev. 62 (1972).

[8] Bedau 81-83. Justice Thurgood Marshall wrote in his concurring opinion that "41 States, the District of Columbia, and other federal jurisdictions authorize the death penalty for at least one crime." Furman 341. Justice Powell observed, "The capital punishment laws of no less than 39 States and the District of Columbia are nullified." Furman 417. See also Chief Justice Burger, Furman 385.

[9] Lockett v. Ohio, 438 U.S. 586, 599 (1978). "The signals from the Court," Chief Justice Burger remarked, "have not, however, been easy to decipher." Id. 602.

[10] For a résumé of this crusade, see Bedau 78-90; for black occupancy, see Furman 364, Marshall, J., concurring opinion.

[11] Bedau 118, 12.

[12] E. B. Prettyman, Jr., "Death and the Supreme Court," 308 (1961).

[13] Bedau 109.

[14] McGautha 242. This is but another of what Sidney Hook terms Douglas' "slap-dash characterizations." He instances, "We must realize that today's Establishment is the new George III," and comments on "the preposterous comparison between our democratic political system and the brutal tyranny of George III. Actually the only branch of the American government whose powers in certain respects are comparable to the despotism of the British crown is the judicial despotism." Sidney Hook, "Philosophy and Public Policy," 31, 34, 35 (1980). See also infra Chapter 4, note 48.

[15] He recounts that when he came on the bench, Chief Justice Hughes "made a statement to me which at the time was shattering but which over the years turned out to be true: 'Justice Douglas, you must remember one thing. At the constitutional level . . . ninety percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predilections' . . . I knew that judges had predilections . . . But I had never been willing to admit to myself that the 'gut' reaction of a judge at the level of constitutional adjudications dealing with the vagaries of due process . . . was the main ingredient of his decision. The admission of it destroyed in my mind some of the reverence for immutable principles." W. O. Douglas, "The Court Years, 1939-1975," 8 (1981). Earlier in the century such after-the-fact rationalizations were characterized as "wishful thinking." Max Isenbergh justly comments that this passage "accounts for, if it does not explain, the intellectual nihilism of his worst opinions." Max Isenbergh, "Thoughts on William O. Douglas the Court Years: A Confession and Avoidance," 30 Amer. U. L. Rev. 415, 422 (1981). Compare Douglas' statement in Zorach v. Clauson, 343 U.S. 306 314 (1952): "Our individual preferences, however, are not the constitutional standard." Compare also Hughes' explanation with his statement quoted infra, text accompanying note 29.

Douglas erroneously attributed the "vagaries" of the Justices to due process. He knew better, see infra Chapter 4, note 46. Alexander Bickel, discussing the Court's treatment of "obscenity," adverted to "The vagaries of the subjective individual judgments that the Justices were pressing into service as the law of the Constitution." Bickel 51.

[16] Bedau 111.

[17] Gregg v. Georgia, 428 U.S. 153 (1976).

[18] Bedau 119. Bedau also stated: "Hidden beneath the veneer of constitutional argument is that the Court has proved itself arbitrary and discriminatory in its defense of the death penalty." Bedau 118. The "veneer of consitutional argument" is an unacceptable substitute for Bedau's predilections.

[19] Reflecting the views of Justice Frankfurter, Louis Henkin wrote, "federalism matters . . . because the history of this country has proved its validity as a principle of progressive government." It remains "important to render unto the states the respect and responsibility that can and ought to remain theirs." In Wallace Mendelson, ed., "Felix Frankfurter: The Judge" 70, 71 (1964).

[20] Bedau 83-84. Bedau hazarded the prediction, "we will not see another execution in this nation in this century." Id. 90. The "death row population has reached an all-time high of more than 780 convicted murderers. Resourceful defense lawyers, through protracted appeals, have so far prevented the execution of all but four of those condemned since the 1972 decision." New York Times, June 14, 1981, p. 28. Justice Rehnquist charged that the Court has "made it virtually impossible for states to enforce with reasonable promptness their constitutionally valid capital punishment statutes," that "the existence of the death penalty in this country is virtually an illusion." Coleman v. Balkcom, New York Times, April 28, 1981, p. D23, dissenting from a denial of certiorari.

[21] Bedau 116.

[22] Id. 76.

[23] Justice Blackmun concluded: "Althought personally I may rejoice at the Court's result, I find it difficult to accept or justify as a matter of history, of law, or of constitutional pronouncement . . . It has sought and achieved an end." Furman 414. Bedau states, however, that if our interest in the "'original intent of the framers' . . . is to be more than an exercise in historical scholarship," it "must take its dominant cues from the constitutional (structural, fundamental) needs of our society and our ideals and aspirations as they are understood today." Bedau 14. This is double-talk for a discard of the "original intent of the framers" in favor of "our aspirations" of "today." But, he wrote in 1976, "the public pulse, as measured by all the opinions of the last few years, indicates that the American people still want the death penalty, and that all the evidence and arguments against it . . . have not significantly changed this attitude." Bedau 102. "According to a Gallup poll published in March [1981], two-thirds of all Americans, the highest percentage in 28 years, favor the death penalty for murder." New York Times, June 14, 1981, p. 28. More significantly, the majority of the States speedily repudiated Furman by reenacting death penalties in what they thought would be acceptable terms. See infra Chapter 6, text accompanying notes 60-61. Bedau wrote in 1968 that death penalties "are not unconstitutional under the Eight Amendment because however cruel and unusual they may now be, they are more 'cruel' and not more 'unusual' than were those that prevailed in England and the colonies two or three hundred years ago. An unbroken line of interpreters has held that it was the original understanding and intent of the framers of the Eighth Amendment . . . to proscribe as 'cruel and unusual' only such modes of execution as compound the simple infliction of death with added cruelties or indignities . . . Similarly, even if the death penalty was imposed by statute for a trifling offense, it is doubtful that it would be 'cruel and unusual' according to the 'original understanding.'" Bedau 35, italics in the original. For proof of these historical conclusions, see infra Chapter 3.

[24] Louis Lusky, Book Review, 6 Hastings Con. L. Q. 403, 406 (1979).

[25] Willard Hurst, "Discussion," in Edmond Cahn, ed., "Supreme Court and Supreme Law," 75 (1954).

[26] J. H. Ely, "Democracy and Distrust," 65 (1980); Bedau 93.

[27] Justice Powell considered that "the sweeping action undertaken today reflects a basic lack of faith and confidence in the democratic process . . . impatience with the slowness, and even the unresponsiveness, of legislators is no justification for judicial intrusion upon their historic powers." Furman 465. See infra Chapter 5.

[28] Max Freedman, ed., "Roosevelt and Frankfurter: Their Correspondence, 1928-1943," 383 (1967), italics in the original. Shortly before Solicitor General Robert H. Jackson became a Justice, he wrote, "This political role [acting as a "continuing constitutional convention"] of the Court has been obscure to laymen—even to most lawyers." R. H. Jackson, "The Struggle for Judicial Supremacy" xi (1941).

[29] Paul G. Kauper, "The Supreme Court: Hybrid Organ of State," 21 S. W. L. Rev. 573, 579 (1967). My own elaborate exposition of this view, Raoul Berger, Government by Judiciary: The Transformation of the Fourteenth Amendment (1977), hereinafter cited as Berger G/J, touched off a controversy with academicians who sought to defend the Court's results, never mind the means. Some of the polemics are listed in Michael Perry, "Interpretivism, Freedom of Expression and Equal Protection," 42 Ohio St. L. J. 261, 285 n. 100 (1981).

Contrast with Judge Irving R. Kaufman's naive recapitulation of "stuffy and bland cliches" as if they were Holy Writ ("Congress v. the Court," New York Times Magazine, Sept. 20, 1981, p. 44) Michael Perry's conclusion, after evaluating the ongoing debate: "There is no plausible textual or historical justification for constitutional policymaking by the judiciary—no way to avoid the conclusion that noninterpretive review, whether of state or federal action, cannot be justified by reference either to the text or to the intention of the Framers of the Constitution." Perry, supra at p. 275. See also L. A. Alexander, "Modern Equal Protection Theories: A Metatheoretical Taxonomy and Critiques," 42 Ohio St. L. J. 3, 4 (1981). For activist acknowledgment, see infra Chapter 9.

CONCLUSION

The historical evidence demonstrates that the Constitution left the States free to enact death penalties unencumbered by any measure of proportionality. For the time being, the Court, after having been rebuffed by the people who cling to death penalties, has by a vote of 7 to 2 sustained them, although leaving an escape hatch. Already it has decreed that death penalties for rape are not proportioned to the crime and are therefore unconstitutional, a decision that is without constitutional warrant.

Abolitionist reliance on the "cruel and unusual punishments" clause assumes first that the Constitution endowed the Court with power ad libitum to make selected portions of the Bill of Rights applicable to the States. That it may be confidently asserted, does violence to the intention of the Framers and violates the Tenth Amendment's command. Next, abolitionists assume that the Court may substitute its present-day reading of the clause for the meaning it had for the Framers. The Justices do not dispute that in 1787 the clause outlawed only "barbarous" punishments, not death penalties; it did not require that the punishment fit the crime, for there was no such doctrine at the adoption of the Constitution. To the contrary, there were many death penalties, such as those for forgery or robbery, that to modern eyes are grossly disproportionate to the offense. The clause, therefore, left the measure of punishment, whether it should be more or less, in the legislature's discretion, so long as it was not "barbarous." So too, the Court's insistence that a penalty must not be offensive to "human dignity" is flatly contradicted by the many punishments that had as their object ignominy, shame and disgrace.

The Court's attempt to impose and police "standards" to curb jury discretion in sentencing has even less constitutional footing and already has resulted in a quagmire of contradictions. It is not alone that there was no judicial assertion of such power prior to 1972, but that the Court has invaded the constitutional province of the jury. Early on the Founders expressed their attachment to the common law mode of trial by jury, whereunder juries could not be called upon to explain their verdicts nor were judges empowered to review verdicts. The jury, in fact, was far closer to the hearts of the founders than was the judiciary; for protection they looked to the jury rather than the judge.

It is not historicism that dictates adherence to the meaning the common law terms they used had for the Framers. Jealously rationing power, circumscribing it at every step, the Framers perforce resorted to familiar terms in order to prick out those limits. If the Court is free to substitute its own meaning for the established common law content of the constitutional terms, it obliterates those limits and revises the Constitution for the imposition of its own predilections on a people who, in the case of death penalties, lost no time in repudiating the court's reading of prevailing standards of "human decency." In turning its back on the practice that obtained at the adoption of the Constitution and persisted for 181 years thereafter, the Court assumed power to alter and amend the Constitution, a power exclusively reserved to the people themselves, a power usurped by the Court disguised in soothing double-talk.

One can respect the "reverence for life" that led Dr. Albert Schweitzer to shrink from treading on a scorpion, without scorning those who would unhesitatingly crush a tarantula or shoot off the head of a rattler. To insist that "no killer can be looked upon with anything but horror, even when that killer is the state,"[1] is to ignore that the bulk of the Americans do in fact look upon executions of murderers without horror. People like Lord Justice Denning are not to be consigned to outer darkness because they consider that "some crimes are so outrageous that society insists upon adequate punishment, because the wrong-doer deserves it."[2] Quite the contrary. As Justice Stewart said for the *Furman plurality:*

"The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they "deserve," then there are sown the seeds of anarchy—of self-help, vigilante justice and lynch law."[3]

Sadists or no, the majority of the American people who cling to death penalties are not to be frustrated because some regard capital punishment as immoral.[4]

Who are these murderers whose extinction is regarded by abolitionists with such "horror"? Justice Marshall, foremost among the abolitionist Justices, said in Furman: "The criminal acts with which we are confronted are ugly, vicious . . . Their sheer brutality cannot and should not be minimized."[5] Justice Powell observed that "brutish and revolting murders continue to occur with disquieting frequency."[6] From time to time murderers escape from jail and commit still other murders.[7] Terror stalks the streets,[8] the streets, Justice Marshall notices, "inspire fear."[9] Referring to the "compassionate" abolitionists, "for whom the victims of crime are only incidental rather than central to the problem of crime prevention," Sidney Hook asks, "At what point do the victims enter the ethical reckoning?"[10]

While abolitionists prefer imprisonment to capital punishment, it is significant that the beneficiaries of their efforts often prefer death to continued imprisonment.[11] It is a notorious fact that prisons have become jungles where murders of fellow inmates are not uncommon, where homosexual assaults are the norm.

Then too, there are the excessive burdens assumed by the Court in painstaking review of hundreds of records, and the detailed exposition of conflicting views for setting aside this or the other conviction, which fill hundreds of pages in the reports. E. Barrett Prettyman, Jr., a one-time clerk to one of the Justices, concluded that the Court devoted "a disproportionately large amount of time" to capital cases; "they receive more attention than any other class of cases coming before the Court."[12] It was not for this—often guilt is beyond per adventure—that the Court was created,[13] but for consideration of the perplexing problems that arise out of the exigencies of our system of government. I would not suggest that these considerations are conclusive, merely that the pragmatic considerations are not all on the side of the abolitionists. Nor is my concern with the merits of death penalties, but with the right of the people to enact them. It need always to be borne in mind that "the criminal law, after all, is primarily a

Footnotes at end.

state rather than a federal responsibility," [14] and that the Court's intrusion into this field is comparatively recent.

Whatever reservations a Justice may have had before he donned the robe as to the wisdom or judiciality of his predecessors, he entertains few doubts that he is richly qualified to impose his vision of the good on the nation. Throughout the judicial spectrum lurks the conviction that Big Brother knows best. That common postulate, which goes to the heart of the judicial function, shows how meaningless are assessments of the Justices in terms of "liberal" and "conservative." Justice Douglas disclosed that at the core of the constitutional decisionmaking process lies the "gut" reaction of the Justices, underling John Stuart Mill's caution that the universal "disposition of mankind . . . to impose their own opinions and inclinations . . . on others . . . is hardly ever kept under restraint by anything but want of power." [15] The Framers in their wisdom withheld such power from the Justices.

Finally, the track record of the Court does not inspire confidence that it is a better judge of what the people should do than the people themselves. Justice, then Solicitor General, Robert H. Jackson, wrote, "time has proved that [the Court's] judgment was wrong on most of the outstanding issues upon which it has chosen to challenge the popular branches." [16] His view was shared by distinguished scholars. The Court would do well to heed the counsel of Justice Holmes: "when the people . . . want to do something I can't find anything in the Constitution expressly forbidding them to do, I say, whether I like it or not, 'Goddamit, let 'em do it!'" [17] The "cruel and unusual punishments" clause constitutes no such prohibition. "After all," wrote Dean Charles E. Clark of Yale Law School in October 1934, "is it a sound and practical theory, as well as a robust and vigorous doctrine, suited to an independent people, to hold that control and direction of its future should be committed to an aloof judicial tribunal, however, esteemed?" [18] No such commitment was ever made by the American people. Instead, the death penalty cases represent a blatant perversion of the "cruel and unusual punishments" clause that thwarts their indubitable will.

FOOTNOTES

[1] Henry Schwarzschild, director of the American Civil Liberties Union Capital Punishment Project, said: "Killing human beings is an act so awesome, so destructive, so irremediable that no killer can be looked upon with anything but horror, even when that killer is the state." New York Times, June 14, 1981, p. 28.

[2] Quoted in Furman 453. Sir James Fitzjames Stephen wrote: "In cases which outrage the moral feeling of the community to a great degree, the feeling of indignation and the desire for revenge which is excited in the minds of decent people is, I think, deserving of legitimate satisfaction." 1 J. F. Stephen, "*History of the Criminal Law of England*," 478 (1883); see also Goodhart, infra note 3.

[3] Furman 308; see also id. 394-395, 452. A. L. Goodhart, "English Law and the Moral Law," 92-93 (1953), wrote: "There seems to be an instinctive feeling in most ordinary men that a person who has done an injury to others should be punished for it . . . without a sense of retribution we may lose our sense of wrong. Retribution in punishment is an expression of the community's disapproval of crime . . . A community which is too ready to forgive the wrongdoer may end by condoning the crime." Bedau 117 rightly emphasizes that punishment, "by its very nature, is retributive . . . imprisonment for murder, no less than the death penalty is retributive. The question, of course, is whether it is retributive enough." That is a question of policy for the legislature and the people, not removed from them by the "cruel and unusual punishments" clause.

[4] Justices Stewart, Powell, and Stevens, the plurality in Gregg v. Georgia, 428 U.S. 153, 183 (1976), stated: "In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks it citizens to rely on legal processes rather than self-help to vindicate their wrong." This shifts the inquiry from whether the Constitution deprived the people of the right to enact death penalties, which they enjoyed in 1787, to an empirical justification which should be addressed to the people when they consider whether to abolish death penalties.

[5] Furman 315.

[6] Id. 444.

[7] A spectacular recent example was the shooting of Pope John Paul II by Mehmet Ali Agca, an escapee from a Turkish prison after conviction for murder. New York Times, May 8, 1981, A-1. Laron Williams, convicted murderer and escapee from a Memphis prison, was charged with a fresh murder, New York Times, May 18, 1981, D-13. Jack Henry Abbott, an imprisoned murderer admitted to another murder after his parole from prison, New York Times, Jan. 16, 1982, p. 27. Joseph Bowen, sentenced in 1971 for the murder of a policeman, was convicted in 1975 of the murder of a prison warden and his deputy and reportedly "laughed when he heard himself sentenced to two life terms." On October 29, 1981, he led several prison inmates in the taking of 38 hostages. New York Times, Oct. 30, 1981, A-1, A-12. These examples turned up in casual reading over a period of a few months. Walter Berns, "For Capital Punishment," 103 (1979), relates that "Henry Jarrette, convicted murderer, escaped from prison, raped and murdered a black girl." Coker v. Georgia involved a convicted murderer and rapist who escaped and committed another rape, supra Chapter 6, text accompanying note 166. Bedau 8 acknowledges that no one can claim "that life imprisonment (which, of course, does not mean 'life' at all) offers complete protection to society."

[8] Justice Blackmun, Furman 414.

[9] Id. 371.

[10] Sidney Hook, "Philosophy and Public Policy," 136 (1980). Louis Jaffe wrote that judges "Have been insensitive to the public's need for a sense of security," Jaffe, "Was Brandeis an Activist: The Search for Intermediate Premises," 80 Harv. L. Rev. 986, 1002 (1967). Justice Holmes, who for many years sat on the Supreme Judicial Court of Massachusetts, stated, "at the present time in this country there is more danger that criminals will escape justice than that they will be subjected to tyranny." Kepner v. United States, 195 U.S. 100, 134 (1904), dissenting opinion joined by Justices Edward White and McKenna.

[11] Jacques Barzun takes a bleak view of life imprisonment and "would choose death without hesitation." Hugo Bedau, "The Death Penalty in America," 161-162 (1967).

In Lenhard v. Wolff, 443 U.S. 1306 (1979), the defendant disassociated himself from efforts to secure review of a death sentence. E. B. Prettyman, "Death and the Supreme Court," 15 (1961), relates that Everett Green "would rather go to the chair than spend the rest of his life in jail." Gary Gilmore preferred execution to serving "more time behind prison bars in Utah." Bedau 121.

A number of such cases were reported in August-September, 1981. Thomas Lee Harp, a convicted slayer, told the Oklahoma court that "he wanted no further appeals." New York Times, Sept. 4, 1981, A-6. Colin Clark, convicted in Louisiana, "said he would rather die than face life in prison." New York Times, Sept. 8, 1981, B-12.

Garry Wills refers to the penitentiary as the "most disastrous survival of the enlightenment still grasping at a death-like life." Quoted in Berns, supra note 7 at 62. Berns considers "prisons are terrible places" and quotes the American Friends Service Committee: the "horror that is the American prison system." Id. 64, 74.

[12] Prettyman, supra note 11 at 305.

[13] For the Founders, "individual rights, even the basic civil liberties that we consider so crucial, possessed little of their modern theoretical relevance when set against the will of the people." Gordon Wood, "The Creation of the American Republic, 1776-1787," 63 (1969). He adds, "it was conceivable to protect the common law liberties of the people against their rulers, but hardly against the people themselves." Id. See also William Gangi, "Judicial Expansionism: An Evaluation of the Ongoing Debate," 8 Ohio Nor. U. L. Rev. 1, 64 (1981).

[14] Prettyman, supra note 11 at 311. Justice Frankfurter wrote, the Fourteenth Amendment "is not the basis of a uniform code of criminal procedure federally imposed." Wallace Mendelson, ed., "Felix Frankfurter: The Judge," 99 (1964). Justice Holmes, in one of his last dissents, counseled, "we ought to remember the great caution shown by the Constitution in limiting the powers of the States, and should be slow to construe the [due process] clause in the Fourteenth Amendment as committing to the Court, with no guide but the Court's own discretion, the validity of whatever laws the States may pass." Baldwin v. Missouri, 281 U.S. 586, 595 (1930).

[15] J. S. Mill, "On Liberty," 28 (1885).

[16] R. H. Jackson, "The Struggle for Judicial Supremacy," 37 (1941). For a similar expression by Dean Charles E. Clark, see his Introduction to Edward Corwin, "The Twilight of the Supreme Court," xviii (1934). "Nothing," wrote Alexander Bickel, the foremost constitutional scholar of his generation, "is more evident in the Supreme Court's past than that most of its prior major enterprises . . . have not worked out." Bickel 176. He averred, "I have come to doubt . . . that judicial supremacy can work and is tolerable in broad areas of social policy." Id. at 99. The Court is "too remote from conditions . . . It is not accessible to all the varied interests that are in play in any decision of great consequence . . . it is, in a vast, complex, changeable society, a most unsuitable instrument for the formulation of policy." Id. at 175. My studies have convinced me that such power was consciously withheld. For an excoriating comment on the socioeconomic record of the pre-1937 Court see H. S. Commager, "Judicial Review and Democracy," 19 Va. Q. Rev. 417, 428 (1943).

[17] Quoted in Charles P. Curtis, "Lions Under the Throne," 281 (1947).

[18] Clark, supra note 16 at xix. "Government by a self-designated elite—like that of benevolent despotism or Plato's philosopher kings—may be a good form of government for some, but it is not the American way." Myres McDougal and Asher Lans, "Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy," 54 Yale L. J. 534, 578 (1945).

[From the National Review, Sept. 16, 1983]

CRIME AND PUNISHMENT

(By Karl Spence)

Fifteen years ago crime was, apart from the Vietnam War, our country's most divisive political problem. Crime was on the rise, but our political leaders and opinion-makers could not agree on why, or how much, or who was to blame, or what should or could be done about it. J. Edgar Hoover had started the controversy in the early 1960s with a series of warnings that rising crime threatened the well-being of the nation. Hoover's opponents in academia and elsewhere charged that he was crying wolf. There had been, they insisted, no substantial change in crime rates. As the decade wore on, however, it became apparent that a serious crime problem had developed and finally demanded attention.

Robbery increased sevenfold in two decades, and the transitive verb to mug entered the language. Mass murder became so common that multiple killings frequently were reported on the inside pages of the newspaper. In fact, the most horrifying aspect of this situation is the indifference with which it is now viewed by the nation. Skid-row drunks are tortured to death, young women are raped and strangled, whole families are murdered in their beds, while the rest of us go on about our business. By the fall of 1976, when an elderly couple in New York City were robbed and tortured twice in their own apartment and then hanged themselves, saying they didn't want "to live in fear anymore," very few people noticed. The slaughter and plunder of American citizens had become a basic part of the American way of life.

Still, there is no consensus as to the cause of this rise in violent, predatory crime, and, therefore, no consensus as to a solution. Suggestions range from eliminating poverty to making punishments more certain and more severe. Those alternatives unfortunately are regarded as being mutually exclusive, and it is widely held that of the two only the former is "enlightened" and morally acceptable. But we must learn to look for the suppression of crime, not as a result of social and economic progress, but as a precondition of it. We must also realize that eliminating poverty would eliminate crime only if a majority of criminals acted out of necessity. In fact, most commit their crimes because they choose to do so, and they must be dealt with by other than economic means.

One of the methods by which we "deal" with crime is to erect a great array of defenses, such as electronic security systems at airports and banks, neighborhood watch programs, multiple locks on apartment doors, and attempts at more comprehensive gun control. These, alas, are all stop-gap measures, aimed at symptoms only. They put the nation into a permanent state of siege and imply that the only way we can be sure that our neighbor will not attack us is to make it impossible for him to do so. This fearful distrust, so destructive to all feelings of community, is perhaps the most evil consequence of our failure to control crime.

Police across the nation have blamed the Supreme Court for the bulk of the crime increase, saying that the broadening of suspects' rights under the Warren Court hampered them to such an extent that an ensuing crime wave was inevitable. Many would dispute that, but it is clear that the governing image of the Warren reforms—that of the solitary and helpless individual overwhelmed by the vast resources of the state—is not reflected in current reality, in which it is the police and the courts that are being overwhelmed (despite the backtracking by the Burger Court in the last year or so). Yet no amount of reform making it easier to obtain convictions will be of any use if the resulting punishments are so light that, far from deterring others by their example, they do not dissuade even the convict himself from resuming his criminal career.

Deaths per year per 100,000 population

Sectarian violence, Northern Ireland, 1968–74	8.8
German bombardment, London, 1940–45	21.7
Murder, Detroit, 1972–78	42.4
Murder, United States:	
1960	5.1
1970	7.9
1980	10.2
Murder, Canada, 1980	2.1

So we arrive at the need for punishment, and since we are especially concerned with violent crime, our remedy will include capital punishment. Here is the point of greatest controversy: To a sizable minority of Americans, the death penalty is one alternative that is unacceptable to a civilized society. Many people hate the idea of executions as much as they hate those crimes for which execution has been the standard punishment. Before we pursue that course of action, then, their objections must be met.

Four basic arguments have been raised against capital punishment: (1) it is cruel and unusual and is therefore against the Constitution; (2) Christianity forbids it; (3) it is as immoral as any other reason for taking human life; and (4) it is not an effective deterrent. Let us examine each of these objections.

1. The Eighth Amendment, which forbids cruel and unusual punishments, was made part of the Constitution in 1791 by men who feared the establishment in America of certain traditional European methods of execution that were calculated to inflict maximum suffering and inspire maximum horror. Punishments such as burning, drawing and quartering, impalement, and pressing are what the phrase "cruel and unusual punishments" referred to in the minds of those who wrote, adopted, and ratified the Eighth Amendment. It obviously did not refer to executions per se: The states and the United States hanged or shot condemned men before and after the Bill of Rights was adopted.

To find that the death penalty violates the Eighth Amendment, then, is in effect to amend the Constitution by reconstruing it. James Madison held that "the sense in which the Constitution was accepted and ratified by the nation" must be "the guide in expounding it"; but the Supreme Court has not bound itself to respect Madison's views, and, in fact it is well within the Court's power to declare capital punishment cruel, unusual, and unconstitutional. The current status of the death penalty is that it may not be made mandatory for any crime, nor may it be left completely to the discretion of judge or jury. Persons opposed to capital punishment, furthermore, may not for that reason be excluded from juries in trials of capital crimes. Those standards will change as the disposition of the Court changes, however, and a binding constitutional definition is needed, to put an end to years of litigation and hesitation.

2. Many of us are aware that the Sixth Commandment is correctly translated from the Hebrew as "Thou shalt not murder." We also know that the Mosaic Law provided the death penalty for murder and for many other crimes, most of which would not be considered capital offenses today. Jesus in his preaching set aside great parts of the Law, including "an eye for an eye, a tooth for a tooth." In this, however, his target was personal vindictiveness, not the idea of legal sanctions. For while we are taught to love our enemies and return good for evil, each of us can do so only on his own behalf: We cannot possibly forgive an injury done to our neighbor. The callous man, "gifted with great fortitude to bear the evils afflicting another," imagines that he forgives what in fact he condones.

For that reason, what Christianity requires of us as a society is different from what it requires of us as individuals. The criminal who received salvation on the cross said of himself and his unrepentant comrade, "We indeed [are condemned] justly; for we are receiving the due reward of our deeds." Did he have it all wrong? Plainly, Christian forgiveness is not meant to cancel the responsibility of those in authority. St. Paul wrote that government "does not bear the sword in vain," but is appointed by God "to execute His wrath on the wrongdoer." With that in mind, Jesus' dictum "All who take the sword will perish by the sword" makes clear that the death penalty for murder still stands. "Beloved, never avenge yourselves, but leave it to the wrath of God; for it is written, 'Vengeance is mine, I will repay, says the Lord.'" So Paul tells us, and we can see that when individuals seek to avenge murders themselves, as in the vendettas of Sicily or the Hatfield-McCoy fueds of Appalachia, the community is harmed, but when murderers are punished as the law prescribes, the community is sustained.

Christian support for the death penalty is not confined to scriptural quotations. Désiré Cardinal Mercier of Belgium, whose people had been crushed and blooded by the armies of Kaiser Wilhelm II, had this to say on the subject in the cathedral of German-occupied Brussels on July 21, 1916:

"Whatever may be our sufferings, we must not wish to show hatred toward those who have inflicted them. Our national unity is joined with a feeling of universal brotherhood. But even this feeling of universal brotherhood is dominated by our respect for the unconditional justice without which no relationship is possible, either between individuals or between nations.

"And that is why, with St. Thomas Aquinas, the most authoritative teacher of Christian theology, we proclaim that public retribution is commendable.

"Crimes, violation of justice, outrage on the public peace, whether enacted by an individual or by a group, must be repressed. Men's minds are stirred up, tortured, uneasy, as long as the guilty one is not put back in his place. . . .

"Public retribution in this sense may distress the affected sentimentality of a weak nature; all the same, it is, says St. Thomas, the expression and the decree of the highest, the purest form of charity, and of the zeal which is its flame. It does not make a target of suffering, but a weapon wherewith to avenge the outrage of justice."

The British lay theologian C. S. Lewis has added his voice to the debate in 1940, at Oxford:

"We can rest contentedly in our sins and in our stupidities . . . but pain insists on being attended to. God whispers to us in our pleasures, speaks in our conscience, but shouts in our pains: It is His megaphone to rouse a deaf world. A bad man, happy, is a man without the least inkling that his actions do not 'answer,' that they are not in accord with the laws of the universe.

"A perception of this truth lies at the back of the universal human feeling that bad men ought to suffer. It is no use turning up our noses at this feeling, as if it were wholly base. . . . Some enlightened people would like to banish all conceptions of retribution or desert from their theory of punishment and place its value wholly in the deterrence of others or the reform of the criminal himself. They do not see that by doing so they render all punishment unjust. What can be more immoral than to inflict suffering on me for the sake of deterring others if I do not deserve it? And if I do deserve it, you are admitting the claims of 'retribution.' And what can be more outrageous than to catch me and submit me to a disagreeable process of moral improvement without my consent, unless (once more) I deserve it?"

Against Mercier and Lewis may be measured the assertion made by Victor H. Evjen, a knowledgeable opponent of the death penalty, in the March 1968 issue of *Lutheran Women:* "Retribution cannot be considered a legitimate goal of criminal law." That, says he, is because retribution "is repugnant to civilized man," thus claiming a unanimity of civilized opinion against the death penalty that does not exist.

3. Some believe the state may never take human life in any circumstances. Such people are called pacifists, and are accorded the status of conscientious objectors in wartime. Many others are willing to fight for their country in wartime, but still think it

immoral to execute murderers. Is their view consistent? Honest soldiers and innocent civilians are the victims of war—are their lives less valuable than that of a convicted killer? If the outrages that the murderers and rapists have inflicted on us do not justify violent countermeasures, what can? The chart on page 1142 gives a sampling of twentieth-century violence. If a foreign power did to American citizens just one-tenth of what our own criminals do to us every year, we would surely be at war. Let us therefore be at war against crime.

Some say that just as it is immoral for the murderer to kill his victim, it is also immoral for the state to kill the murderer. This ignores the principle of retribution and misunderstands the purpose and the function of the law. The law exists not only to establish what is right and wrong, but also to enable us to live together as a society. If we do not go about armed and on our guard against every stranger we meet, it is *because* we are forbidden to kill, rape, rob, cheat, or otherwise victimize our neighbors. We need to protect our society against those who defy this obligation, and that is what the law does. It works, not by setting a good example, but by retaliation—of which retribution is the justified form. If "crime does not pay," it is because the criminal pays. He breaks the law, he is caught, and in accordance with his deserts he is fined, jailed, or executed. No ethical attack on the last of those sanctions can fail to strike down the first two as well, and thus to cripple the law itself. If the law does not retaliate, it does not work; society's protection is gone, and the sufferings of the innocent multiply. And that brings us to the crux of the debate.

4. If the death penalty has no deterrent value, theoretical justifications of it may frequently be overridden by the desirability of showing mercy to the convict and attempting his rehabilitation. But if executions do have deterrent value, opposition to them becomes pernicious, dooming many more people than it saves. Predictably, opponents of capital punishment approach this question of fact and come away with conclusions to fit their preconceptions. But it is here that the argument against capital punishment is weakest.

CAPITAL PUNISHMENT

Year	Executions	Murders
1957	65	8,060
1958	49	8,220
1959	49	8,580
1960	56	9,140
1961	42	8,600
1962	47	8,400
1963	21	8,500
1964	15	9,250
1965	7	9,850
1966	1	10,920
1967	2	12,090
1968	0	13,650
1969	0	14,590
1970	0	15,810
1971	0	17,630
1972	0	18,520
1973	0	19,510
1974	0	20,600
1975	0	20,510
1976	0	18,780
1977	1	19,120
1978	0	19,560
1979	2	21,460
1980	0	23,040
1981	1	22,520

We ought to understand that the deterrence question is at present not one of proof but of possibility. Constitutional, religious, and moral standards having been met, our concern for future victims requires absolute *certainty* that crime cannot be reduced, in any degree, by executions, of whatever scope, before it will allow us to forbear proceeding *to* the proof, which is to execute murderers. Can such certainty intelligently be maintained? I suggest not.

The statistical support for the belief that executions do not deter (primarily, Thorsten Sellin's 1959 study, which covered the years 1920-1955) deals with an era in which death for murder was the exception rather than the rule, and the no-deterrence argument assumes that for humanitarian reasons such will always be the case. Declining to consider what might happen to the murder rate if executions increased, abolitionists in the mid-Sixties confidently predicted that nothing untoward would ensue if executions ceased entirely. As the chart on this page shows, their expectations were disappointed. It began to appear that even when they were a rarity, executions had served a purpose, and reassessments were forthcoming. While some abolitionists try to face down the results of their disastrous experiment, and still argue to the contrary, the most influential new study—Isaac Ehrlich's "The Deterrent Effect of Capital Punishment" (1975), which has supplanted Sellin as the central reference in the deterrence debate—concludes that a substantial deterrent effect has been observed.

Ehrlich's evidence and the Supreme Court's approval notwithstanding, authorities around the country continue to stay their hands, fearful of the "bloodbath" if the hundreds of persons under sentence of death were executed in rapid order. In the meantime, a real bloodbath goes on unabated. In six months, more Americans are murdered than have died by execution in this entire century.

The experts tell us that that's the way it is and the way it will be. But what if we *used* the death penalty, and not just for the most extremely heinous crimes, but as a standard punishment? Can we hold ourselves guiltless if we do not? By no means. Until we begin to fight crime in earnest, every person who dies at a criminal's hands is a victim of our inaction.

J. Edgar Hoover, who seized the crime wave of his day and bore it down beneath the sheer weight of his activity, once said, "Crime is a dangerous, cancerous condition which, if not curbed, will soon eat at the very vitals of the country." Today, we see the decay of our inner cities, we read of tragedy and outrage until we are numb, and many of us have felt the sickening touch of brutality in our own lives.

Society must once again assume the right and accept the duty of exacting retribution.

Mr. HELMS. Mr. President, I thank the distinguished chairman of the Judiciary Committee, Senator THURMOND, for this work on his bill, and I urge my colleagues to support it.

Mr. WEICKER. Mr. President, the following extract from the records of our English church came to my attention:

William Jones and Henry Pittaway were executed at Oxford for the murder of James Milling, Underkeeper in the Forest of Wychwood and were both buried in the same grave. Many years later someone confessed on his deathbed that he had been responsible for the crime, so the names of Jones and Pittaway were cleared.—Extract from The Parish Records, 1824 Taynton Church, Oxfordshire, England.

The issues have not changed all that much since that time, Mr. President. Mistakes have, can and will be made in convicting people of capital crimes. Clearing their names after the fact does them little good.

I will vote to defeat S. 1765 to establish a Federal death penalty.

● Mr. D'AMATO. Mr. President, I rise today to cosponsor S. 1765, a bill to establish a constitutional procedure for the imposition of the death penalty. This procedure is requried by a series of Supreme Court cases starting with Furman against Georgia in 1972. It is important to note that these cases never said that the death penalty itself is unconstitutional. They merely require legislative guidance before the death penalty can be imposed. S. 1765 satisfies this requirement.

The bill we are voting on today authorizes the death penalty for four capital offenses: treason, espionage, murder and other crimes such as armed robbery resulting in the death of another person, and the attempt to assassinate the President that either injures the President or comes dangerously close to killing the President.

This bill establishes a three-stage process. First, the Government, before the trial, must notify the defendant and the court that it intends to seek the death penalty and must set forth those aggravating factors that justify a sentence of death. Second, at the trial there must be one stage where the judge or jury can consider only the issue of guilt or innocence. Third, at a second stage in the trial, there must be a separate hearing on the question of whether the death penalty should be imposed. This hearing will normally be before the same jury which sat for the trial, or if both parties agree, before the judge. The key to this process is the statute's list of aggravating or mitigating factors.

The mitigating factors include whether the defendant is less than 18 years old, is subject to serious mental problems or pressures, had a limited involvement in the crime, or was under duress. Aggravating factors will vary depending on whether the offense is treason, espionage or murder. For example, aggravating factors in cases involving murder include: repeated serious violent crimes by the defendant; commission of the offense in an especially heinous, cruel, or depraved manner, or for hire; or commission of the crime against U.S. or foreign officials most likely to be the targets of assassination, kidnaping, and terrorism.

One of four threshold circumstances must be proven to exist in homicide cases. The bill provides that the jury must find that the defendant, one, intentionally killed the victim; two, intentionally inflicted serious bodily injury that resulted in the death of the victim; three, intentionally participated in an act that he knew, or rea-

sonably should have known, would create a grave risk of death to a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or four, if the offense is an attempt to kill the President, engaged in conduct that resulted in bodily injury to the President or otherwise came dangerously close to causing the death of the President. If the jury determines that at least one of these factors exists, it must determine by unanimous verdict, in light of all the evidence, whether the aggravating factors found to exist sufficiently outweigh any mitigating factors, or in the absence of any mitigating factors, whether the aggravating factors are sufficient to justify a sentence of death.

The defendant shall have a right to appeal the sentence of death and this review shall have priority over all other cases. In order to affirm the sentence, the appellate court must determine that the sentence of death was not imposed under the influence of passion, prejudice, or other arbitrary factors.

Mr. President, I have taken the time to set forth these details because we must never impose the death sentence lightly. The Constitution requires no less. However, there are three arguments in favor of the death penalty that do justify its imposition. The first of these is retribution. People who commit capital offenses forfeit their right to life. As a matter of self-preservation, society has the right to impose the death penalty on those who commit the most heinous intolerable crimes, those that actually threaten the foundations of society itself. As Senator McClellan said nearly 10 years ago:

> What other punishment is "just" for a man, found to be sane, who would stab, strangle, and mutilate eight student nurses?
>
> What other punishment is "just" for a man who would invade the home of members of a rival religious sect and shoot to death men, women, and children, after forcing a mother to watch as her three young children were drowned before her eyes?
>
> What other punishment is "just" for a band of social misfits who would invade the homes of people they had never met and hack to death a woman eight and a half months pregnant and her guests?

The second argument in favor of the death penalty is that it deters murder and other capital offenses. Although people will probably debate this point forever, the Supreme Court has said in Gregg against Georgia, "there are carefully contemplated murders—such as murder for hire—where the penalty of death may well enter into a cold calculus" preceding the decision to act.

Finally, there are cases when the penalty of life imprisonment is simply inadequate because there is always the possibility that a particularly dangerous murderer will escape, or kill again in prison.

Mr. President, murder today is at an all time high. It is up dramatically from the days before the death penalty laws were struck down. There were over 21,000 murders committed in 1982 alone.

Mr. President, I would like to use this opportuntiy to call on the legislature of my own State of New York to join those 38 States which have enacted legislation restoring the death penalty and satisfying the constitutional requirements set forth by the Supreme Court. We have recently seen a kind of "open season" on police officers in New York which gives vivid proof of the need for such action by the legislature.

Only last week a 30-year-old police officer was slain with a shot to the head at a range of less than 5 feet. A 27-year-old police officer was killed in January. Another police officer was shot but not killed on Monday. We cannot tolerate these crimes. We must send a message to the criminal element that our war on crime is real and that certain actions are absolutely intolerable.

Mr. President, I urge my colleagues in the Senate to join me in voting for S. 1765.●

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order, the hour of 2:30 p.m. having arrived, the Senate will now proceed to vote. 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 assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

Mr. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

I further announce that the Senator from Massachusetts (Mr. TSONGAS) is absent on official business.

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

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

The result was announced—yeas 63, nays 32, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—63

Abdnor	Baker	Boren
Armstrong	Baucus	Bradley
Bumpers	Hecht	Pressler
Byrd	Heflin	Pryor
Chiles	Heinz	Quayle
Cochran	Helms	Randolph
D'Amato	Huddleston	Roth
DeConcini	Humphrey	Rudman
Denton	Jepsen	Simpson
Dixon	Johnston	Specter
Dole	Kassebaum	Stafford
Domenici	Kasten	Stennis
East	Laxalt	Stevens
Exon	Long	Symms
Ford	Lugar	Thurmond
Garn	Mattingly	Tower
Goldwater	McClure	Trible
Gorton	Moynihan	Wallop
Grassley	Nickles	Warner
Hatch	Nunn	Wilson
Hawkins	Packwood	Zorinsky

NAYS—32

Andrews	Eagleton	Melcher
Bentsen	Evans	Metzenbaum
Biden	Hart	Mitchell
Bingaman	Hatfield	Pell
Boschwitz	Inouye	Percy
Burdick	Kennedy	Proxmire
Chafee	Lautenberg	Riegle
Cohen	Leahy	Sarbanes
Danforth	Levin	Sasser
Dodd	Mathias	Weicker
Durenberger	Matsunaga	

NOT VOTING—5

Cranston	Hollings	Tsongas
Glenn	Murkowski	

So the bill (S. 1765) was passed, as follows:

S. 1765

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18 of the United States Code is amended—

(a) by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH SENTENCE

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title, if the offense constitutes an attempt to kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President; or

"(c) any other offense for which a sentence of death is provided, if the defendant—

"(1) intentionally killed the victim;

"(2) intentionally inflicted serious bodily injury that resulted in the death of the victim; or

"(3) intentionally participated in an act that he knew, or reasonably should have known, would create a grave risk of death to a person, other than one of the participants in the offense, and the victim died as a direct result of the act;

shall be sentenced to death if, after consideration of the factors set forth in section

3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified.

"§ 3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) the defendant was less than eighteen years of age at the time of the offense;

"(2) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(3) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; and

"(4) the defendant was an accomplice whose participation in the offense was relatively minor.

The jury, or if there is no jury, the court, may consider whether any other mitigating factors exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the defendant has previously been convicted of another offense involving espionage or treason for which either a sentence of life imprisonment or death was authorized by statute;

"(2) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; and

"(3) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (b) or (c), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property in interstate commerce by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), or section 2381 (treason) of this title, or section 901 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)) (aircraft piracy);

"(2) the defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute;

"(3) the defendant has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person;

"(4) the defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense;

"(5) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

"(6) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value;

"(7) the defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value;

"(8) the defendant committed the offense after substanial planning and premeditation to cause the death of a person or commit an act of terrorism; or

"(9) the defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, the Vice-President-designate, or, if there is no Vice President, the officer, next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if he is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he is engaged in the performance of his official duties;

"(ii) because of the performance of his official duties; or

"(iii) because of his status a public servant.

For purposes of this subparagrah, a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter; and

"(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

(b) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of Rule 32(e) of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The attorney for the government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor, concerning which information is presented at the hearing, required to be considered under section 3592. The jury must find the existence of a mitigating or aggravating factor by a unanimous vote, although it is unnecessary that there be a unanimous vote on any specific mitigating or aggravating factor if a majority of the jury finds the existence of such a specific factor.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(a), an aggravating factor required to be considered under section 3592(b) is found to exist; or

"(2) an offense described in section 3591 (b) or (e), an aggravating factor required to be considered under section 3592(c) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

"§ 3594. Imposition of a sentence of death

"Upon a finding under section 3593(e) that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding under section 3593(e) that a sentence of death is not justified, or under section 3593(d) that no aggravating factor required to be found exists, the court shall impose any sentence other than death that is authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without parole.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of an aggravating factor required to be considered under section 3592;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"§ 3597. Use of State facilities

"A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.";

(b) by repealing sections 3566 and 3567;

(c) in the chapter analysis of part II, by adding the following new item after the item relating to chapter 227:

"228. Death sentence..... 3591";

and

(d) in the section analysis of chapter 227, by amending the items relating to sections 3566 and 3567 to read as follows:

"3566. Repealed.

"3567. Repealed.".

SEC. 2. Section 34 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 3. Section 794(a) of title 18 of the United States Code is amended by changing the period at the end of the section to a comma and by adding immediately thereafter the words "except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.".

SEC. 4. Section 844(d) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 5. Section 844(f) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 6. Section 844(i) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 7. The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

SEC. 8. Section 1116(a) of title 18 of the United States Code is amended by striking the words "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

SEC. 9. Chapter 51 of title 18 of the United States Code is amended—

(a) by adding at the end thereof the following:

"§ 1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of parole.

"(b) For the purposes of this section—

"(1) 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life; an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death;

"(3) 'murders' means committing first degree or second degree murder as defined by section 1111 of this title."; and

(b) by amending the section analysis to add:

"1118. Murder by a Federal prisoner.".

SEC. 10. Section 1201 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 11. The last paragraph of section 1716 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the paragraph.

SEC. 12. Subsection (c) of section 1751 of title 18 of the United States Code is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsction (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to kill the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

SEC. 13. The second to the last paragraph of section 1992 of title 18 of the United States Code is amended by changing the

comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 14. Section 2031 of title 18 of the United States Code is amended by deleting the words "death, or".

SEC. 15. Section 2113(e) of title 18 of the United States Code is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof the words "or if death results shall be punished by death or life imprisonment".

SEC. 16. Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), is amended by striking subsection (c).

SEC. 17. The provisions of chapter 228 of title 18 of the United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I yield to the distinguished chairman of the Judiciary Committee.

Mr. THURMOND. Mr. President, I express my deep appreciation to the able Senator from Arizona who has worked very hard on this matter. He was formerly a State prosecutor and did a fine job. He has been most helpful on this bill, and he is a cosponsor of the bill.

I thank him for his great work.

Mr. President, I also express my appreciation to the able majority leader who has been a stalwart with respect to all these crime bills. Without his help we could not have gotten them through.

I also thank the minority leader, also, for his fine cooperation.

Mr. BAKER. Mr. President, I yield to the Senator from Arizona.

Mr. DECONCINI. Mr. President, I join my distinguished colleague from South Carolina in complimenting and thanking the majority leader and the minority leader.

This took a lot of time, pain, and suffering. I appreciate his commitment. He has always been right on the mark and he came through as he always does.

I also wish to compliment the junior Senator from Michigan, who conducted a very good effort in opposition to this bill.

Of course, without the leadership of the Senator from South Carolina, the distinguished President pro tempore, this would not be here today and we would not just have passed what I consider a major tool in the criminal justice system to move this country in the right direction.

I thank the Senator from South Carolina.

Mr. BAKER. Mr. President, I will not take but a minute.

I wish to express my appreciation and I am sure that of every Senator for the extraordinarily good job Senators have done on both sides of the management of this bill, which is a highly emotional measure and one of great sensitivity.

But I especially congratulate the chairman of the committee, the President pro tempore, Senator THURMOND, for his diligence, dedication, and successful effort at managing this matter, and the equally diligent and dedicated effort of the Senator from Arizona, who has been a stalwart in his insistence that this matter be addressed by the Senate, which the Senate has now done and expressed its view in overwhelming numbers.

Mr. President, may I say now that in a moment it will be the intention of the leadership on this side to ask the Senate to turn to the consideration of the career criminal bill. By the way, may I say that I have consulted with the minority leader who indicates that he has no objection to us proceeding to the consideration of that measure. But before I do that, may I also say that I have consulted with the minority leader on another matter which he has likewise cleared and that is for the consideration at this time of Calendar Order No. 654, which is Senate Resolution 350.

On yesterday, the distinguished senior Senator from Washington requested that the matter be taken up at that time.

Because of the leadership practice of requiring these measures to be printed on the calendar for 1 day, it was with great reluctance that I had to decline. But I am happy at this time to announce that the minority leader has cleared the resolution for action and I am prepared to proceed.

CONGRATULATING AMERICAN OLYMPIC ATHLETES

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 654, Senate Resolution 350.

I further ask unanimous consent that when the matter is reported to the Senate that no amendment be in order and that the total time for the consideration of this measure be limited to 10 minutes, equally divided.

The PRESIDING OFFICER (Mr. CHAFEE). Is there objection?

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. Does the Senator object?

Mr. GORTON. Mr. President, I wish to state to the distinguished majority leader that I do have a technical amendment. We misstated the address of one of the people concerned.

Mr. BAKER. All right, Mr. President, I modify my request that only one amendment will be in order and that will be the technical amendment just identified by the distinguished senior Senator from the State of Washington.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 350) congratulating American athletes for their significant accomplishments and bearing at the 1984 winter Olympics in Sarajevo, Yugoslavia.

The Senate proceeded to consider the resolution.

Mr. GORTON. Mr. President, this resolution congratulates the eight medal winners from the United States in the winter games, a resolution which was offered yesterday and printed in the RECORD. It also mentions the other athletes who participated for the United States.

I do not find it necessary to add to the remarks I presented yesterday. I will say, while I have my friend, the Senator from Ohio, in the Chamber, he generally speaks at length on anything that I offer on this floor. I do not know whether he wishes to reserve that right on this particular resolution or not.

Mr. METZENBAUM. I will simply say "amen."

Mr. GORTON. I thank the Senator.

AMENDMENT NO. 2714

(Purpose: Technical amendment)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington (Mr. GORTON) proposes an amendment numbered 2714.

In the preamble delete the words "Wilmington, Delaware" and insert in lieu thereof "Burlington, Massachusetts".

Several Senators addressed the Chair.

The PRESIDING OFFICER. Will the Senate please suspend? It will be necessary to agree to the text of the resolution before we can agree to the amendment because the amendment is to the preamble.

The question is on agreeing to the resolution.

The resolution (S. Res. 350) was agreed to.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I would like to compliment the Senator from Washington on this resolution, but I also would like to explain to my colleagues why it was so understandable that the first mistake was made. There were so many Olympic athletes from Wilmington, Del., this year, that

it is understandable that the Senator from Washington would assume that the person named was a Delawarean and not from Massachusetts.

Mr. President, I just wanted to explain how the Senator could make that mistake. It is perfectly understandable.

Mr. GORTON. Mr. President, it is extremely fortunate that the Senator from Massachusetts, who is now on the floor, made the correction. The Senator from Delaware may not realize that the genesis of this resolution was the two Senators from Washington. Of the eight medal winners, exactly four, or one-half, were from the State of Washington.

Mr. BIDEN. We can understand that. Probably the remainder were from the State of Delaware. I compliment both Senators.

Mr. KENNEDY. Mr. President, all of us are proud of the American athletes who brought home so many medals from the winter Olympics of 1984. And in Massachusetts we were especially pleased with the performance of Peter and Kitty Carruthers, the "pride of Burlington."

Peter and Kitty Carruthers and all the Olympic athletes have devoted years of training in preparation for these Olympics. Their determination, creativity, grace and imagination, and their exceptional drive to succeed are an inspiration to all Americans in all walks of life.

I am proud, therefore, to support this resolution commemorating America's Olympic athletes. Each of them has achieved a special success at Sarajevo. Peter and Kitty Carruthers defied the odds and won a silver medal in a competition dominated by Russians and East Germans in recent years. They brought home the first silver medal in pairs skating in over 30 years. Their medal, and the seven other medals won by Americans this year, are a special gift to the Nation. In honoring them today, we honor the best in America and the best in ourselves.

I also want to take this occasion to commend the performance of five other Olympic athletes from Massachusetts, Mark and Scott Fusco, David Jensen, Bob Brokke and Mark Kumpel—all of whom were members of the U.S. hockey team. Perhaps a repetition of the miracle of 1980 was never in the cards for 1984.

Sports—and sometimes politics too—is often a contest of inches and intense emotion. Who knows? If that first Canadian shot in the first seconds of the first game had not been deflected into the American net, the whole course of the tournament could have changed, and the Senate might now be honoring our athletes for nine medals instead of eight. Now, instead, we say, "Wait until Calgary in 1988."

Mr. GORTON. Mr. President, I ask unanimous consent that Senators KENNEDY, MCCLURE, ARMSTRONG, SPECTER, BIDEN, and CHAFEE be added as cosponsors of the resolution.

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

The question is on agreeing to the amendment.

The amendment (No. 2714) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the preamble, as amended.

The preamble, as amended, was agreed to.

The resolution (S. Res. 350), with its preamble, reads as follows:

S. RES. 350

Whereas the attention of millions of people around the world has been directed during the past week toward the 1984 winter Olympics in Sarajevo, Yugoslavia;

Whereas the contingent of athletes from the United States has included some of the finest young people to have represented this country in recent Olympics' competitions;

Whereas our best previous alpine record in the winter Olympics was in 1964 when four medals were won by American athletes;

Whereas this 1984 contingent of American athletes has achieved significant success for themselves and their Nation in this winter Olympics;

Whereas these American athletes have achieved eight medals in the 1984 winter Olympics competition, including four gold and four silver medals, five of which were in alpine skiing for a new American record;

Whereas these American Olympic medal winners are:

Debbie Armstrong of Seattle, Washington, who won the gold medal in the women's giant slalom competition;

Scott Hamilton of Denver, Colorado, who won the gold medal in men's figure skating;

Bill Johnson of Van Nuys, California, who won the gold medal in the men's downhill ski event;

Phil Mahre of Yakima, Washington, who won the gold medal in the men's slalom competition;

Kitty and Peter Carruthers of Burlington, Massachusetts, who won the silver medal in pairs figure skating;

Christin Cooper of Sun Valley, Idaho, who won the silver medal in the women's giant slalom;

Steve Mahre, also of Yakima, Washington, who won the silver medal in the men's slalom competition; and

Rosalynn Sumners of Edmonds, Washington, who won the silver medal in the women's figure skating competition; and

Whereas the conduct of these Olympic medal winners and that of all their team colleagues represented themselves, their families, and their Nation with extraordinary grace and courage: Now, therefore, be it

Resolved, That it is the sense of the Senate that these American athletes be exuberantly congratulated for their significant accomplishments and bearing at the 1984 winter Olympics in Sarajevo, Yugoslavia; and be it further

Resolved, That the United States Senate encourages all young American athletes to take great pride in the accomplishments of the 1984 American Olympic team and learn the qualities of commitment to excellence, grace under pressure, and good will toward other competitors that was exhibited by the 1984 American Olympic team; and be it further

Resolved, That the special congratulations of the United States Senate be extended to Phil and Holly Mahre to whom, on the day of Phil's achievement of his Olympic gold medal, was born their first son.

Mr. BAKER. Mr. President, I yield to the Senator from Washington if he desires to move to reconsider the action just taken.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the resolution, as amended, was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I wish to congratulate the Senators from Washington and to once again express my apology that it was not possible to do this on yesterday, as I explained.

Let me say to my friend from Delaware that he is not only always interested in guarding the interests of Delaware, but to claim whatever victories they are entitled to, plus a little bit more.

Mr. BIDEN. Mr. President, as small as we are, we always want to do that.

AWARD OF MEDAL OF FREEDOM TO SENATOR BAKER

Mr. KENNEDY. Mr. President, will the majority leader yield?

Mr. BAKER. I yield.

Mr. KENNEDY. Mr. President, since we are recognizing very special qualities of sportsmanship and leadership, and I think rightly so, and I have already presented my comments, I believe the Senate ought to understand what I think many of us who have had the opportunity to understand. That is that the majority leader has been recognized for his extraordinary public service and is to be awarded the Medal of Freedom later on in the month of March.

As we honor our country's athletes, I think all of us, whether Republican or Democrat, certainly ought to commend the choice for recognizing the great service which the majority leader has offered to this body and to his State.

Mr. BAKER. Mr. President, I am most grateful to my colleague from Massachusetts, who has been my colleague and friend for more years than we care to count. I am indeed fortunate to have him as a friend.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, as I indicated earlier, it is the intention of the leadership to ask the Senate to turn to the consideration of the career crime bill at this time. I do not anticipate the Senate will complete action

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on that measure today. I would hope, however, that we may lay the bill down and that we may continue negotiations for an agreed time for the final disposition and consideration of any amendments to the measure, which I would anticipate would be tomorrow.

I would also say that it may be—indeed, it is likely—that we may be able to turn to some other measure temporarily this afternoon and finish it before we resume consideration of the career crime bill tomorrow.

I have consulted with the minority leader and I believe I am correct in saying that there is no objection on his part to laying the bill down and that we will continue our efforts to reach an agreement for a time certain for passage on tomorrow.

ARMED CAREER CRIMINAL ACT

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar Order No. 310, S. 52.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 52) to combat violent and major crime by establishing a Federal offense for continuing a career of robberies or burglaries while armed and providing a mandatory sentence of life imprisonment.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment.

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Armed Career Criminal Act of 1983".

SEC. 2. Chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2118. Armed Career Criminals

"(a) Whoever carries a firearm during the commission of an offense described in subsection (c) of this section or commits such an offense with another who carries a firearm during the commission of such offense, or attempts or conspires to do so, shall be fined not more than $25,000 and imprisoned not less than fifteen years.

"(b) An offense under this section shall not be prosecuted unless the United States proves beyond a reasonable doubt that the defendant has been convicted of at least two offenses described in subsection (c) of this section.

"(c) The offense referred to in subsections (a) and (b) of this section is any robbery or burglary offense, or a conspiracy or attempt to commit such an offense, which may be prosecuted in a court of any State or of the United States and which is punishable by a term of imprisonment exceeding one year.

"(d) Notwithstanding any other provision of law—

"(1) any person charged with an offense under this section shall be treated in accordance with the provisions of section 3148 of this title;

"(2) the indictment or the information need not contain allegations pertaining to or references to subsection (b) of this section;

"(3) the issue of whether the United States has fulfilled its burden of proof beyond a reasonable doubt under subsection (b) of this section shall be heard and decided by the court before trial; and

"(4) the court shall not sentence the defendant to probation, nor suspend such sentence, and the defendant shall not be eligible for release on parole before the end of such sentence.

"(e) For purposes of this section—

"(1) 'State' means any State of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States;

"(2) 'firearm' has the meaning set forth in section 921 of this title;

"(3) 'robbery offense' means any offense involving the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury; and

"(4) 'burglary' means any offense involving entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense.

"(f) Except as expressly provided herein, no provision of this section shall operate to the exclusion of any other Federal or State law, nor shall any provision be construed to invalidate any other provision of Federal or State law.".

SEC. 3. The table of sections at the beginning of chapter 103 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"2118. Armed Career Criminals.".

SEC. 4. It is the intent of Congress that—

(a) the trial and appeal of any person prosecuted under section 2118 of title 18, United States Code, as added by this Act, shall be expedited in every way;

(b) this section shall not create any right enforceable at law or in equity in any person; and

(c) armed robbery and burglary offenses should ordinarily be prosecuted by the States and that prosecutions under section 2118 of title 18, United States Code, as added by this Act, should take place only where circumstances justify exceptional handling. An offense under this section shall not be prosecuted unless the appropriate State prosecuting authority requests or concurs in such prosecution and the Attorney General or his designee concurs in such prosecution.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I rise not to speak at this moment on the career criminal bill other than to suggest that I know Senator KENNEDY and Senator SPECTER are trying valiantly to see if we can work out some agreement. We reported a bill out of committee which I believe would have been acceptable, though there may be some changes, which they are trying to negotiate now.

At an appropriate time, and I am seeking the guidance of the majority leader, I would like to take 3 minutes to introduce another bill, just to move it for introduction. There would be no action.

Mr. BAKER. Mr. President, I think the best way to handle that might be to provide a brief time for the transaction of routine morning business, which would interrupt the Senate's consideration of the measure now pending. The Senator could introduce his bill at that time and there may be other Senators who wish to speak. That would occur while we continue negotiations.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, to extend not past the hour of 3:30 p.m., during which Senators may speak for not more than 3 minutes each.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

ANNUAL REPORT OF THE ADMINISTRATION ON AGING—MESSAGE FROM THE PRESIDENT—PM 118

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with Section 207 of the Older Americans Act, as amended (41 U.S.C. 3018), I transmit herewith the Annual Report for Fiscal Year 1983 of the Administration on Aging of the Department of Health and Human Services. The Annual Report includes information on evaluation as required under Section 206.

RONALD REAGAN.

THE WHITE HOUSE, *February 22, 1984.*

DEFERRAL OF CERTAIN BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM 119

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Energy and Natural Resources, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report seven new deferrals of budget authority totaling $28,960,700.

The deferrals affect the Departments of the Interior, Justice, and Transportation. The details of the deferrals are contained in the attached reports.

RONALD REAGAN.

THE WHITE HOUSE, *February 22, 1984.*

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that he had approved and signed the following bills and joint resolution:

February 2, 1984:

S. 1863, an act for the relief of Audun Endestad.

February 17, 1984:

S. 379, an act to cancel certain indebtedness in connection with disaster relief activities.

February 21, 1984:

S.J. Res. 146, joint resolution to designate March 23, 1984, as "National Energy Education Day."

MESSAGES FROM THE HOUSE

At 10:38 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its clerks, announced that the House agrees to the amendments of the Senate to the bill (H.R. 4336) to make certain miscellaneous changes in laws relating to the civil service.

At 4:08 p.m., a message from the House of Representatives was delivered by Mr. Berry, one of its reading clerks, announced that the Speaker had signed the following enrolled bill:

S. 1388. An act to amend title 38, United States Code, to increase the rates of compensation for survivors; to express the sense of the Congress that increases in the rates of compensation should take effect on December 1 beginning in fiscal year 1985; and for other purposes.

The measure was subsequently signed by the President pro tempore (Mr. THURMOND).

ENROLLED BILL PRESENTED

The Secretary reported that on today, February 22, 1984, he had presented to the President of the United States the following enrolled bill:

S. 1388. An act to amend title 38, United States Code, to increase the rates of compensation for disabled veterans and the rates of dependency and indemnity compensation for survivors; to express the sense of the Congress that increases in the rates of compensation should take effect on December 1 beginning in fiscal year 1985; 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-2551. A communication from the Administrator of the National Aeronautics and Space Administration transmitting a draft of proposed legislation to authorize appropriations to NASA for research and development; to the Committee on Commerce, Science, and Transportation.

EC-2552. A communication from the Deputy Assistant Secretary of the Interior transmitting a draft of proposed legislation to establish a working capital fund in the Bureau of Reclamation; to the Committee on Energy and Natural Resources.

EC-2553. A communication from the Administrator of the Environmental Protection Agency transmitting, pursuant to law, the Agency's report on Indemnification; to the Committee on Environment and Public Works.

EC-2554. A communication from the Assistant Administrator of the Environmental Protection Agency transmitting, pursuant to law, the National Priorities List; to the Committee on Environment and Public Works.

EC-2555. A communication from the Administrator of the Environmental Protection Agency transmitting, pursuant to law, the National Water Quality Inventory Report for 1982; to the Committee on Environment and Public Works.

EC-2556. A communication from the Acting Secretary of State transmitting, pursuant to law, a report on the status of payments under loan guarantees or credit assurance agreements made to Poland; to the Committee on Foreign Relations.

EC-2557. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, copies of international agreements, other than treaties, entered into by the United States within the previous 60 days prior to February 3, 1984; to the Committee on Foreign Relations.

EC-2558. A communication from the Chairman of the National Capital Planning Commission transmitting a copy of proposed legislation to increase the compensation of members of the Commission; to the Committee on Governmental Affairs.

EC-2559. A communication from the Special Counsel, U.S. Merit Systems Protection Board, transmitting, pursuant to law, a report on the findings and conclusions concerning certain allegations of violation of law and regulation, and abuse of authority; to the Committee on Governmental Affairs.

EC-2560. A communication from the Special Counsel, U.S. Merit Systems Protection Board, transmitting, pursuant to law, a report on allegations of abuse of authority and substantial and specific danger to public health and safety at the VA Medical Center, Miles City, Montana; to the Committee on Governmental Affairs.

EC-2561. A communication from the Assistant Attorney General for Administration transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-2562. A communication from the General Counsel of the Foreign Claims Settlement Commission transmitting, pursuant to law, the Commission's 1983 report on its implementation of the Government in the Sunshine Act; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title:

S. 1059. A bill to provide that it shall be unlawful to deny equal access to students in public schools and public colleges who wish to meet voluntarily for religious purposes and to provide district courts with jurisdiction over violations of this Act. (Rept. No. 98-357) (Minority views filed).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. HEINZ:

S. 2317. A bill to suspend for 3 years the duty on crude 8 + 5 hydoxyquinolines; to the Committee on Finance.

By Mr. HATCH (for himself and Mrs. HAWKINS):

S. 2318. A bill to provide financial assistance to States for a program of occupational training for single working parents and homemakers; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN:

S. 2319. A bill to amend the Internal Revenue Code of 1954 to disallow certain tax incentives to tax shelters, and for other purposes; to the Committee on Finance.

By Mr. HART:

S. 2320. A bill to withdraw U.S. military forces in Central America and to limit the introduction of U.S. military forces without congressional approval; to the Committee on Foreign Relations.

By Mr. PERCY (by request):

S. 2321. A bill to further amend the Peace Corps Act; to the Committee on Foreign Relations.

By Mr. BENTSEN (for himself and Mr. GRASSLEY):

S. 2322. A bill to amend the Internal Revenue Code of 1954 to allow individuals to compute the amount of the deduction for retirement savings on the basis of the compensation of the spouse; to the Committee on Finance.

By Mr. CHAFEE (for himself and Mr. SIMPSON):

S. 2323. A bill to amend the Internal Revenue Code of 1954 to impose an excise tax on

the receipt of golden parachute payments and to deny any deduction with respect to such payments; to the Committee on Finance.

By Mr. PACKWOOD (for himself, Mr. HOLLINGS, Mr. WEICKER, Mr. KENNEDY, Mrs. HAWKINS, Mr. CRANSTON, Mr. LAUTENBERG, Mr. HART, Mr. HUMPHREY, Mr. CHILES, Mr. INOUYE, Mr. TSONGAS, Mr. PELL, Mr. RIEGLE, and Mr. ROTH):

S. 2324. A bill to amend the Coastal Zone Management Act of 1972 regarding activities directly affecting the coastal zone; to the Committee on Commerce, Science, and Transportation.

By Mr. D'AMATO (for himself, Mr. SPECTER, and Mr. LAUTENBERG):

S. 2325. A bill to provide financial aid to public mass transit systems for crime prevention and security; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. D'AMATO (for himself and Mrs. HAWKINS):

S. 2326. A bill entitled the "Securities Fraud Prevention Act"; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BIDEN:

S. 2327. A bill to provide for real life imprisonment; to the Committee on the Judiciary.

By Mr. BOREN (for himself, Mr. BOSCHWITZ, Mr. BAUCUS, Mr. ABDNOR, and Mr. HART):

S. 2328. A bill to provide for an improved program for wheat; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. NICKLES:

S. 2329. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans and to remove unnecessary barriers to employer participation in those plans for modifying the rules relating to employer withdrawal liability, asset sales, and funding, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HATCH (for himself and Mr. DENTON):

S. 2330. A bill to amend the Internal Revenue Code of 1954 to allow the deduction for certain expenses paid or incurred by an individual in connection with the adoption of a child; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 2331. A bill to amend section 1601(d) of Public Law 96-607 to permit the Secretary of the Interior to acquire title in fee simple to McClintock House at 16 Williams Street, Waterloo, N.Y.; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S.J. Res. 240. Joint resolution relating to the 40th anniversary of the liberation of Rome; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. BENTSEN, Mr. HOLLINGS, Mr. DOLE, Mr. COHEN, Mr. CHILES, Mr. LONG, Mr. PERCY, Mr. MOYNIHAN, Mr. LEVIN, Mr. CRANSTON, Mr. DODD, Mr. JEPSEN, Mr. SPECTER, Mr. THURMOND, Mr. INOUYE, Mr. QUAYLE, Mr. TSONGAS, Mr. HECHT, Mr. BOREN, Mr. HEFLIN, and Mr. METZENBAUM):

S.J. Res. 241. A joint resolution to authorize and request the President to issue a proclamation designating May 6 through May 13, 1984, as "Jewish Heritage Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CHILES (for himself, Mr. INOUYE, Mr. BYRD, Mr. EAGLETON, Mr. BAUCUS, Mr. BENTSEN, Mr. BINGAMAN, Mr. BOREN, Mr. BUMPERS, Mr. BURDICK, Mr. DIXON, Mr. EXON, Mr. FORD, Mr. JOHNSTON, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. MATSUNAGA, Mr. METZENBAUM, Mr. PELL, Mr. PROXMIRE, Mr. PRYOR, Mr. RANDOLPH, Mr. RIEGLE, Mr. STENNIS, and Mr. ZORINSKY):

S. Con. Res. 96. A concurrent resolution expressing the sense of Congress that the President should submit a revised budget proposal which contains provisions to reduce the Federal deficit by at least $200 billion over the next 3 years; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself and Mrs. HAWKINS):

S. 2318. A bill to provide financial assistance to States for a program of occupational training for single working parents and homemakers; to the Committee on Labor and Human Resources.

SINGLE PARENTS AND HOMEMAKERS EDUCATION ASSISTANCE ACT

Mr. HATCH. Mr. President, I rise today to introduce the "Single Parents and Homemakers Education Assistance Act." This legislation is designed to enhance the opportunities of single working parents and homemakers to obtain marketable vocational skills. I propose this legislation as a means to prevent poverty among single working parents and the homemakers who have been substantially excluded from existing programs.

The Federal Government, and Congress in particular, has largely ignored the young single parents who are struggling in low-wage jobs that barely provide subsistence for themselves and their children. These parents are not on welfare. They are working, but because they are, they are excluded from eligibility for the many programs designed to help the unemployed. They deserve a chance to improve their circumstances. The number of single-parent households has grown precipitously over the past generation and we can no longer afford to ignore them if for no other reason than that the immediate welfare of their children will be fundamentally consequential to our Nation's future. The desire and determination to work should be sufficient in this country to create opportunities for parents not just to provide for themselves and their own, but to advance their skills and quality of life.

Also largely and unjustly ignored are the problems of homemakers who desire or need to obtain jobs. These persons are especially deserving of their Nation's help. As was expressed powerfully in recent hearings before the Committee on Labor and Human Resources, homemakers work. They work hard, and the fruits of their labor are of incalculable value to our society.

Many homemakers need or will need assistance in learning marketable skills. It is unreasonable to expect that all homemakers, or even most of them, will remain homemakers for their entire adult lives. One can raise a family and still have many productive years. Additionally, women are more likely to outlive their husbands requiring them to have job skills in the event of losing their spouses through death. Divorce is increasingly a cause of homemaker displacement and poverty. Finally, our economy has a need for skilled people and homemakers should be given an opportunity to contribute their efforts and abilities.

Here is what one of our witnesses, Margot Joynes, had to say about the problems of displaced homemakers before the Committee on Labor and Human Resources:

> What are our displaced homemaker clients like? They have been in the home for many years. They had planned to spend a lifetime devoted to homemaking. The displaced homemakers we serve are very vulnerable, coming from homemaking responsibilities in a period of great stress. They lack self-esteem, self-confidence. They lack awareness of themselves as worthy individuals with potential. We hear them over and over say they do not have any marketable skills. In addition to lacking knowledge about self, they lack knowledge about community resources and information about the local labor market. The stress from a major life crisis and pressure to get paid employment often leaves them with health problems. Most of them have real financial need. Many of them need legal help. They are all ages and stages in life transition.

While the language of the legislation does not specify men or women, and when they qualify, men are certainly eligible, our society still expects women primarily to care for the children. Thus, when families break up, it is primarily women who become the single parents.

These single mothers are usually at an economic disadvantage when compared with their former husbands, because usually, if the women had jobs at all, the men had better jobs. Women are also penalized for homemaking because they remain out of the labor force and thus do not gain experience or on-the-job skills. The single mothers are mostly relegated to so-called pink-collar occupations that may pay the grocery bill for a two-parent family but will rarely pay for a decent standard of living for a single-parent household.

Also, we must face the reality that, for the present, the men in question are doing very little to secure a decent

standard of living for their children and the mothers of their children. Of the 8.4 million women nationwide who had custody of their children in 1981, less than half had been awarded child support. Only 47 percent of those women who had been awarded child support received the full amount which averaged $40 a month. Twenty-eight percent of these women received nothing.

Mr. President, the legislation that I am proposing provides formula grants to the States to fund or subsidize vocational education for single working parents and homemakers and to make this education accessible and pertinent to these persons. The States are given considerable flexibility to design their programs in keeping with State economies and the wishes of local citizens. The legislation requires no new agencies at either the Federal or State levels and existing personnel can be used to administer the program. The immediate director of the program within each State will be the sex equity coordinator whose position has already been mandated by Federal regulations, and will be made statutory by this legislation.

The legislation before us addresses straightforwardly problems of two groups of Americans that deserve our attention and for whom there are few, if any, programs or initiatives to prevent their poverty. I urge my colleagues to support the expeditious passage of the Single Parents and Homemakers Education Assistance Act.

Mr. President, I ask unanimous consent that this legislation and a summary of this legislation be printed in the RECORD.

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

S. 2318

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be entitled "Single Parents and Homemakers Education Assistance Act".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to make grants to States to assist—

(1) single working parents who are living with and supporting minor children, and

(2) individuals who have been primarily homemakers as adults and who therefore have fewer marketable occupational skills

to gain the education or training necessary to perform jobs or engage in businesses that will provide them with a higher standard of living than their present levels of education and training will allow them to achieve.

SINGLE PARENTS AND HOMEMAKERS EDUCATION GRANTS AUTHORIZED

SEC. 3. (a) The Secretary is authorized to make grants, in accordance with the provisions of this Act, to States to provide occupational training to single working parents and homemakers.

(b) There is authorized to be appropriated $100,000,000 for the fiscal year 1985 and for each of the succeeding fiscal years ending prior to October 1, 1987, to carry out the provisions of this Act.

DEFINITIONS

SEC. 4. For the purpose of this Act—

(1) The term "single working parent" means an individual who—

(A) is unmarried or legally separated from a spouse,

(B) has a minor child or children for which the parent has either custody or joint custody; and

(C) is working at least 20 hours a week, for an employer or in self-employment, and furnishes the preponderance of the nonpublic financial support for the household of the parent.

(2) The term "homemaker" means an individual who—

(A) has not worked full time to support himself or herself,

(B) has been a dependent for tax purposes for at least 10 years during the period beginning on the date on which the individual—

(i) was first married,

(ii) parents of a first child, or

(iii) attained 18 years of age,

and ending on the date on which the determination is made; and

(C) has been a dependent for tax purposes for most of the 10-year period immediately prior to the date on which the determination is made.

(3) The term "Secretary" means the Secretary of Education.

(4) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

STATE ALLOTMENTS

SEC. 5. (a) (1) The Secretary shall, from the amount appropriated under section 3 (b) for each fiscal year which remains after the Secretary makes the apportionment required under subsection (b) (1), allot to each State—

(A) an amount which bears the same ratio to 20 percent of such remaining amount as the population of the State aged 15 to 19, inclusive, bears to the population aged 15 to 19, inclusive, of all States; plus

(B) an amount which bears the same ratio to 80 percent of such remaining amount as the population of the State aged 20 to 65, inclusive, bears to the population aged 20 to 65, inclusive, of all States.

(2) For the purpose of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b) (1) The Secretary shall apportion one-half of 1 percent of the amount appropriated under section 3 (b) for each fiscal year on the basis of need among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which paragraph (1) applies may receive grants under this Act upon an application submitted to the Secretary containing provisions which describe the programs for which assistance is sought under this Act and which are consistent with the requirements of section 7.

(c) (1) If, with respect to any State, the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within the State that assistance under this Act be made directly 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 to provide benefits under this Act;

the Secretary shall reserve from amounts which would otherwise be allotted to such State under this Act for the fiscal year the amount determined under paragraph (2).

(2) The Secretary shall reserve for the purpose of paragraph (1) from sums that would otherwise be allotted to such State not less than 100 percent of an amount which bears the same ratio to the State's allotment for the fiscal year involved as the population of all eligible Indians for whom a determination under this paragraph has been made bears to the population of all individuals eligible for assistance under this Act in such State.

(3) The sums 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 an award 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 by regulation.

(5) The terms "Indian tribe" and "tribal organization" mean those tribes, bands, or other organized groups of Indians recognized in the State in which they reside or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

USES OF FUNDS

SEC. 6. Each State may use grants made under this Act to—

(1) provide, subsidize, reimburse or pay for education and training activities, including basic literacy instruction and necessary educational materials, that will furnish single parent workers and homemakers with marketable skills; and

(2) make education and training more accessible to single parent workers and homemakers by assisting them with child care or transportation services or by organizing and scheduling the programs so that such programs are more accessible.

APPLICATIONS AND REQUIREMENTS

SEC. 7. (a) Each State desiring to receive its allotment for the fiscal year under this Act shall submit an application to the Secretary. Each such application shall be in such form as the Secretary may require. Each such application shall contain assurances by the chief executive officer of the State that the State will comply with subsection (b) and will meet the conditions enumerated in subsection (c).

(b) After the expiration of the first fiscal year in which a State received funds under this Act, no funds shall be allotted to such State for any fiscal year under this Act unless the legislature of the State conducts public hearings on the proposed use and distribution of funds to be provided under this Act for such fiscal year.

(c) As part of the annual application required by subsection (a), the chief executive officer of each State shall certify that the State agrees to—

(1) use the funds made available under this Act in accordance with section 6 and use no funds that are not directly related to the costs of materials and services furnished

for eligible single working parents and homemakers;

(2) pay from non-Federal sources all of the non-Federal administrative costs of carrying out the program for which assistance is sought;

(3) assign a full-time individual to administer this program whose duties will include reviewing all State vocational education programs to determine whether there is any bias in these programs against serving men and women who seek training for occupations that are not traditionally associated with their sex, and whose duties will also include working with these programs to eliminate such bias or to insure that such bias does not occur;

(4) provide assurances that the State will spend no less than 20 percent of the assistance furnished under this Act in any fiscal year for materials and services furnished to single working parents or to homemakers, as the case may be;

(5) furnish relevant training and educational activities to single working parents and homemakers who desire to enter occupations that are not traditionally associated with their sex;

(6) provide assurances that the State will give special attention to furnishing occupational training and education to single working parents and homemakers who—

(A) have dependents;

(B) have the greatest financial need; and

(C) have lost their spouses through death;

(7) provide assurances that the State will consult with private industry councils established under the Job Training Partnership Act and will emphasize training for occupations which the appropriate private industry councils determine are most needed or most available or provide the greatest opportunity for employment within the communities in the State;

(8) provide assurances that, whenever feasible, community-based organizations and private service providers will be used to achieve the objectives of the program for which assistance is sought, and that not less than 20 percent of the allotment of the State will be available for community-based organizations as provided in this clause;

(9) provide that fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this Act, including procedures for monitoring the assistance provided under this Act, and provide that at least every year each State shall prepare, in accordance with subsection (f), an audit of its expenditures of amounts received under this Act and amounts transferred to carry out the purposes of this Act;

(10) use, whenever feasible, community-based organizations and private service providers to achieve the objectives of the program; and

(11) provide assurances that the State will expend funds and conduct the program in strict accordance with the provisions of this section.

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection.

(d)(1) In addition to the requirements of subsection (c), the chief executive officer of each State shall prepare and furnish to the Secretary a plan which contains provisions describing how the State will carry out the assurances contained in subsection (c). The chief executive officer of each State may revise any plan prepared under this paragraph and shall furnish the revised plan to the Secretary.

(2) Each plan prepared under paragraph (1) shall be made available for public inspection within the State in such a manner as will facilitate review of, and comment on, the plan.

(3) The Secretary shall approve the plan submitted under this subsection unless the Secretary determines that the plan does not comply with a reasonable interpretation of the specific provisions of this Act.

(e) No State may receive financial assistance under this Act unless the State has complied with the provisions of this section.

(f) Each audit required by subsection (c)(8) shall be conducted by an entity independent of any agency administering activities or services carried out under this Act and shall be conducted in accordance with generally accepted accounting principles. Within 30 days after the completion of each audit, the chief executive officer of the State shall submit a copy of such audit to the legislature of the State and to the Secretary.

(g) The State shall repay to the United States amounts found not to have been expended in accordance with this Act or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this Act.

(h) The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of grants under this Act in order to assure that expenditures are consistent with the provisions of this Act and to determine the effectiveness of the State in accomplishing the purposes of this Act.

ADMINISTRATION

SEC. 8. The Secretary is authorized to prepare and promulgate such regulations as are essential to carry out the provisions of this Act, except that the Secretary may promulgate no regulations that define or explain the purposes of the program, the criteria for eligibility for assistance, and the contents of the format of State assurances of the State plan.

PAYMENTS TO STATES

SEC. 9. (a) From its allotment under section 5, the Secretary shall make payments to each State in accordance with section 6503(a) of title 31, United States Code, for use under this Act.

(b) Payments to a State from its allotment for any fiscal year shall be expended by the State in such fiscal year or in the succeeding fiscal year.

SUMMARY: A PROGRAM FOR THE OCCUPATIONAL TRAINING OF SINGLE WORKING PARENTS AND HOMEMAKERS

(1) Title: This bill shall be titled: "Single Parents and Homemakers Education Assistance Act".

(2) Authorization: $100 million a year for FY 85, FY 86 and FY 87.

(3) General Purpose: This program is intended to assist (a) single working parents who are living with and supporting minor children, and (b) persons who have been primarily homemakers as adults and who therefore have fewer marketable occupational skills to gain the education or training necessary to perform jobs or engage in businesses that will provide them with a higher standard of living than their present levels of education and training will allow them to achieve.

(4) Formula for distribution of funds: The appropriation shall be apportioned to the states and the territories on a population basis in accordance with the following breakdown: 20 percent will be apportioned on the basis of population 15 through 19, 80 percent on the basis of population 20 through 65. The share of any state or territory that does not seek or qualify for funds shall be divided proportionately among the other states and territories.

(5) Eligible groups—definition:

(a) Single working parents: The parent must be unmarried or legally separated from his/her spouse. The parent must have a minor child or children for which the parent has either custody or joint custody. The parent must be working a minimum of twenty hours a week at gainful employment or self employment. The parent must supply the preponderance of the non-public financial support of his/her household.

(b) Homemaker: This person must have been a homemaker who has not worked full time to support him/herself and who has also been a dependent for tax purposes for at least ten years during the time since he/she was first married or parented a first child or since he/she reached majority, and also who has not worked full time to support him/herself and has been a dependent for tax purposes for most of the prior ten years.

(6) Allowable uses of the funds:

(a) to provide, subsidize, reimburse for or to pay for education and training, including basic literacy instruction and necessary educational materials, that will supply eligible persons with marketable skills.

(b) to make this education and training more accessible to these persons by assisting them with child care or transportation or by organizing and scheduling the programs themselves so that they are more accessible.

(7) Stipulations for the states: To receive funds a state must certify the following assurances to the Secretary of Education:

(a) that it will bear all non-federal administrative costs for the program, and that all of the funds received will pay for materials and services for eligible persons.

(b) that it will expend no less than twenty percent of the funds on programs, services and materials for each eligible group (the single working parents and the homemakers).

(c) that it will assign a full-time person to administer this program whose duties will include reviewing all state vocational educational programs to determine whether there is any bias in these programs against serving men and women who seek training for occupations that are not traditionally associated with their sex, and whose duties will also include working with these programs to eliminate such bias or to insure that such bias does not occur.

(d) that it will endeavor to provide relevant training and education to eligible persons who desire to enter occupations that are not traditionally associated with their sex.

(e) that it will stress providing occupational training and education to those eligible persons who (i) have dependents, (ii) who have the greatest financial need and/or (iii) have lost their spouses through death.

(f) that it will consult with the Private Industry Councils and will stress training for occupations which they feel are the most needed or most available within their communities.

(g) that it will conduct the program and expend funds in strict accordance with its state plan, and that it will make this state plan readily available to the public.

(h) that whenever feasible, community based organizations and private providers will be used to achieve the objectives of the program, but that no less than 20 percent of program funds will be used to achieve these objectives through community based organizations.

In addition, to receive funds a state must do the following:

(a) submit to the Secretary of Education a plan that will clearly indicate how the state intends to expend program funds to comply with the required assurances and to effect the mandated purposes of the program. This plan can be revised any time during the fiscal year, but must be received by the Secretary before the state spends program funds in accordance with the revised plan. The plan must be approved by the Secretary of Education before funds are transferred to the state, but the Secretary must approve the plan unless the Secretary determines that the plan does not comply with a reasonable interpretation of the specific provisions of this act.

(b) Each year the state legislature must conduct an oversight hearing regarding the operation of the program before the state is eligible for program funding in the second and subsequent years of the program. The state must certify to the Secretary that this hearing has been conducted.

(c) Before a state is eligible for funding for the second and subsequent years of the program, it must file a report on the operation of the prior year's program in such a format and including such information as the Secretary may require. At a minimum this report shall show the average earnings and distribution of earnings of the program participants before their training. The report required prior to the third year and subsequent years of the program shall indicate the earnings gains made by the participants; the report must show the average wages and the distribution of wages of past participants three months after the conclusion of their training.

(8) Limitation on Federal Regulations: The Secretary shall promulgate no regulations that define or explain the purposes of the program, the criteria for group eligibility, the contents or format of the state plan, or the assurances that the state must make. The state can define these items for itself as long as its interpretation of the statute is reasonable.

By Mr. MOYNIHAN:

S. 2319. A bill to amend the Internal Revenue Code of 1954 to disallow certain tax incentives to tax shelters, and for other purposes; to the Committee on Finance.

TAX SHELTER REFORM ACT OF 1984

Mr. MOYNIHAN. Mr. President, I rise today on a matter of large import for the fairness and efficiency of the tax system. This is the proliferation of tax shelters, the near epidemic of investments designed to enable taxpayers to reduce their taxable incomes by more than the amounts they invest. Shelters take the form of investments—and who among us does not want to encourage investment? But these are not economic investments in a true sense. Here, investment occurs, not with the expectation of economic profit, but rather with the assurance of tax deductions, credits, and losses. The goal is not to produce a profit, but to reduce the tax liability on one's income from other sources. According to Joseph A. Pechman, Senior Fellow at the Brookings Institution, in Federal Tax Policy (1983):

> Tax shelters permit individuals to reduce drastically or even to wipe out tax liabilities on large incomes by taking advantage of preferential provisions in the tax law.

I have no argument here with tax incentives designed to promote economically and socially desirable activities. I must and will oppose tax avoidance schemes designed solely for tax advantages. I am concerned about tax loopholes which merely allow the most wealthy among us to avoid bearing their fair share of the tax burden, thereby increasing the burden on the middle and lower income Americans.

I rise then, Mr. President to introduce legislation, the Tax Shelter Reform Act of 1984, to address this problem.

This is not a minor, nor idle, matter. Tax-sheltering schemes are increasing greatly, both in number and volume. According to a report in U.S. News & World Report of June 13, 1983, Robert A. Stranger & Co., an investment adviser firm, has estimated that total investments in tax-shelter partnerships, the primary vehicles for these transactions, increased more than 100 percent from 1980 to 1983, from $5.7 billion to $12 billion, and will reach $14 billion this year. The Stranger firm also estimated that 750,000 individuals invested in tax shelters in 1982, and the numbers are rising. These shelters generally are investments designed to take advantage of a loophole, in which the investor's return mainly is based, not on economic profit, but on tax savings with respect to income from other sources.

The total cost to the Treasury, to ordinary taxpayers, are large, but hard to estimate with precision. Last year, the Internal Revenue Service examined 95,000 tax-shelter returns, involving more than $1.7 billion in disputed tax deductions and credits. At this rate, the current IRS backlog of 350,000 questionable returns with tax shelters represents more than $6.5 billion in foregone or potential revenues. As these represent only the most questionable tax shelters—about 10 percent of all sheltering activities, according to estimates by Stranger & Co.—total costs to the Treasury could reach $65 billion.

Mr. President, permit me to explain how these schemes provide a wealthy taxpayer with overly generous tax benefits. Most arrangements are quite a bit more complex, but a basic understanding of tax shelters is necessary in order to combat them.

A classic tax shelter could involve, for example, a machine leased to a farmer. The investor contributes, say, $10,000 in cash, and the tax shelter promoter arranges a $105,000 loan. Of the $115,000, the promoter takes $15,000 and $100,000 is used to buy the machine. The machine investment qualifies for the investment tax credit (ITC) of 10 percent of the entire $100,000 cost, so the investor can subtract $10,000 from his tax liability for that credit. At this point, our investor has invested $10,000 and received a $10,000 tax credit from the U.S. Treasury. But the investor is also entitled to additional tax breaks, in the form of depreciation deductions, because the machine can be written off or depreciated over 5 years. The accelerated cost recovery system (ACRS) provides for a 15-percent tax deduction, based on the machine's total cost, in the first year. In addition to the $10,000 tax credit, therefore, the investor would claim a deduction of almost $15,000 in the first year. For an investor in the 50-percent tax bracket, this deduction is worth nearly $7,500 in tax avoidance. Finally, the taxpayer can deduct any payments for interest on the $100,000 loan. This last deduction usually offsets the tax liability on any income derived by the investor from leasing the machine to the farmers. Thus, the investor who puts up $10,000 has gained immediately tax benefits of $17,500.

Our investor, moreover, continues to collect tax savings in succeeding years without any additional investment. In year 2, the interest deduction continues to offset the tax liability for the leasing income, while the depreciation deduction rises to 22 percent. This means the tax shelter investor can claim a new deduction of almost $22,000, equivalent to a tax credit of almost $11,000 if he, like the typical tax shelter investor, is in the 50-percent bracket. This return of almost $2 in tax reductions for every dollar invested, just in the first year, and about $28,000 in tax savings over 2 years for a $10,000 investment, is not unusual. Under more complex arrangements, the investor can generate even greater tax savings. The investor's depreciation deductions continue for 3 more years, moreover, and if he ever sells the property any gain will be taxed at preferential long-term capital gains rates.

For the promoter and purchaser of a tax shelter, the object of investment matters little—real estate, equipment leasing, oil and gas exploration, industrial research and development projects. These are the foci of tax shelters, because these are the kinds of investments for which Congress has provided the greatest number and breadth of tax incentives.

Tax shelter schemes have proliferated despite passage of the Tax Equity and Fiscal Responsibility Act of 1982 and its provisions curtailing shelters. According to a Washington Post report of November 6, 1983:

Congress and the Internal Revenue Service have taken a series of steps to tighten up regulation of tax shelters, but to no avail. The market in tax-based limited partnerships continues to come up with new ways to skirt the edge of the law.

Other analysts agree. For example, a Wall Street Journal article of February 15, 1984, reported that many legitimate partnership syndicators feel that many partnerships being sold today make little or no economic sense, apart from their tax deductions.

Efforts by the IRS and the U.S. Tax Court to stem abusive tax-sheltering activities have been hindered by the sheer volume of cases. At the close of 1982, 300,000 tax returns with tax-shelter arrangements were in the examination process at the IRS; 1 year later, the Service had completed examinations of 95,000 returns with tax shelters, but the backlog had reached 350,000 returns. According to the Joint Committee on Taxation, 20,000 cases involving tax shelters, representing asserted tax deficiencies of $1.4 billion, are pending now before the Tax Court.

The proliferation of tax-sheltering activity not only costs the Treasury great sums and strains the capacity of the IRS and the U.S. Tax Court, it also threatens our essentially voluntary system of tax collection. The IRS audits roughly 1.5 percent of all returns filed. As 98.5 percent of all returns are not audited, we must rely on most taxpayers to report correctly their income tax liabilities. So far this has worked because Americans are honest and because Americans believe that the Tax Code is essentially fair. The proliferation of tax shelters, designed almost exclusively to reduce the tax liability for wealthy investors, undermines these vital beliefs. A recent study by the Joint Tax Committee emphasized this point, stating:

> A major concern is that the highly visible marketing of tax shelters, and the accompanying belief that the Internal Revenue Service cannot deal with them, may erode taxpayers' confidence in the fairness and effectiveness of the tax system. Sociological research supports the proposition that taxpayers are more likely to comply with the tax laws when they perceive the system to be fair or when the costs of noncompliance are perceived as relatively high and relatively certain. The widespread use of tax shelters deprives the system of its claim to fairness and retards the administrative and judicial processes to the point that penalties seem neither certain nor costly.

In the present era of immense budget deficits, we can no longer tolerate tax expenditures with little or no economic justification, nor can we tolerate a tax system which permits the most wealthy among us to escape their fair tax liabilities. This bill would represent an important advance against abusive tax-sheltering activities.

A section-by-section analysis of my proposal and the bill follows, and I urge my colleagues to support this effort.

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

SECTION-BY-SECTION ANALYSIS

Contents of the Bill

Sec. 101. Disallowance of certain expenses where the taxpayer uses property similar to property owned by the taxpayer.
Sec. 102. Additional tax where court determines property is significantly overvalued or undervalued.
Sec. 103. Expansion of the minimum tax.
Sec. 104. Reform tax treatment of luxury automobiles.
Sec. 105. Disallowance of interest deduction on certain short-term obligations.
Sec. 106. Tax shelters must file Securities and Exchange Commission reports with Secretary of the Treasury.
Sec. 107. Study of Tax Shelters.

Section 101. Disallowance of certain expenses where the taxpayer uses property similar to property owned by the taxpayer.

Under current law, the investment tax credit and depreciation deductions are available only for the business use of property, not for the personal use of property. Thus, if a business purchases a yacht for the business purpose of leasing it out to customers on a daily or weekly basis, the business can claim the investment tax credit and depreciate the cost of the yacht over its ACRS life. On the other hand, if a person buys a yacht for his own personal use, he is not entitled to an investment tax credit or depreciation deductions with respect to the yacht

Recently, some taxpayers have set up partnerships or other pooling arrangement to enable them to enjoy personal use of yachts or other property, while claiming the investment tax credits and depreciation deductions intended only for business uses. This abuse of the investment tax credit and depreciation deductions can be accomplished very simply under current law: person A buys a yacht and leases it to person B, and person B buys a similar or comparable yacht and leases it to person A. Person A has the personal use of the yacht owned by person B, while still being able to claim the tax credit and depreciation deductions for the yacht he owns and leases to person B. Similarly, person B uses one yacht and claims the investment tax credit and depreciation deduction for the other. The net effect: the Treasury subsidizes the yachts used by both A and B.

This abuse of the tax code could be based not only on the purchase of yachts, but of any depreciable property. If person A buys a house and leases it to person B, and B buys a comparable house and leases it to person A, then A and B can each enjoy the use of one house while depreciating the other.

Nor is the abuse limited to simple arrangements between two individuals. The swapping of yachts or other property can be accomplished with partnerships, corporations, and other pooling arrangements involving dozens of people.

However accomplished, these transactions are not the type of legitimate business investments that the Congress intended the Treasury to subsidize. They are abuses that must be stopped.

Section 101 of this legislation would deny the investment tax credit and depreciation deductions in those situations in which a taxpayer who claims them is renting similar property from a second taxpayer. Taxpayers improperly claiming such tax credits and deductions would be subject to the penalties for fraud or negligence now provided in Section 6653 of the Internal Revenue Code of 1954. The provision would be effective with respect to property rented or leased after the date of introduction of this legislation.

Section 102. Additional tax where court determines property is significantly overvalued or undervalued.

Under current law, a taxpayer who vastly overvalues or undervalues property, in order to increase his tax deductions and credits is subject to only a small penalty. He remains entitled to the tax credit and depreciation deduction based on the actual value of the asset. Given the small rate of audits, just 1.5 percent of all returns, these arrangements offer no discentives to discourage taxpayers from playing "audit roulette" by tremendously overvaluing (or undervaluing) their property.

Section 102 of this legislation would impose a larger penalty for abusive over- and undervaluations. If the value claimed by the taxpayer on his tax return is more than twice (or less than half) of the property's value as determined by a federal court in a tax proceeding, then the taxpayer's valuation will be deemed to have been abusive, and he would forfeit all deductions and credits taken with respect to the overvalued (or undervalued) property. He also would be denied a deduction for any interest required to be paid to the government for the use of the disallowed depreciation deduction and tax credits.

This provision would not apply if the taxpayer could prove that he innocently and mistakenly relied upon an incorrect appraisal by a qualified appraiser, following generally accepted appraisal practices.

The purpose of this provision is simple: discourage the abusive practice of overvaluing and undervaluing property, in order to gain greater tax deductions and credits. The provision would apply to all returns filed after the date of introduction of this legislation. The change also could reduce dramatically future backlogs of cases in the Federal District Courts, Claims Court, and the Tax Court, many of which relate to valuation questions.

Section 103. Expansion of the Minimum Tax.

This key provision would strengthen the current 20 percent minimum tax. Under current law, a taxpayer who uses tax shelter deductions and credits to drastically reduce his regular tax liability still can be liable for an alternative minimum tax of 20 percent on any income exceeding $30,000 ($40,000 for couples filing joint returns). Current law, however, enables some taxpayers to avoid this minimum tax as well as the regular tax, by claiming tax shelter losses to offset earned and investment income.

As it is, couples filing joint returns are subject to a 20 percent marginal tax rate on any taxable income over $15,000. Section 103 of this legislation would ensure that all taxpayers with high earned and investment incomes (from salaries, wages, commissions, interest, dividends, and similar sources) would pay at least this minimum rate. Under this section, a taxpayer could still claim personal itemized deductions such as medical expenses and mortgage interest, to reduce his income subject to the minimum tax. But he could not further reduce his tax base by claiming losses generated from

sources other than his earned and investment income, i.e., from many tax shelters.

This provision would ensure that high income individuals, like everyone else, will be subject to some federal tax. It would also discourage tax sheltering, since any income over $40,000 ($30,000 for a single taxpayer), after personal deductions, would be subject to a minimum 20 percent tax regardless of the ingenuity of any tax shelter.

Section 104. Limit Tax Credits and Deductions for Luxury Cars.

Under current law, Section 168(d) of the Internal Revenue Code of 1954, businesses can claim an investment tax credit and depreciation deductions for automobiles used in the course of business. This is proper; transportation is a legitimate business expense. Some businesses, however, use these provisions to provide luxury and prestige to their top executives, as well as transportation, by purchasing limousines and claiming the tax credits and depreciation deductions on the entire cost of the limousine—not just on the component which represents the cost of transportation.

Section 104 of this legislation would limit the tax benefits generated by the purchase or lease of automobiles for business purposes. Under this provision a business could claim a tax credit and depreciation deductions on the value of an automobile purchased or leased for business purposes, but the base for this value would be limited to $15,000 in the year of enactment. Every year thereafter, this base would be adjusted according to the automobile component of the Consumer Price Index.

This proposal would not prevent businesses from providing their executives with luxury cars; but it would limit the subsidy for so doing to a level consonant with the costs of transportation. Quality automobiles can be purchased for $15,000 or less, yet many businesses now spend tens of thousands of dollars more for luxury automobiles. There is no justification for asking ordinary taxpayers to pay more taxes, so that some businesses can deduct the costs of providing their executives with additional luxury and prestige. I introduced this proposal previously, as S. 2232.

Section 105. Disallow interest deductions on certain short-term obligations under certain circumstances.

Under current law, taxpayers do not pay tax on interest earned on many short-term securities until they sell or case-in those short-term securities. If the same taxpayer borrows the funds to purchase these securities, he can deduct his interest payments. Together, these transactions create a "straddle"—the taxpayer defers tax on his gains, while taking deductions of his cost.

Section 105 of this legislation would provide that a taxpayer could deduct the interest paid to borrow funds to purchase short-term securities only in the year in which he declares the interest income from these short-term securities.

Section 106. Reporting Requirements.

Section 106 of this legislation would require any corporation or partnership organized for tax shelter purposes to file with the Internal Revenue Service duplicates of materials that they are now required to file with Federal and State agencies authorized to regulate offerings of securities for sale.

This provision would help the Internal Revenue Service identify abusive tax shelters, and distinguish them from legitimate investment combinations.

Section 107. Study of Tax Shelters.

Section 107 of this legislation would direct the Treasury Department to study the entire area of tax shelters and report to Congress, no later than December 1, 1984, with specific recommendations addressing the problem of stemming abusive tax sheltering activities. The Treasury would be specifically directed to examine further extensions or expansions of minimum tax requirements, the extension and revision of the "at-risk" and "recapture" rules, the impact of full basis adjustment for the investment tax credit, and proposals to limit the deductibility of artificial accounting losses.

S. 2319

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

SEC. 1. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Tax Shelter Reform Act of 1984".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 101. DISALLOWANCE OF CERTAIN EXPENSES WHERE TAXPAYER USES PROPERTY SIMILAR TO PROPERTY OWNED BY THE TAXPAYER.

(a) Section 262 (relating to personal, living, and family expenses) is amended by redesignating the first sentence thereof as subsection (a) and by inserting after such new subsection (a) the following new subsection:

"(b) DISALLOWANCE OF CERTAIN EXPENSES WHERE TAXPAYER USES PROPERTY SIMILAR TO THE PROPERTY OWNED BY THE TAXPAYER.—In any case in which—

"(1) a taxpayer uses property of another person for personal purposes and such other person uses similar property of the taxpayer for personal purposes, or

"(2) under regulations prescribed by the Secretary, the taxpayer is a member of a partnership, joint venture, or other entity one of the principal purposes of which is to allow members to acquire similar property and to use his property or such other person's or members' property for personal purposes, then the taxpayer shall, for the purpose of this subsection be treated as using the taxpayer's property for personal purposes during the period he is using his property or such other person's or members' property for personal purposes to the extent of the expenses attributable to such property used by the taxpayer for personal purposes. Section 6653 of the Internal Revenue Code of 1954 shall apply to taxpayer misallocations under this subsection."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to the use of property after February 22, 1984, in years ending after such date.

SEC. 102. ADDITIONAL TAX WHERE COURT DETERMINES PROPERTY IS SIGNIFICANTLY OVERVALUED OR UNDERVALUED.

(a) IN GENERAL.—Section 6659 (relating to addition to tax in case of valuation overstatements for purposes of the income tax) is amended by adding at the end thereof the following new subsection:

"(g) *Alternative Addition to Income Tax or Estate or Gift Tax Where Court Determines Valuation Overstatement or Understatement.*—

"(1) IN GENERAL.—In the case of an individual or a closely held corporation or a personal service corporation, if a court of the United States (including the United States Claims Court and the Tax Court) makes a final determination that—

"(A) such individual has an underpayment of the tax imposed by chapter 1, chapter 11, or chapter 12 for any taxable year, and

"(B) such underpayment is attributable to—

"(i) in the case of the tax imposed by chapter 1, a valuation overstatement which is more than 200 percent of the correct valuation, or

"(ii) in the case of the tax imposed by chapter 11 or chapter 12, a valuation understatement which is less than 50 percent of the correct valuation.

there shall be added to the tax, for that year, in addition to any amount under subsection (a), the valuation overstatement amount, and no deduction shall be allowed for any interest paid or accrued with respect to these additions to taxes.

"(2) VALUATION OVERSTATEMENT AMOUNTS.—For purposes of this subsection, the term 'valuation overstatement amount' means—

"(A) in the case of the tax imposed by chapter 1, the excess of—

"(i) the amount of tax imposed under chapter 1 if no deduction or credit were allowed with respect to the property for which there was a valuation overstatement, over

"(ii) the amount of tax imposed under chapter 1 if the correct valuation of such property is used; and

"(B) in the case of the tax imposed by chapter 11 or chapter 12, an amount equal to 100 percent of the underpayment of tax attributable to the valuation understatement.

"(3) FINAL DETERMINATION.—For purposes of this subsection, a determination by a court of the United States shall be treated as final when such determination is treated as final for purposes of this title (determined without regard to this subsection).

"(4) VALUATION UNDERSTATEMENT.—For purposes of this subsection, a valuation understatement shall be determined in the same manner as a valuation overstatement under subsection (c), except that 'less than 50 percent' shall be substituted for '150 percent or more' in subsection (c)(1).

"(5) This subsection shall not apply in any situation in which the taxpayer can prove that he innocently and mistakenly relied upon an incorrect appraisal of a qualified apprasier following generally accepted appraisal practices."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any determination of a court of the United States with respect to any return or other document filed by the taxpayer after February 23, 1984.

SEC. 103. EXPANSION OF THE MINIMUM TAX.

(a) Section 55(b) of the Internal Revenue Code of 1954 (relating to the alternative minimum for taxpayers other than corporations) is amended by adding at the end thereto the following new subsection:

"(3) Notwithstanding the above, the alternative minimum taxable income shall never be less than the alternative minimum taxable income floor as defined in subsection (f) below."

(b) Section 55(f) of the Internal Revenue Code of 1954 (relating to the alternative minimum tax for taxpayers other than corporations) is amended by adding at the end thereto the following new subsection:

"(3) ALTERNATIVE MINIMUM TAXABLE INCOME FLOOR.—The alternative minimum taxable income floor for the taxable year

means the taxpayer's adjusted gross income with the following three adjustments:

"(1) deductions attributable to property held for the production of rents or royalties or to a trade or business (other than a trade or business consisting of the performance of services) shall not be taken into account to the extent that the deductions from such activities exceed the gross income attributable to such activities;

"(2) adjusted gross income shall be increased by the amount in Section 57(a)(9); and

"(3) adjusted gross income shall be reduced by the taxpayer's alternative tax itemized deductions."

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after February 22, 1984.

SEC. 104. REFORM TAX TREATMENT OF LUXURY AUTOMOBILES.

(a) Subsection (d) of section 168 of the Internal Revenue Code of 1954 (relating to unadjusted basis; adjustments) is amended by adding at the end thereof the following new paragraph:

"(3) LIMITATION IN CASE OF LUXURY AUTOMOBILES.—

"(A) IN GENERAL.—In the case of a passenger automobile, the basis of such automobile, taken into account—

"(i) for purposes of determining the amount of the deduction allowable under this section (and any other deduction allowable for depreciation or amortization),

"(ii) for purposes of determining the amount of the credit allowable under section 38, and

"(iii) for purposes of section 179, shall not exceed $15,000, increased by the automobile price inflation adjustment (if any) for the calendar year in which the automobile is placed in service by the taxpayer.

"(B) PASSENGER AUTOMOBILE.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'passenger automobile' means any 4-wheeled vehicle—

"(I) which is manufactured primarily for use on public streets, roads, and highways, and

"(II) which is rated at 6,000 pounds gross vehicle weight or less.

"(ii) EXCEPTION FOR CERTAIN VEHICLES.—The term 'passenger automobile' shall not include—

"(I) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business, and

"(II) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire.

"(C) AUTOMOBILE PRICE INFLATION ADJUSTMENT.—For purposes of this paragraph—

"(i) IN GENERAL.—The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

"(I) the CPI automobile component for December of the preceding calendar year, exceeds

"(II) the CPI automobile component for December of 1983.

"In the case of calendar year 1984, the automobile price inflation adjustment shall be zero.

"(i) CPI AUTOMOBILE COMPONENT.—The term 'CPI automobile component' means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

"(D) COORDINATION WITH SECTION 1031.—In the case of an exchange described in section 1031 where the property received in the exchange is a passenger automobile, the excess of the fair market value of such property over the limitation of subparagraph (A) shall be treated as an amount received in cash for purposes of section 1031.

"(E) COORDINATION WITH SECTION 162.—For purposes of determining the amount of the deduction allowed under section 162 for rentals or other payments relating to the rental for longer than one month of a passenger automobile, the amount of the deduction allowed under section 162 shall not exceed the fair market value of a rental or other payment for an automobile costing $15,000, increased by the automobile price inflation adjustment (if any) for the calendar year in which the automobile is placed in the service by the taxpayer."

(b) The amendment made by subsection (a) shall apply to property placed in service after January 30, 1984, in taxable years ending after such date.

SEC. 105. DISALLOWANCE OF INTEREST DEDUCTION ON CERTAIN SHORT-TERM OBLIGATIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DENIAL OF DEDUCTION FOR INTEREST PAID OR INCURRED TO PURCHASE OR CARRY CERTAIN SHORT-TERM OBLIGATIONS.—

"(1) GENERAL RULE.—Except as otherwise provided in this subsection, the net direct interest expense with respect to any short-term obligation shall be allowed as a deduction for the taxable year only to the extent that such expense exceeds the sum of the daily portions of the acquisition discount for each day during the taxable year on which the taxpayer held such obligation.

"(2) SUBSECTION NOT TO APPLY IF TAXPAYER ELECTS TO INCLUDE ACQUISITION DISCOUNT IN INCOME.—Paragraph (1) shall not apply to any taxpayer with respect to any obligation who elects, with respect to all such obligations held during the taxable year, to include in gross income an amount equal to the sum of the daily portions of the acquisition discount for each day during the taxable year for which such taxpayer held such obligation.

"(3) SHORT-TERM OBLIGATION.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'short-term obligation' means any bond, debenture, note, certificate, or other evidence of indebtedness which has a fixed maturity date not exceeding 1 year from the date of issue.

"(B) EXCEPTIONS.—The term 'short-term obligation' shall not include—

"(i) NATURAL PERSONS.—Any obligation issued by a natural person.

"(ii) TAX-EXEMPT OBLIGATIONS.—Any obligation if—

"(I) the interest on such obligation is not includible in gross income under section 103, or

"(II) the interest on such obligation is exempt from tax (without regard to the identity of the holder) under any other provision of law.

"(4) ACQUISITION DISCOUNT.—For purposes of this subsection, the term 'acquisition discount' means the excess of—

"(A) the stated redemption price at maturity, over

"(B) the taxpayer's basis for the obligation.

"(5) DAILY PORTION.—For purposes of this subsection the daily portion of the acquisition discount is an amount equal to—

"(A) the amount of such discount, divided by

"(B) the number of days after the day on which the taxpayer acquired the obligation and up to (and including) the day of its maturity."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after February 22, 1984.

SEC. 106. TAX SHELTERS MUST FILE SECURITIES AND EXCHANGE COMMISSION REPORTS WITH SECRETARY OF THE TREASURY.

(a) IN GENERAL.—Each tax shelter which is required to file a statement with the Securities and Exchange Commission after December 31, 1984, shall also file such statement with the Secretary of the Treasury or his delegate as regulations prescribed by the Secretary so provide.

(b) TAX SHELTER DEFINED.—For purposes of this section, the term "tax shelter" means—

(1) any enterprise (other than a C corporation, within the meaning of section 1361(a)(2) of the Internal Revenue Code of 1954) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal of State agency having the authority to regulate the offerings of securities for sale,

(2) any syndicate (within the meaning of section 1256(e)(3)(B) of such Code), or

(3) any partnership, entity, plan, or arrangement which is a tax shelter within the meaning of section 6661(b) of such Code.

SEC. 107. STUDY OF TAX SHELTERS.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of tax shelters, including an analysis of—

(1) the revenue loss from tax shelters,

(2) the impact of tax shelters on a self-assessment revenue collection system,

(3) the economic impact of tax shelters,

(4) the feasibility of implementing a system of limitations against losses with respect to tax shelter activities,

(5) the impact of the "at-risk" and "recapture" rules,

(6) the impact of non-recourse financing,

(7) the deductibility of interest incurred by limited partners,

(8) the impact of the investment tax credit and the appropriateness of full basis adjustment, and

(9) such other matters as the Secretary of the Treasury or his delegate may prescribe.

(b) SUBMISSION OF REPORT.—Not later than December 1, 1984, the Secretary of the Treasury or his delegate shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report of the results of the study and analysis conducted under subsection (a).

By Mr. PERCY (by request):

S. 2321. A bill to further amend the Peace Corps Act; to the Committee on Foreign Relations.

PEACE CORPS ACT AMENDMENTS

Mr. PERCY. Mr. President, by request, I introduce for appropriate reference a bill to further amend the Peace Corps Act.

This legislation has been requested by the Peace Corps and I am introducing the proposed legislation in order that there may be a specific bill to which Members of the Senate and the

public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with a section-by-section analysis of the amendments and the letter from the Director of the Peace Corps to the President of the Senate dated February 16, 1984.

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

S. 2321

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(b) of the Peace Corps Act (hereinafter "the Act") is amended by amending the first sentence thereof to read as follows:

"There are authorized to be appropriated to carry out the purposes of this Act not to exceed $105,800,000 for the fiscal year 1985 and such sums as may be necessary for the fiscal year 1986.".

SEC. 2. Section 7(a)(2) of the Act is amended by amending that part of the first sentence thereof which precedes clause (A) to read as follows: "The President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that, with respect to United States citizens—".

SEC. 3. Section 15(a) of the Act is amended by adding, at the end thereof, the following sentence: "Technical publications produced by the Peace Corps may be sold at cost in furtherance of the purpose of this Act, and the proceeds of such sales may be credited to the currently applicable appropriation of the Peace Corps, not withstanding Subsection 3302(b) of Title 31 of the United States Code.".

PEACE CORPS,
OFFICE OF THE DIRECTOR,
Washington, D.C., February 16, 1984.

Hon. GEORGE BUSH,
President, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I am pleased to transmit to you a draft bill which will enable Peace Corps to continue its efforts on behalf of world peace and friendship for the fiscal years 1985 and 1986.

The bill will authorize the appropriation of $105,800,000 for activities under the Peace Corps Act for fiscal year 1985, and such sums as may be necessary to support activities under the Peace Corps Act in fiscal year 1986. An additional authorization request for $18,200,000 for Peace Corps programs in Central America in 1985 is being transmitted as part of the Administration's response to the report of the National Bipartisan Commission on Central America.

This bill also corrects an unintended change in Peace Corps authority to employ foreign nationals abroad made by the Foreign Service Act of 1980. Prior to the passage of that Act, the Peace Corps could employ foreign nationals for indefinite periods. Under the new provisions enacted by the Foreign Service Act, they have been subjected to the five year limit on Peace Corps employment which is applicable to U.S. citizens, and the concomitant "out as long as in" rule. Foreign national employees provide necessary administrative support abroad. The Peace Corps posts will lose many of these valuable employees in the next few years unless they are exempted from these two rules.

Peace Corps technical publications contain much information which is valuable to private voluntary organizations and host-country ministries. The bill proposes an amendment to the Peace Corps Act which would facilitate dissemination of this valuable information by authorizing the Peace Corps to sell its technical publications at cost, and to credit the proceeds of such sales to its current appropriations. The Peace Corps cannot afford to provide large numbers of its publication gratis, or without being able to recoup, for its own use, the proceeds of sales. Under present law, the proceeds of such sales must be remitted to the Treasury.

The Office of Management and Budget has advised that there is no objection to the submission of this legislation to the Congress and that its enactment would be in accord with the program of the President.

Sincerely,

LORET MILLER RUPPE,
Director.

PEACE CORPS ACT AMENDMENTS: SECTION-BY-SECTION ANALYSIS

Section 1 amends Section 3 of the Peace Corps Act (hereinafter the "Act") to authorize the appropriation of not to exceed $105,800,000 for activities under the Act for fiscal year 1985, and such sums as may be necessary for fiscal year 1986. An additional authorization request for $18,200,000 for Peace Corps programs in Central America in 1985 is being transmitted as part of the Administration's response to the report of the National Bipartisan Commission on Central America. The amendment also deletes obsolete material restricting the amount of fiscal year 1967 funds authorized for expenditure for research to $500,000.

Section 2 amends Section 7(a)(2) of the Act to exempt foreign national employees from the five year limit on Peace Corps employment, and from the requirement that former employees must be "out as long as in" before they are eligible for reemployment by the Peace Corps. Until passage of the Foreign Service Act in 1980, foreign national employees were not subject to these provisions of the Act, and they provided necessary administrative stability overseas. Inclusion of these employees within the coverage of these two provisions was an inadvertent result of the restructuring of the Foreign Service by the Foreign Service Act of 1980. Within the next few years the Peace Corps will lose many long term foreign national employees to the detriment of Peace Corps' overseas administrative operations unless this error is corrected.

Section 3 amends Section 15(a) of the Act to authorize the Peace Corps to sell its publications to the public at cost, and to authorize deposit of the proceeds of such sales to the Peace Corps' then-current appropriation. The Peace Corps produces a number of technical publications which are valuable to private voluntary organizations and to host-country governments and agencies. They are often requested in quantity. Peace Corps cannot afford to make multiple copies available gratis, although dissemination of the information they contain is a desirable extension of Peace Corps' mission. Efforts to have these publications produced through the Government Printing Office have proved too expensive, or unsuccessful. At present, Peace Corps lacks authority to reimburse its appropriation for the costs of publication of these materials from the proceeds of sales. Authorizing Peace Corps to sell its publications at cost and reimburse its current appropriation for such cost, would permit a broader dissemination of Peace Corps' technical publications than is now possible.

By Mr. BENTSEN (for himself and Mr. GRASSLEY):

S. 2322. A bill to amend the Internal Revenue Code of 1954 to allow individuals to compute the amount of the deduction for retirement savings on the basis of the compensation of the spouse; to the Committee on Finance.

HOMEMAKERS EQUITY ACT

● Mr. BENTSEN. Mr. President, homemakers, like the self-employed and those whose jobs do not offer a retirement plan, deserve the opportunity to provide for financial security in old age. Acknowledging this, Mr. GRASSLEY and I are introducing the Homemakers' Equity Act. This act recognizes the important economic value of our Nation's homemakers by making nonworking spouses eligible for the full $2,000 retirement investment and deduction from taxable income that workers may receive.

Under current law, wage earners may receive a tax deferral on income they deposit in an individual retirement account up to $2,000 per year. This limit is increased to $2,250 if the wage earner sets up an IRA for his or her spouse. I do not believe this situation is fair to homemakers who have not worked outside the home or who have interrupted their careers temporarily. My bill would allow the homemaker to establish an account whether or not the wage earner has one. It would permit an annual contribution of up to $2,000 each by the homemaker and the working spouse, for a maximum contribution of $4,000.

Mr. President, financial security in retirement will become increasingly difficult to achieve in the years to come. By the turn of the century, 13 percent of our population will be over 65. Older persons are living longer, retiring earlier, and becoming increasingly dependent on retirement income programs. At the same time, the declining birth rate will mean fewer workers supporting more beneficiaries in the social security system.

In 1935, there were nine workers for every aged person. In 1977, the worker-to-aged ratio was 4 to 1, and there were three workers for every social security beneficiary. By the year 2050, there will be two workers for every one beneficiary. It is easy to see that our retirement systems cannot take that kind of overload. One way to ease the burden on the system is to enable and encourage a person to pro-

vide for his or her own retirement. It was with this idea in mind that Congress enacted the Employee Retirement Income Security Act of 1974. That legislation contained provisions which allowed individuals not participating in qualified private or governmental programs to set up their own retirement plans. It is about time that homemakers were given equal treatment under ERISA. Though they do not work for wages, the Nation's homemakers do very real work with very long hours. We must recognize the economic value of their labor. My Homemaker's Equity Act will enable this important group of individuals with no current means of providing for their retirement to do so—the 30 to 50 million American homemakers rapidly approaching retirement age without any type of retirement plan.

These individuals have devoted many years of self-sacrificing unpaid work toward the welfare of the family. These homemakers often face financial crisis when confronted with an untimely death of the working spouse before retirement age, a dissolved marriage, or old age with only minimum social security benefits for their support.

I have long argued that our present tax system is biased against savings. We need to constantly be looking for ways to encourage savings which, in turn, provide a greater source of capital for the investment needed to promote economic growth. This simple and equitable IRA extension is one such option.

In every session of Congress since 1979, I have supported legislation which would allow homemakers to establish an IRA whether or not the wage earner has one. Further, the administration has recently announced its support for this legislation. With their help and yours, I believe that the Homemakers' Equity Act can be enacted expeditiously.

Mr. President, colleagues; I respectfully request your consideration of this legislation which would encourage these individuals to take independent action to establish their own retirement funds, thus providing them with the means to live their later years with the dignity and self-respect which is rightfully theirs.●

By Mr. CHAFEE (for himself and Mr. SIMPSON):

S. 2323. A bill to amend the Internal Revenue Code of 1954 to impose an excise tax on the receipt of golden parachute payments and to deny any deduction with respect to such payments; to the Committee on Finance.

GOLDEN PARACHUTE PAYMENTS

● Mr. CHAFEE. Mr. President, one of the most serious abuses of business practice is the use of golden parachutes. Therefore I am introducing today a bill which will discourage them.

A golden parachute is a special employment agreement between a company and its chief executives that guarantees those executives usually generous—sometimes wildly extravagant—severance packages if control of the company changes. According to the Wall Street Journal, some of these employment contracts can even exceed the market value of the company, or its annual earnings. Their use seems to be increasing as an element in contests over corporate control.

Most commonly, golden parachutes are designed to provide substantial financial settlements to executives of companies subject to an unfriendly takeover. In case of such a takeover, the executives bail out and open the parachute. They can receive substantial settlements in the form of cash, stock, or property, sometimes paid as a lump sum and sometimes spread over several years in installments. These are contingent, unfunded financial commitments by a company to its executives. As such, they are open to widespread abuse which should be curtailed.

The most familiar takeover is the Bendix-Marietta battle. Finding itself pursued by Bendix Corp., Martin Marietta quickly protected top executives salaries with golden parachutes. Marietta then enlisted the aid of United Technologies, which already had its top officers outfitted with golden parachutes.

United Technologies went on the offensive and made an offer to acquire Bendix. Bendix's chief executive officer, William M. Agee, in the heat of this contest, persuaded his board of directors to protect him, and the board granted him and his top executives golden parachutes worth $16 million, which included Agee's parachute of $4 million. Bendix then called on Allied Corp. to serve as their ally. Allied agreed and acquired Bendix.

This takeover left Mr. Agee without a job, but he is doing quite well. His golden parachute gives him an annual salary of $825,000 per year through 1987.

An attempt is sometimes made to justify parachutes on the ground that they give executives an incentive to defend their company against takeover. I ask why key employees should receive extra compensation to act in the best interests of their company and its owners—the shareholders? Golden parachutes can hurt shareholders who would like to sell their stock and who might welcome a change in ownership to enhance the value of their shares. Especially when secretly negotiated and approved by boards of directors, or not shown on financial statements as contingent liabilities, such arrangements are outright destructive to shareholder interests.

Currently, a stockholder's remedy against such abuse is by means of a class action for wasting corporate assets and for breach of fiduciary duty. Such lawsuits have not slowed the profusion of golden parachute agreements. This form of redress from bad business practice is costly and time consuming. Stockholders should be better protected.

The legislation I propose would not outlaw golden parachutes. But it deliberately makes them financially unattractive both to the companies and individual executives entering such agreements.

To the executive, who can be in better financial condition if he actually loses the company, my bill would make the parachute payment subject to a 90-percent excise tax. None of the parachute payment could be offset by tax preferences or deductions. To the company paying the parachute, the bill would stipulate that such payments could not be deducted as business expenses.

I ask unanimous consent that the bill be included in the RECORD at the conclusion of my remarks.

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

S. 2323

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

SECTION 1. GOLDEN PARACHUTE PAYMENTS.

(a) EXCISE TAX ON GOLDEN PARACHUTE PAYMENTS.—Subtitle D of the Internal Revenue Code of 1954 (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 46—GOLDEN PARACHUTE PAYMENTS

"Sec. 4999. Golden Parachute Payments.

"SEC. 4999. GOLDEN PARACHUTE PAYMENTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any golden parachute payment an excise tax equal to 90 percent of the amount of such payment. The tax imposed by this section shall be paid by the payee.

"(b) GOLDEN PARACHUTE PAYMENT.—For purposes of this section, the term 'golden parachute payment' means any payment received by an individual from an employer corporation or a parent or subsidiary corporation of such employer corporation—

"(1) in lump sum or installments,

"(2) in cash, stock, or other property,

"(3) pursuant to a contingent, unfunded compensation agreement,

"(4) resulting from an actual or threatened change in the operating control of such corporation,

"(5) after termination of such individual's employment by such corporation, and

"(6) Without any corresponding substantive increase in job duties, responsibilities, or title if employed by any successor corporation, or parent or subsidiary corporation of such employer or successor corporation.

"(c) PAYMENT NOT INCLUDED IN GROSS INCOME.—Golden parachute payments shall not be included in gross income of the payee.".

(b) DEDUCTIONS DISALLOWED WITH RESPECT TO GOLDEN PARACHUTE PAYMENTS.—

(1) IN GENERAL.—Part IX of subchapter B of chapter 1 of such Code (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280F. GOLDEN PARACHUTE PAYMENTS.

"(a) IN GENERAL.—No deduction shall be allowed for—

"(1) the payment of any golden parachute payment, or

"(2) any expenses paid or incurred for the production or collection of any golden parachute payment or for the management, conservation, or maintenance of property held for the production of such payment.

"(b) GOLDEN PARACHUTE PAYMENT.—The term 'golden parachute payment' has the meaning given such term by section 4499 (b).".

(2) CLERICAL AMENDMENT.—The table of sections for such part is amended by adding at the end thereof the following new item:

"Sec. 280F. Golden parachute payments.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after December 31, 1983.●

By Mr. PACKWOOD (for himself, Mr. HOLLINGS, Mr. WEICKER, Mr. KENNEDY, Mrs. HAWKINS, Mr. CRANSTON, Mr. LAUTENBERG, Mr. HART, Mr. HUMPHREY, Mr. CHILES, Mr. INOUYE, Mr. TSONGAS, Mr. PELL, Mr. RIEGLE, and Mr. ROTH):

S. 2324. A bill to amend the Coastal Zone Management Act of 1972 regarding activities directly affecting the coastal zone; to the Committee on Commerce, Science, and Transportation.

COASTAL ZONE MANAGEMENT ACT AMENDMENTS

● Mr. PACKWOOD. Mr. President, today my colleagues and I are introducing a bill amending the Coastal Zone Management Act of 1972 (CZMA) to clarify the consistency provision of that act—section 307(c)(1).

The Coastal Zone Management Act of 1972—Public Law 92-583—provides grants to States to develop and administer programs for managing resources in their coastal zones. Coastal zone management was envisioned by the Congress as a cooperative partnership between States and the Federal Government, with States voluntarily working toward recognized national goals. In this manner, a rational and balanced approach to both conservation and development of coastal resources could be assured.

States whose program received Federal approval were also assured that Federal activities directly affecting the coastal zone would, to the maximum extent practicable, be consistent with that State's coastal management plan. It is this consistency provision that provides States the opportunity to plan for and respond to Federal activities that affect their coastal zone. This procedure also prevents Federal agencies from committing public resources to activities which might be found to be inconsistent.

This legislation, which is based on Oregon statute, restates the intent of Congress regarding the consistency provision by providing that Federal activities directly affecting States' coastal zones are to be conducted in a manner consistent with those States' federally approved coastal management plans.

This legislation is needed because the Supreme Court in its recent 5-to-4 decision in Secretary of the Interior against California ruled that some Federal activities directly affecting a State's coastal zone need not meet the consistency requirement provided by the Congress.

In my view, this decision violates the intent of Congress and must be rectified immediately. The exclusion of States from the initial stages of oil and gas development off their coasts is not only unwise but is not supported by legislative history. In the 94th Congress—1976—the Commerce Committee amended section 307 to insert the term "leases" wherever the phrase "licenses or permits" appeared and stated in the Committee report:

> In practical terms, this means that the Secretary of the Interior would need to seek the certification of consistency from adjacent States[s] . . . before entering into a binding lease agreement with private oil companies.

Since this language was, in the view of the Supreme Court, not sufficient to indicate the intent of Congress, an amendment to the statute is required.

The Court's decision abrogates the Federal-State partnership regarding coastal resources and violates the management scheme envisioned by the CZMA. This decision also impacts other Federal activities of far-reaching and lasting consequence, including ocean dumping activities and deep seabed mining. Indeed, plans for leasing of ocean mining tracks in the Pacific Northwest are already underway at the Department of the Interior.

I am also aware, however, that some fisheries interests are concerned that this bill may have an impact on the Magnuson Fisheries Conservation Management Act (MFCMA). The regional concept of fisheries management embodied in the MFCMA is an integral part of that act. Whether State review of fisheries management plans undermines the integrity of the regional management concept will be closely examined.

Mr. President, the legislation being introduced today does not grant States new authority, rather it simply restates these rights as provided by law in 1972. This legislation will restore the carefully balanced Federal-State partnership provided by the CZMA, and reaffirm the States' right to influence Federal activities directly affecting their coastal zone.

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

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

S. 2324

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 307(c)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(1)) is amended to read as follows:

"(c)(1)(A) Each Federal agency conducting or supporting an activity (whether within, or landward or seaward of, the coastal zone) that directly affects the coastal zone shall conduct or support that activity in a manner which is fully consistent with approved State management programs, unless the Federal activity is—

"(i) undertaken to counter the immediate effects of a declared national emergency;

"(ii) necessary for reasons of national security; or

"(iii) required by any provision of a Federal law which prevents consistency with any provision of an approved State coastal zone management program.

Any Federal activity which is not required to be fully consistent pursuant to clauses (i), (ii), or (iii) of this subparagraph must be consistent, to the maximum extent possible, with approved State coastal zone management programs.

"(B) For purposes of subparagraph (A) of this paragraph, a Federal agency activity shall be treated as one that 'directly affects the coastal zone' if the conduct or support of the activity either—

"(i) produces identifiable physical, biological, social, or economic consequences in the coastal zone; or

"(ii) initiates a chain of events likely to result in any such consequences.".●

● Mr. HOLLINGS. Mr. President, I speak as the original author of the Coastal Zone Management Act and most of its amendments through the years. And I also speak today as a principal cosponsor of a bill that is regrettably made necessary by the 5 to 4 decision of the Supreme Court, announced on January 11 of this year in Secretary of the Interior against California. This decision is one which studiously ignores the obvious meaning and intent of the Coastal Zone Management Act and the wealth of legislative history surrounding it. The Court's 5 to 4 split bears out this point of view.

Section 307(c)(1) of the Federal consistency provision in the CZMA states that Federal activities "directly affecting" the coastal zone have to be consistent, "to the maximum extent practicable" with approved State coastal zone programs. The intent of the Coastal Zone Management Act as a whole and the language of the provision itself, as well as the lengthy and repeated legislative history, make very clear what is meant. There is no trick of English language here, no hidden meaning. This provision focuses on the results of the Federal activity in question, and the probable impact that this will have on the State's coastal zone. It is not—as the majority Justices have in error perceived—focused

on the mere location of that Federal activity.

With the pen strokes of the majority opinion, suddenly we are being told that a Federal-State relationship founded over 10 years ago in this legislation is not at all what the Congress and the States believed it to be. And in the place of this established partnership we now have a simple-minded description for which there is no basis in legislative history or legislative context. What the Court has done is freed the Department of Interior of its duty to review offshore oil and gas leasing plans for consistency with the CZM plans of adjacent States, while this duty is exactly what Congress intended to impose in this provision of law.

In reading the majority opinion I began to wonder if the traditional rules of statutory construction had been abandoned by our top jurists. However, the soundly reasoned dissent by Justice Stevens reassured me. The dissenters share my disbelief over the majority's analysis, with the following remarks on the two theories underlying that analysis:

> The Court's first theory is refuted by the plain language of the 1972 act, its legislative history, the basic purpose of the act and the findings of the District Court. The Court's second theory which looks at post-1972 legislative developments, is simply overwhelmed by a series of unambiguous legislative pronouncements that consistently belie the Court's interpretation of the intent of Congress.

I believe the bill we introduce today will even more clearly require offshore oil and gas leasing by the Interior Department to be consistent with approved coastal zone management programs. This amendment of the CZMA's section 307(c)(1) includes additional language to emphasize that activities landward and seaward of the coastal zone, as well as within, are covered. Further, we are more tightly defining the definition of "directly affecting." Finally, we have eliminated the troublesome phrase "consistent to the maximum extent practicable" and replaced it with the more succinct phrase "fully consistent."

The three exceptions to the consistency requirement—national security, national emergency, conflicts with Federal law—are intentionally narrow.

I am pleased with this proposed revision of the Federal consistency language, for I believe it will eliminate any perceived ambiguities once and for all. This bill is, however, only the starting point of the debate. It will, I believe, be both necessary and desirable to receive testimony on the relationship between the CZMA and the Magnuson Fishery Conservation and Management Act. The MFCMA established a unique regional system for managing U.S. fishery resources within our Nation's 200-mile zone but beyond State waters. The Magnuson Act was passed in recognition that marine fishery resources are most effectively managed throughout their migratory range, which often involves the waters adjacent to more than one coastal State. Furthermore, the Magnuson Act's regional management council system is, quite simply, a mechanism made up almost exclusively of State interests—representatives of coastal State governments and individuals nominated by Governors of those same coastal States.

Now we seem to have developed, in one part of the country in particular, a conflict between the CZMA Federal consistency requirement and the decisions of the regional management councils. It appears to me that one group of fishing interests, in fact, is using the Federal consistency requirement to defeat competing fisheries interests in a fight that has virtually nothing to do with coastal zone management and the intent of the CZMA, and everything to do with an intense conflict over the allocation of fishery resources. This matter bears serious examination and review in the context of the deliberations over the intent of Congress in the Federal consistency provision, and the new proposal put before the Congress today. In the final analysis, we want both the Magnuson Act and the CZMA to work effectively in balancing Federal and State interests.

I will in the near future offer a comprehensive statement detailing the history of the Federal consistency provision.●

● Mr. PACKWOOD. Senator CRANSTON is not present today. I am very pleased that he is joining as a cosponsor of my bill and I ask that his statement supporting the measure be inserted in the RECORD.

Mr. CRANSTON. Mr. President, I am delighted to join Senator PACKWOOD as a cosponsor of legislation to amend the Coastal Zone Management Act of 1972 and clarify the consistency provision, section 307(c)(1) of the act. Specifically the bill provides that Federal activities directly affecting coastal zones—whether within the zone itself or outside—are to be conducted in a manner consistent with States' federally approved coastal management plans.

This legislation is needed because the U.S. Supreme Court in its recent 5-to 4-decision in Secretary of the Interior against California misinterpreted—in my view—section 307(c)(1) of the Coastal Zone Management Act. The act was designed to encourage coastal State governments to develop management plans for wise and balanced use of their coastal resources. It was passed to assure that rapidly increasing demands for industrial, commercial, recreational, and conservation needs of our coastal regions would be accommodated in an orderly and farsighted manner. In return for developing federally approved management programs, States were promised through the Federal consistency provisions, section 307(c)(1), that the Federal Government would seek to the maximum extent practicable to make its own actions consistent with these State coastal plans. The U.S. Supreme Court's ruling that some Federal activities directly affecting a State's coastal zone need not meet the consistency requirement violates congressional intent.

The legislative history of the Coastal Zone Management Act clearly shows that Congress envisioned that Outer Continental Shelf (OCS) preleasing and leasing activities be reviewed for consistency with State plans. Excluding States from participating in the initial stages of the process, as the Court's decision does, is not supported by the legislative history or by the demands of effective coastal management. For example, it is during the prelease stage that decisions are made on the size and location of tracts, the timing of the sale, and the stipulations to which leases are to be subject. Each of these decisions is crucial to OCS planning decisions and the CZMA intended that States be involved in this critical stage in OCS decisionmaking. In contrast, the Court's interpretation relegates States to a defensive role of merely objecting to proposals of individual leases on a piecemeal basis, making impossible the comprehensive coastal planning envisioned by the CZMA.

Although Secretary of the Interior against California arose specifically over the application of the consistency provision to OCS lease sale 53, the Supreme Court's decision is not limited to OCS leasing. It has far reaching implications for all Federal activities that may impact coastal zones including ocean dumping and deep seabed mining, making it all the more imperative that the consistency provision as Congress intended be restored. The consistency requirement is the mechanism for avoiding litigation and promoting cooperation between affected States and the Federal Government. Indeed, it is precisely because the CZMA results in better cooperation and coordination between States and the Federal Government that it has always enjoyed strong bipartisan support.

The legislation being introduced today does not grant States new authority over Federal activities directly affecting coastal zones. Rather it restates the rights States have had since the passage of the Coastal Zone Management Act of 1972. It reaffirms that under the CZMA States have the right and opportunity to influence Federal decisions which directly affect their coasts. It does not give States any jurisdiction over Federal actions which

occur outside the coastal zone and which do not affect their coastal zones. I am aware, however, that some fisheries interests are concerned about the impact of this legislation on fishery management plans developed pursuant to the Magnuson Fishery Conservation and Management Act. I believe this is a matter worthy of review during the course of congressional hearings on consistency legislation and I stand ready to work with the fisheries industry to seek an appropriate solution to this matter. My basic goal is to undo the wrong done by the U.S. Supreme Court and restore the carefully balanced Federal-State partnership established by the Coastal Zone Management Act in section 307(c)(1).●

SUPPORT FOR SENATOR PACKWOOD'S PROPOSAL TO AMEND THE COASTAL ZONE MANAGEMENT ACT OF 1972

● Mrs. HAWKINS. Mr. President, I rise today in support of Senator PACKWOOD's proposal to amend the Coastal Zone Management Act of 1972.

This proposal is necessary to reverse the effect of the U.S. Supreme Court decision of January 11, 1984. That decision could allow the exclusion of coastal State governments from any significant role in the process of determining the scope of timing of Federal OCS exploration activities. The Court based its decision on the reasoning that Federal OCS activities "do not directly affect coastal areas." I do not agree with that conclusion. This is one of those times when the legal view of things tends to stray far from reality. The coastal States have every right to play a central role in deciding how and where OCS sales should go forward.

It has been only 3 short months since I stood on this floor and engaged in discussions with my colleague from Louisiana, Senator JOHNSTON, about the wisdom of allowing the major oil companies to carry out drilling exploration activities just 10 miles off the west coast of Florida. The Senate's November action, which created a 30-mile buffer zone for our Florida coast, temporarily put my fears to rest, but there is another sale scheduled for November 1985, and many more after that.

I am glad to report that Secretary of the Interior William Clark is doing a fine job of reforming the Department's approach to Federal OCS policy—he is to be commended. But we, who represent coastal States, cannot depend entirely upon the good will and wisdom of the Interior Department to maintain optimum relations with our State governments on OCS matters in light of the recent Supreme Court decision. No—the January 11, 1984, decision makes the CZMA practically worthless, and changes must be made to make its meaning clear.

It is my understanding that there may be some objections to this proposal from commercial fishermen in the coastal States, but I am assured by my staff that there are compromise positions that should resolve these differences. I am willing to consider all reasonable arguments relating to these objections.

I urge my colleagues to consider this proposal carefully. The assertion of States' rights does have a place in our Federal-State form of government. This is one case where the concept of States' rights badly needs to be implemented.●

● Mr. LAUTENBERG. Mr. President, I am pleased to join in sponsoring this important legislation to preserve the integrity of the coastal zone management program. This program plays an important role in enabling States like mine to protect and appropriately manage our coastal resources and environment.

Few people in my State—the most densely populated in the Nation—are far from a coast that stretches from our border with New York along the Hudson, down along the Atlantic to Cape May, across the Delaware Bay, and up the Delaware River to Trenton. This is the coast that is managed under my State's coastal zone management program. It is a coast that is a base for industry and transportation, for business, and jobs. It is a coast that is home for commercial fishing that means roughly a half billion dollars in economic activity for my State. It is home for recreational fishing that also boosts our economy and provides enjoyment to many. It is a coast that has some of the nicest beaches in the country for the recreation and relaxation of our citizens and visitors. It is a coast that, still, in many areas, is preserved in its natural beauty. And, Mr. President, we want to keep it that way.

When Congress passed the Coastal Zone Management Act, it intended to give States like mine the tools to properly manage their coastal environment. Federal money was provided to assist in the development of coastal zone management activities. Coastal zone management plans were subjected to Federal review and approval. And the act insured that if later Federal actions affected the coastal zone plan, they would, to the maximum extent practicable, have to be made consistent with those plans.

It is that last element that is the focus of the legislation we are introducing today. Notwithstanding the intent of the Congress to insure the integrity of coastal zone management activities, the Department of the Interior has not listened. It has consistently followed a practice of refusing to cooperate with the States and proposing actions which violate coastal zone management plans.

In his rush to lease outer continental shelf areas for oil and energy development, Secretary Watt refused to make an effort to reconcile his efforts with existing coastal zone management activities. In my State, he refused to heed warnings that leasing in several selected tracts at deep sea canyon heads would endanger the habitat for tilefish. The tilefish is the most important food fish for commercial fishing in New Jersey, and is found only in the warm, narrow bank of water lying along the New Jersey coast. Further, Secretary Watt refused to modify leases of other tracts off New Jersey's coast to protect the environment.

Secretary Watt took the position that leasing areas in the Outer Continental Shelf did not affect the coastal zone of New Jersey. He argued that because only leasing, and not actual exploration or production, was immediately at stake, there would be no detrimental impact on New Jersey. Following this logic, he made no effort to conform his actions to New Jersey's coastal zone management plan.

Mr. President, because leasing inevitably lends to exploration, and to production if commercially warranted, and because the Department of the Interior showed no intention to work with coastal States, New Jersey took Secretary Watt to court. California and various environmental groups took Secretary Watt to court as well.

Mr. President, we are introducing legislation today because, in these cases, the courts did not uphold the intent of Congress to encourage all Federal actions to be consistent with State coastal zone managment plans. In New Jersey's case, the district court ruled that before leasing offshore tracts, the Secretary of the Interior had to consider the effects on the coastal zone likely to result not just from leasing, but from the exploration, development, and production. However, disturbingly, the court in New Jersey went on to say that harm to the habitat of fish and other sealife, and its harm to major coastal economic activity—commercial fishing—was not the kind of impact on the coastal zone that Congress had in mind. Our legislation would make it absolutely clear that protection of fisheries is just the kind of impact that must be considered by the Federal Government.

Mr. President, the case in New Jersey was overtaken by the one involving California. That case went all the way to the U.S. Supreme Court. Last month, by a vote of 5 to 4, the Court upheld former Secretary Watt's strained reading of the Coastal Zone Management Act. The Court ruled that leasing activity alone had no effect on the coastal zone. Mr. President, as the court in New Jersey at least recognized, we cannot divorce leasing activity from exploration and production facilities that follow. It is

in the interest of sound coastal planning, which the Coastal Zone Management Act intends to promote, that the Federal Government consult with the States early on. When the Federal Government decides to lease a particular area for development, it is deciding about where onshore impacts will occur; it is deciding what will happen to our fisheries; it is deciding what will happen to our coastal environment that is so critical.

I should add one further point. This bill does not stop development of energy resources in the Outer Continental Shelf. Rather, it helps insure that such development occur without harm to our environment. As New Jersey's own coastal zone management plan states, exploration of offshore oil and gas reserves is encouraged so long as no long-term adverse impact results, and so long as the activities are conducted in accordance with the coastal zone management program. That is the issue. Will the agencies of the Federal Government act consistently with our States, coastal zone management efforts?

Mr. President, this legislation would clarify the Coastal Zone Management Act. It would force the Department of the Interior to pay heed to State efforts to responsibly and sensitively manage their coastal resources and protect their coastal environment. It would restore the integrity of the coastal zone management plans. It would permit orderly development of domestic energy resources, by removing the need for endless litigation and appeals to Congress over damaging actions by the Department of the Interior. It lays out a framework for development of domestic natural resources within a carefully structured set of guidelines that protects environmental, recreational, and other commercial values.

I urge my colleagues to support it.●

● Mr. CHILES. Mr. President, I am pleased to join in sponsoring legislation designed to clarify the intent of Congress with respect to the Coastal Zone Management Act of 1972. The purpose of this statute—to encourage States to formulate and administer coastal zone programs—has been seriously challenged by a recent Supreme Court decision. In this case, Secretary of the Interior against California, the Court ruled in a 5-to-4 decision that Outer Continental Shelf leasing is not subject to the consistency requirement of the Coastal Zone Management Act. This ruling, in my view, misconstrues the purpose of the statute and, if left unaddressed, will hinder future efforts to encourage cooperation between States and the Federal Government in managing coastal resources.

In 1972, Congress recognized the importance of setting up a process whereby the Federal Government and the coastal States could work together to effectively manage their coastal resources. By enacting the Coastal Zone Management Act, Public Law 92-583, Congress authorized Federal grant moneys to be distributed to coastal States to use to develop and later administer coastal management plans which conformed to certain guidelines. An important part of the Coastal Zone Management Act involved the consistency provisions of section 307(c)(1) which assured States that their management programs, once approved by the Federal Government, would not be adversely effected by Federal agencies conducting activities affecting States' coastal areas. The section states that:

> Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved State management programs.

The recent court decision focused on the Department of the Interior's plans to conduct a lease sale off the California coast near Santa Barbara. In 1980, the California Coastal Commission requested a consistency determination from the Department—a showing by the Interior Department that the lease sale would be "consistent" to the maximum extent practicable with the State coastal zone program. The Department's response was that the lease sale would not "directly affect" the California coastal zone. Despite two lower court rulings to the contrary, the Supreme Court narrowly ruled against the State of California, arguing that the Federal actions in question were to take place beyond the State's 3-mile territory. The Court has determined, therefore, that Federal activities in the Outer Continental Shelf can never fall within the consistency provisions of the statute because the activities are outside the outer boundaries of the coastal zone. This interpretation, of course, has implications beyond the oil and gas leasing situation. Future decisions with respect to ocean dumping activities and deep sea bed mining—decisions having tremendous impact on States' coastal areas—can possibly be made without reference to coastal State concerns.

Again, the purpose of the Coastal Zone Management Act was to prevent adverse affects on the coastal zone. It is difficult, if not impossible, to contemplate achieving this purpose without considering activities outside the zone itself. The legislation introduced today seeks to restate the intent of Congress to include States in the decisionmaking process on any and all Federal activities directly affecting the coastal zones. Effective management of coastal resources requires a working partnership between the Federal Government and coastal States. This partnership has been weakened and needs to be strengthened by the pending legislation if we are to achieve the goals set forth by the Coastal Zone Management Act.●

By Mr. D'AMATO (for himself, Mr. SPECTER, and Mr. LAUTENBERG):

S. 2325. A bill to provide financial aid to public mass transit systems for crime prevention and security; to the Committee on Banking, Housing, and Urban Affairs.

TRANSIT CRIME PREVENTION ACT OF 1984

● Mr. D'AMATO. Mr. President, today I am introducing legislation addressing the serious problem of transit crime currently plaguing our Nation's mass transit systems. This bill, the Transit Crime Prevention Act of 1984, will assist the Federal Government in protecting its huge investment in mass transportation and help assure its unwavering commitment to the transit needs of our metropolitan areas in the future.

Transit crime undermines the ability of government to provide reliable and safe systems of public transportation in our Nation's major urban centers. Government's primary duty is to protect the safety of its citizens and that duty is not met when our buses and subways are ravaged by muggers and thieves whose crimes go undetected and unpunished.

The Transit Crime Prevention Act will provide $200 million, over a 3-year period, to subway and bus systems for the purchase of crime prevention and security capital equipment. Funds will come from a portion of the Federal gas tax enacted last year. One penny of the nickel increase in the gas tax is already specifically designated for mass transit capital purchases.

Funds are to be available for crime prevention and security grants at the following levels: $25 million for fiscal year 1984; $75 million for fiscal year 1985; and $100 million for fiscal year 1986. In fiscal years 1984, 1985, and 1986, $1.25 billion, $1.1 billion, and $1.1 billion now are authorized, respectively, from the gas tax for distribution to transit systems. This legislation would raise the authorization ceilings in fiscal year 1985 and fiscal year 1986 to $1.175 billion and $1.2 billion, respectively, to provide the additional $75 million and $100 million in those years. It is important to note, however, that the Congressional Budget Office has projected that the one penny of the gas tax is expected to bring in $1.31 billion and $1.38 billion, respectively, in fiscal year 1985 and fiscal year 1986. Thus the funds are readily available to increase the authorization.

Taxpayers are paying the one penny of the nickel increase in the gas tax enacted last year for mass transit. They are entitled, therefore, to feel safe when they use the Nation's subways and buses. Moreover, the Federal

investment in mass transit is best protected when ridership levels are high. A safe transit network will encourage increased ridership.

Under this bill, transit properties would submit applications to the Federal Department of Transportation. Funds would be distributed on a discretionary basis for such items as vandal-resistant lighting, improved communications equipment, and closed-circuit TV. Hearings held by the Senate Subcommittee on Transportation appropriations on January 18, 1984, in New York City, evoked testimony from witnesses which emphasized the great need for Federal assistance in funding capital expenditures for crime prevention equipment, both for older transit systems and new systems which now must be built with crime deterrent features and effective security as design and planning considerations.

Transit crime is a serious problem confronting metropolitan areas throughout this Nation. It is not unique to New York. Most major transit systems in this Nation experience similar problems. In 1982, for example, a total of 5,600 serious felonies were reported on transit systems in Boston, Chicago, and Philadelphia, all of which are smaller in size than New York's massive 710-mile, 460-station subway system.

Our Nation's subways and buses are fertile ground for assaults, robberies, and other felonies. As more and more subway and light rail systems commence operations, the unfortunate reality of transit crime will be felt in more and more cities.

On our mass transit systems—both subways and buses, but especially subways—the widespread public perception is that government is not fulfilling its most basic obligation to protect life and property. The perception is that we have lost control of the underground transit system. Subways are perceived to be, and in many cases are, a dangerous place. This perception is heightened by the filth and graffiti found in many systems. In New York, the Metropolitan Transit Authority spends more than $17 million a year for costs associated with graffiti and other acts of vandalism.

During the first 11 months of 1983, over 14,000 serious crimes, including robberies, assaults, drugs and weapons crimes, and jewelry snatches, were reported on New York's subways and buses, most of them occurring on the subways. On average, 40 felonies a day are reported on the subways alone. The word "reported" must be emphasized, since a good percentage of transit crime is never reported. Behind all the statistics, however, are people—people who for economic and other reasons have no other choice but to take mass transit and be subjected to the threat of assault, robbery, and other invasions of their persons and property.

Some examples of serious crimes which have been committed on the New York subways during the past 2 months are frightening.

A 59-year-old postal supervisor was stabbed to death in an attempted robbery in a stairwell darkened by vandals' chronic smashing of corridor lights. Six days earlier, a 23-year-old husband and father was also killed in a subway stabbing.

A 21-year-old female college student was sexually assaulted by two men who held a razor to her throat as she rode the train.

Around Christmas, a gang of 50 to 60 youths kicked, punched, and robbed passengers on a subway train.

On the one hand, transit crime reflects the overall crime patterns above ground and is similar in other respects to nontransit crime. And as with most crime, a relatively small percentage of criminals commit a disproportionately high number of crimes. The New York Transit Authority Police several years ago identified approximately 500 persons who were thought to be responsible for up to 30 percent of all serious crime in the subway. A large part of this is due to the revolving door justice which must be rooted out of our criminal justice system.

Transit crime, however, stands apart from other types of crime in several ways. When you walk down that stairwell into the subway station, you lose much of the control you feel above ground. One is, in essence, a captive underground. At certain stations, an atmosphere of crime is created by dark corridors and graffiti-ridden walls.

Even though the number of reported crimes during the first 11 months of 1983 show a slight improvement over 1982, no one can say that we are close to winning the war against transit crime. I believe that the Federal Government must place a higher priority on fighting transit crime. It must devote more resources toward helping localities acquire the type of capital equipment with which to fight transit crime. In addition to the legislation which I am offering today, I believe that the Department of Transportation must encourage demonstration grants in the area of preventing transit crime.

An investment to fight crime is both morally sound and fiscally prudent. Transit riders have the right to feel safe on the Nation's buses and subways. In addition, the billions of dollars which Federal, State, and local governments invest in mass transit is best protected when transit crime is minimized. In 1982, the year when transit crime was the greatest in New York, ridership on the New York subways was the lowest, falling below the 1 billion mark for the first time since statistics began to be compiled in 1940.

If we do not move to make transit safe, ridership figures will continue to plummet and governmental dollars will be wasted. Improving the safety and security of the Nation's public transit systems can be a reality if we are willing to commit ourselves to achieving this goal.

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

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

S. 2325

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 "Transit Crime Prevention Act of 1984".

SEC. 2. (a) Section 21(a)(2)(B) of the Urban Mass Transportation Act of 1964 is amended (1) by striking out "and 16(b)" and inserting in lieu thereof "16(b) and 23"; and (2) by deleting "$1,100,000,000 for fiscal year 1985, and $1,100,000,000 for fiscal year 1986" and inserting in lieu thereof "$1,175,000,000 for fiscal year 1985, and $1,200,000,000 for fiscal year 1986".

(b) Section 21(a) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following:

"(6) Of the funds available for obligation under paragraph (2)(B) for fiscal years 1984, 1985, and 1986, not less than the following amounts shall be available for the purposes of section 23 of this Act: for fiscal year 1984, $25,000,000, for fiscal year 1985, $75,000,000, and for fiscal year 1986, $100,000,000. Nothing in this paragraph shall be construed as prohibiting the use of additional funds, available under this subsection, for public transit crime prevention and security.".

(c) The Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new section:

"SEC. 23. (a) From funds made available pursuant to section 21(a)(6) of this Act, the Secretary is authorized to make grants to public mass transit systems for crime prevention and security in connection with the operation of such systems. The Secretary is authorized to make such grants in such amounts, at such times, and subject to such conditions, as the Secretary shall by regulation prescribe. In selecting appropriate recipients of grants under this section, the Secretary shall consider, among other matters, the amount of crime on public mass transit systems.

"(b) The Secretary shall require each public mass transit system receiving a grant pursuant to this section to submit, on not less than an annual basis, a report with respect to the amount of crime on such system. Such report shall contain such information and data, and shall be submitted at such time and in such manner and cover such period, as the Secretary shall by regulation prescribe.".●

By Mr. D'AMATO (for himself and Mrs. HAWKINS):

S. 2326. A bill entitled the "Securities Fraud Prevention Act"; to the Committee on Banking, Housing, and Urban Affairs.

SECURITIES FRAUD PREVENTION ACT

● Mr. D'AMATO. Mr. President, I rise today to introduce the Securities

Fraud Prevention Act. This legislation authorizes the SEC to bar brokers from the securities markets if they have been barred from the commodities markets by the Commodities Futures Trading Commission (CFTC). This will prevent fraudulent and disreputable commodities brokers from continuing their illegal practices at the expense of those investing in the stock markets. Significantly, the 97th Congress gave the CFTC the power to bar from the commodities markets those barred by the SEC from the securities markets when it passed H.R. 5447. This legislation became Public Law 97-444, and is cited as title 7, United States Code, section 12a. The reciprocity I now propose is clearly justified.

The legislation I am submitting today originated at a hearing of the Securities Subcommittee I chaired in New York City during the New Year's recess. I had called the hearing to examine the SEC's program for stemming abuses in the so-called hot new issues market. A hot new issue is an oversubscribed initial public offering of common stock. In fiscal year 1983, the value of all initial public offerings was $57 billion, or 33 percent of all stock offerings.

Manipulations and illegalities are involved only in a small—less than 2 percent—but still significant, fraction of initial public offerings. When they cost elderly people their life savings, however, they assume a tragic dimension. These relatively few offerings deprive thousands of investors of hundreds of millions of dollars and reduce confidence in the stock markets generally.

At the hearing, I cited a number of prospectuses to illustrate how extremely speculative some of the hot issues are. In one case, the company's filing of 39 million shares at a penny a share disclosed that the principal shareholder and vice president, an unemployed 21-year old, intended to devote only 10 percent of his time to the company, which was organized to sell medical equipment. Another company's prospectus revealed that it had failed to file tax returns since 1971, did not know whether its officers would be able to devote sufficient time to the company, and might not be able to continue as a going concern.

Certainly it is true that investors owe it to themselves to read prospectuses before investing. It is equally true, however, that we must do all that we can to enforce and strengthen our securities laws to thwart the unscrupulous few who seek to exploit the unsophisticated investor. The elderly living on fixed incomes are particularly susceptible. We must act to protect them.

By barring from the stock markets commodities brokers already barred by the CFTC from the commodities markets, we will prevent their profiting at the expense of the innocent investor. We will help eradicate the use of numerous frauds and deceptions, including:

First. Tie-in arrangements, in which brokers force their clients to buy unattractive stocks in order to qualify for "promising" hot new issues;

Second. Refusals to execute, that is, delaying for an unconscionable period of time executions of sell orders;

Third. Persuading a client who has expressed the desire to sell his stock not to collect cash on the sale, but to reinvest the proceeds in a higher priced stock: by rolling over his paper profits from stock A to stock B to stock C, ad infinitum, the customer never sees any cash; and

Fourth. Fraudulently announcing new company ventures or products that do not, in fact, exist and never will.

Full disclosure and a "let the buyer beware" rule are not the answer to these problems. The Government can, and must, prevent criminals and others with a history of illegitimate activity from participating in the securities markets.

I am pleased that the Securities and Exchange Commission has endorsed my legislation. I am confident that we can enact it this year and improve the protection we provide the investing public. I ask unanimous consent that my bill be printed in the RECORD.

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

S. 2326

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

SEC. 101. This Act may be cited as the "Securities Fraud Prevention Act."

SEC. 102. (a) Section (3)(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)) is amended—

(1) by inserting before the semicolon at the end of subparagraph (A) the following: ", contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or futures association registered under section 17 of such Act (7 U.S.C. 21), or has been and is denied trading privileges on any such contract market";

(2) by inserting before the semicolon at the end of subparagraph (B) the following: ", or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.)"; and

(3) by inserting after "municipal securities dealer," in subparagraph (C) the following: "or while associated with an entity or person required to be registered under the Commodity Exchange Act,".

(b) Section 15(b)(4) of such Act (15 U.S.C. 78o(b)(4)) is amended—

(1) by striking out "or fiduciary" in subparagraph (B)(ii) and inserting in lieu thereof "fiduciary, or any entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.)";

(2) in subparagraph (C)—

(A) by inserting "entity or person required to be registered under the Commodity Exchange Act," after "or municipal securities dealer"; and

(B) by inserting "entity or person required to be registered under such Act," before "or insurance company"; and

(3) by inserting "the Commodity Exchange Act," after "Investment Company Act of 1940," each place it appears in subparagraphs (D) and (E).

SEC. 103. The preceding provisions of this Act shall take effect on the date of enactment of this Act.●

By Mr. BIDEN:

S. 2327. A bill to provide for real life imprisonment; to the Committee on the Judiciary.

REAL LIFE IMPRISONMENT

Mr. BIDEN. Mr. President, 2 weeks ago I voted for cloture on the death penalty bill because I did not wish to delay any further the opportunity for the full Senate to vote on this measure.

However, I voted against passage of the bill as currently drafted because of my concern about the possibility of executing an innocent person.

There have been a number of cases, so accurately noted by Senator LEVIN during the course of this debate, in the last decade and a half in which a person, who in fact was convicted of a capital offense, was later determined, as consequence of the appearance of an additional witness, or material in the file, to be innocent of the crime.

That is the reason I am against the death penalty.

I do not have any constitutional objection, although I know some, including Senator LEVIN, do. And I do not have any objections to the death penalty on moral grounds. I have stated that position for 11 years. I do not believe it is beyond the power of the State to enforce such a statute.

Consequently, I have been attempting for the last couple of years as the ranking member of the Judiciary Committee to promote an alternative, a provision that would require for capital offenses a minumum mandatory life sentence with no probation and no parole unless proof that the person did not commit the crime came to light.

The "real life" sentence provision in the crime bill we just passed 2 weeks ago does, however, create a problem in a situation where an inmate serving a life sentence commits a murder while incarcerated.

On November 9, 1983, I attended a hearing at which Norman Carlson, Director of the Federal Bureau of Prisons, testified about the murders of two correctional officers at Marion Maximum Security Prison. Additionally, in the last 10 years, there have been nearly 2,000 violent assaults on Federal correctional employees in which 7 prison guards have been killed. There have also been—and I might add,

equally important—136 inmates killed during this time by other prisoners.

Because I do not believe the death penalty is an immoral act on the part of society—because I do not have any moral objection, because I believe it is constitutionally enforceable, I believe the death penalty is justified in cases where the assaulters are aleady serving a life sentence without probation or parole and they commit a murder while in custody.

Some might argue you can easily as well err in that case; however, in a closed situation like a prison it is very doubtful. In this case, I am prepared to err on the side of imposition of the sentence where, in fact, there is no other alternative.

What does a prison official do to a person receiving life who commits a murder? Do they put him in another cell? Do they move him to another wing? What is the punishment? We do not have corporal punishment, nor should we, in the prison system. The warden does not take a ruler and slap his knuckles. There is nothing that can be done. In those cases, there is no deterrent whatsoever.

We have cases where people have testified that within 2 years, some criminals are back in the prison serving another life sentence and they commit, in some cases, more than one murder. In that case, I think there should be the death penalty.

Currently, inmates in this situation act with impunity because another life sentence means absolutely nothing to them.

I argue that my real-life sentence requirement is substantially different from what exists today. Right now, a person that gets convicted of murder, convicted of a capital offense, and we read every day where, within a matter of years, most times in 7 or 10 years, they are eligible for parole or even granted parole. Is it not outrageous, in my view, that someone like Sirhan Sirhan may be eligible to walk the streets again on parole? No wonder the American people are upset when you give them an alternative, life sentence the way the statute defines it now or the death penalty. The way life sentence is defined now, not only would they choose the death penalty, but I would choose the death penalty as an alternative to what we have now.

I believe the death penalty is justified in cases where assailants are already serving a life sentence without parole and commit another murder while in custody. Currently, inmates in this situation can act with impunity since another life sentence means absolutely nothing.

Our criminal justice personnel in correctional facilities are powerless and under a real threat in these instances, since there is no provision in the criminal code that effectively deters or punishes these prisoners from murdering again while in prison.

I believe in this circumstance, and this circumstance only, is capital punishment justified. Inmates who are convicted of a capital crime under the new sentencing guidelines—which we have already passed and hope the House will pass—and have no hope for release, must be held accountable for any further violent action. Another life sentence in this situation is meaningless and offers no punishment or deterrence.

For these reasons I am introducing a bill which will establish a minimum mandatory life sentence without probation or parole for all capital offenses for which the current penalty is death; except for those cases where an inmate already serving a mandatory sentence of life commits murder while in Federal custody. I believe in the instance where an individual commits another murder while in custody, the Government must use the ultimate sanction of death.

I ask unanimous consent that the bill be printed in the CONGRESSIONAL RECORD.

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

S. 2327

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 51 of title 18 of the United States Code is amended by adding the following new section after section 1117:

"§ 1118. Murder by Federal prisoners

"(a) Whoever, while confined in a Federal correctional institution under sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of parole.

"(b) For purposes of this section—

"(1) 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death;

"(3) 'murders' means committing first-degree murder or second-degree murder as defined by section 1111 of this title.

"(c) A person shall be subjected to the penalty of death under this section only if a hearing is held in accordance with this section.

"(d) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty under this section, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice (1) that the Government in the event of conviction will seek the sentence of death, and (2) setting forth the aggravating factor or factors which the Government will seek to prove as the basis for the death penalty. The court may permit the attorney for the Government to amend this notice for good cause shown.

"(e) HEARING BEFORE COURT OR JURY.—When the attorney for the Government has filed a notice as required under subsection (d) and the defendant is found guilty of or pleads guilty to an offense under this section, the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(1) before the jury which determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury which determined the defendant's guilt has been discharged for good cause; or

"(D) after initial position of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the Government.

A jury impaneled pursuant to paragraph (2) of this subsection shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than twelve.

"(f) PROOF OF AGGRAVATING AND MITIGATING FACTORS.—Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under this section, no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (i) or (j) or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (j), information may be presented relating to any other aggravating factor.

"Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to the appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the de-

fendant, and is not satisfied unless established by a preponderance of the information.

"(g) RETURN OF FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings indentifying any mitigating factors, and any aggravating factors set forth in subsection (j) found to exist.

"(h) IMPOSITION OF SENTENCE.—Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"(i) MITIGATING FACTORS.—In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) the defendant was less than eighteen years of age at the time of the crime;

"(2) the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge;

"(3) the defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge;

"(4) the defendant is punishable as a principal (as defined in section 2(a) of this title) in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to the charge; and

"(5) the defendant could not reasonably have foreseen that his conduct in the course of the commission of murder, or other offense resulting in death for which he was convicted, would cause, or would create a grave risk of causing, death to any person.

"(j) AGGRAVATING FACTORS.—The following aggravating factors shall be considered but are not exclusive:

"(1) the defendant committed the offense during the course of seizing, confining, inveigling, decoying, kidnaping, abducting, carrying away, holding hostage, or holding for ransom or otherwise any person;

"(2) the death or injury resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission or attempted commission of, an offense under section 751 (escape by prisoner in custody of institution or officer);

"(3) the defendant committed the offense during the course of perpetrating or attempting to perpetrate a sexual assualt on any person;

"(4) the defendant committed the offense during the course of, on account of, or as a result of any transaction concerning or distribution of any controlled substance as defined by schedules I, II, III, IV, and V of section 812 of title 21;

"(5) the defendant committed the offense while armed with, or having readily available, a firearm, as defined in section 921(a)(3) of this title;

"(6) the defendant committed the offense during the course of inciting, organizing, promoting, encouraging, participating in, carrying out, or aiding or abetting any person in inciting, participating in, or carrying on a riot as defined in section 2102 of this title;

"(7) the defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute;

"(8) the defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person;

"(9) in the commission of the offense the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense;

"(10) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

"(11) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value;

"(12) the defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value; and

"(13) the defendant committed the offense after substantial planning and premeditation to cause the death of a person.

"(k) INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION.—In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"(l) APPEAL FROM SENTENCE OF DEATH.—In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"The court shall affirm the sentence if it determines that: (1) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and (2) the information supports the special finding of the existence of any aggravating factor, or the failure to find any mitigating factors as set forth or allowed in this section. In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

"(m) IMPLEMENTATION OF A SENTENCE OF DEATH.—A person who has been sentenced to death pursuant to the provisions of this section shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"(n) USE OF STATE FACILITIES.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.".

(b) The table of contents for chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1118. Murder by Federal prisoners.".

SEC. 2. (a) Section 3566 of title 18 of the United States Code is amended to read as follows:

"§ 3566. Sentence of real life imprisonment

"A defendant who has been found guilty of—

"(1) an offense described in section 784 or section 2381 of this title;

"(2) an offense described in section 1751(c) of this title, if the offense constitutes an attempt to kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President; or

"(3) any other offense for which a sentence of death is provided, shall be sentenced in lieu thereof to life imprisonment without the possibility of parole if it is determined that imposition of a sentence of life imprisonment without the possibility of parole is justified.".

(b) Section 3567 of title 18, United States Code, is repealed.

(c) The items for sections 3566 and 3567 of chapter 227 of title 18, United States Code, are amended to read as follows:

"3566. Sentence of real life imprisonment.

"3567. Repealed.".

SEC. 3. Section 34 of title 18, United States Code, is amended by striking out "also to the death penalty or" and by inserting after "imprisonment for life" the following: "or imprisonment for life without the possibility for parole".

SEC. 4. Section 794(a) of title 18, United States Code, is amended by striking out "by death or" and by striking out the period at the end of the section and inserting in lieu thereof the following: ", or imprisonment for life without the possibility of parole.".

SEC. 5. Section 844(d) of title 18, United States Code, is amended by striking out "or to the death penalty" and by striking out the period at the end thereof and inserting in lieu thereof the following: "or to life imprisonment without the possibility of parole.".

SEC. 6. Section 844(f) of title 18, United States Code, is amended by striking out "or to the death penalty" and by striking out the period at the end thereof and inserting in lieu thereof "of life imprisonment without the possibility of parole.".

SEC. 7. Section 844(i) of title 18, United States Code, is amended by striking out "or to the death penalty" and by striking out the period at the end thereof and inserting in lieu thereof "or to life imprisonment without the possibility of parole.".

SEC. 8. The second paragraph of section 1111(b) of title 18, United States Code, is amended to read as follows: "Whoever is guilty of murder in the first degree shall be punished by life imprisonment without the possibility of parole;".

SEC. 9. Section 1116(a) of title 18, United States Code, is amended by inserting after "imprisonment for life" the following: "without the possibility of parole".

SEC. 10. Section 1201 of title 18, United States Code, is amended by inserting after "or for life" in subsection (a) the following: "and, if the death of any person results, shall be punished by life imprisonment without the possibility of parole".

SEC. 11. The last paragraph of section 1716 of title 18, United States Code, is amended by striking out "also to the death penalty or" and by striking all after "imprisonment for life" and inserting in lieu thereof the following: "without the possibility of parole.".

SEC. 12. Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) shall be punished by—

"(1) imprisonment for any term of years or for life; or

"(2) by imprisonment for any term of years, for life, or for life without the possibility of parole,

if the conduct constitutes an attempt to kill the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

SEC. 13. The second to the last paragraph of section 1992 of title 18, United States Code, is amended by striking out "also to the death penalty or" and by inserting after "imprisonment for life" the following: "without the possibility of parole".

SEC. 14. Section 2031 of title 18, United States Code, is amended by striking "death, or" and by adding at the end thereof "or for life without the possibility of parole".

SEC. 15. Section 2113(e) of title 18, United States Code, is amended by striking out "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof "or if death results shall be punished by life imprisonment without the possibility of parole".

SEC. 16. Subsections (i)(1)(B) and (n)(2)(B) of section 1472 of title 49, United States Code, are amended to read as follows:

"(B) if the death of another person results from the commission or attempted commission of the offense by imprisonment for life without the possibility of parole.".

SEC. 17. Section 351(b) of title 18, United States Code, is amended by striking out "by death or" and inserting after "for life" the following: "or life without the possibility of parole".

SEC. 18. Section 1751(b) of title 18, United States Code, is amended by striking out "by death or" and inserting after "for life" the following: "or life without the possibility of parole".

SEC. 19. Section 2381 of title 18, United States Code, is amended by striking out "suffer death" and inserting in lieu thereof "be imprisoned for life without the possibility of parole".

By Mr. BOREN (for himself, Mr. BOSCHWITZ, Mr. BAUCUS, Mr. ABDNOR, and Mr. HART):

S. 2328. A bill to provide for an improved program for wheat; to the Committee on Agriculture, Nutrition, and Forestry.

WHEAT IMPROVEMENT ACT OF 1984

● Mr. BOREN. Mr. President, today I am introducing a revised version of the 1984 wheat program. I am pleased to have Senators BOSCHWITZ, BAUCUS, ABDNOR and HART joining me in this effort.

Mr. President, I had hoped that Secretary Block's announcement over the weekend would have included modifications in the wheat program. The Secretary merely announced a change in the summer fallow rules and the extension of the signup period. Neither of these will result in the level of participation we need in the wheat program. The administration's insufficient attention to the current wheat situation compels us to once again try to make changes in the wheat program. The extension of the signup period will give us time to act.

Ending stocks for the 1983 crop are estimated at 1.4 billion bushels, about twice as high as we need. If we fail to modify the wheat program, we can expect 1984 crop-ending stocks to be somewhere between 1.8 and 2 billion bushels. If this happens, the cash price of wheat will plummet to well below $3 per bushel. Mr. President, our farmers will just not be able to survive with prices that low.

There are some in the administration who feel that the solution to our surplus problem is lower prices. They claim that the lower the price is, the more we will export. But, let's look at the facts. Of the 1981 crop, we exported 1.8 billion bushels of wheat and the average farm price was $3.65. Of the 1982 crop, 1.5 billion bushels were exported and the average farm price dropped to $3.53. Exports are dropping again for the 1984 crop and the average farm price is estimated at $3.45-$3.60 per bushel; $3.45 is probably the more realistic estimate. What we see here is that the lower the wheat price for the farmer, the less we export, contrary to what some would have us believe. The solution simply does not lie in lower prices, yet, that is the road this administration is taking us down.

Mr. President, we simply must take action. For the past 3 years, the administration ignored the problem when it still could have been corrected for a reasonable price and then, at the last minute, came in, spending billions of dollars to achieve a small reduction in supply and then forgetting all about it again until the next crisis occurs. As some have said, this policy has indeed been pennywise and billion-dollar foolish.

For the past 8 months, many of us here in Congress have tried to negotiate a revised wheat program, but the administration would not agree to a compromise. Proposal after proposal has been made, but to no avail. The House acted in November by passing H.R. 4072, but we have yet to bring a wheat bill before the Senate.

Mr. President, we have only 3 weeks left to revise the wheat program. Today, along with Senators BOSCHWITZ, BAUCUS, ABDNOR and HART, I am introducing one final proposal—the Wheat Improvement Act of 1984. This bill is virtually identical to H.R. 4072. In fact, there are only two differences. First, in our bill we left out the provision for summer fallow changes as that has now been done administratively. Second, we delay the payment of advance deficiency payments until after October 1, 1984. By doing this, we achieve cost savings in each fiscal year from the current one to 1988. When scored against the fiscal year 1984 budget resolution, our bill will save $181 million this year, and a total of $3.7 billion over the next 5 years. This legislation is both fiscally responsible and prudent. If we act now, we can avoid the necessity of spending billions later.

Because of the time element involved, we are also introducing this legislation as an amendment to H.R. 3867, the Perishable Agricultural Commodities Act, which is now pending on the Senate Calendar.

Mr. President, we must act now. Time is of the essence. The future of our wheat farmers is on the line. Many in this Chamber have called for the Senate to take action. Last fall, Senator DOLE proposed a virtually identical program. Earlier this month, 13 of our colleagues joined me in sending a letter to Senator BAKER and Senator BYRD urging that floor time be provided for any agricultural measure so we could debate wheat legislation. I ask unanimous consent that copies of these letters be placed in the RECORD at the conclusion of my remarks.

It is imperative that we take advantage of the extended signup period by acting now. I urge my colleagues to join us in this effort to correct the mismanagement of the wheat program.

I ask unanimous consent that a summary and cost estimate of this legislation be placed in the RECORD at the conclusion of my remarks.

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

SUMMARY: THE WHEAT IMPROVEMENT ACT OF 1984

A. The bill makes the following changes in the 1984 wheat program:

1. Provides for a 20 percent acreage reduction with no payment.

2. Provides for a 10 percent paid diversion program with payment at $2.70 per bushel.

3. Compensation for participation in the payment-in-kind (PIK) program would be based on 85 percent of farm program yield.

4. Target price for the 1984 crop would be $4.38.

5. Haying and grazing would be permitted on reduced acreage.

6. Farmers would have until March 30, 1984 to sign-up to participate in the 1984 wheat program.

7. Requires that advance deficiency payments be made, but not until after October 1, 1984.

B. The bill also changes the 1985 crop target price to $4.38.

CBO cost estimates [1]

Fiscal year:	*Millions*
1984	−$261
1985	−443
1986	−945
1987	−1,082
1988	−1,013
Net savings	3,774

[1] As scored against fiscal year 1984 budget resolution.

U.S. SENATE,
Washington, D.C., February 3, 1984.

Hon. HOWARD H. BAKER, Jr.,
Majority Leader, U.S. Capitol.

DEAR MR. MAJORITY LEADER: Over the past few months, there has been much talk of higher commodity prices due to the 1983 drought. This may be true for some commodities, but it most definitely is not true for wheat. Due to the late announcement of the 1983 wheat payment-in-kind program and excellent growing conditions, the 1983 program for wheat failed to reduce ending stocks enough to increase the price. Thus, for wheat, the farm price has remained devastatingly low.

The 1984 wheat program, as announced by the Department of Agriculture, will lead to low farmer participation for the simple reason that most wheat producers will not find the program financially attractive under the existing terms and conditions. Lower participation will increase carry-over stocks which will result in a lower farm price and higher program costs.

It is, therefore, imperative that the Senate act now to establish an improved 1984 wheat program. Not only would an improved wheat program reduce federal expenditures, it would also encourage participation. Increased participation would also result in a more equitable distribution of program benefits. The Congressional Budget Office estimates that enactment of H.R. 4072, for example, will save taxpayers $3.3 billion over the next five years and result in higher wheat prices for the farmer. Three billion dollars in savings would certainly make a dent in the federal deficit.

For the past six months, there has been a bipartisan effort in the Senate to consider and pass a wheat bill. We greatly appreciate your continued patience and cooperation in this effort. Wheat producers should not suffer because of any division among the other commodity groups; nor should the budget savings that could be achieved be taken lightly.

A number of House-passed agricultural bills are currently pending on the Senate calendar or before the Senate Agriculture Committee. Any of these bills could serve as an appropriate vehicle for legislation dealing with the 1984 wheat program.

We urge you to schedule adequate floor time as soon as possible for one of these agricultural measures so that the Senate can debate legislation to establish an improved 1984 wheat program.

Sincerely,

Senators David L. Boren, Max Baucus, Quentin Burdick, Lloyd Bentsen, Daniel Inouye, Patrick J. Leahy, Nancy L. Kassebaum, Rudy Boschwitz, Walter D. Huddleston, Slade Gorton, Gary Hart, James S. Abdnor, John Glenn, Larry Pressler.

U.S. SENATE,
Washington, D.C., February 3, 1984.

Hon. ROBERT BYRD,
Democratic Leader, U.S. Capitol.

DEAR MR. LEADER: Over the past few months, there has been much talk of higher commodity prices due to the 1983 drought. This may be true for some commodities, but it most definitely is not true for wheat. Due to the late announcement of the 1983 wheat payment-in-kind program and excellent growing conditions, the 1983 program for wheat failed to reduce ending stocks enough to increase the price. Thus, for wheat, the farm price has remained devastatingly low.

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For the past six months, there has been a bipartisan effort in the Senate to consider and pass a wheat bill. We greatly appreciate your continued patience and cooperation in this effort. Wheat producers should not suffer because of any division among the other commodity groups; nor should the budget savings that could be achieved be taken lightly.

A number of House-enacted agricultural bills are currently pending on the Senate calendar or before the Senate Agriculture committee. Any of these bills could serve as an appropriate vehicle for legislation dealing with the 1984 wheat program.

We urge you to work with the Majority Leader in scheduling adequate floor time as soon as possible for one of these agricultural measures so that the Senate can debate legislation to establish an improved 1984 wheat program.

Sincerely,

Senators David L. Boren, Max Baucus, Quentin Burdick, Lloyd Bensten, Daniel Inouye, Patrick J. Leahy, Nancy L. Kassebaum, Rudy Boschwitz, Walter D. Huddleston, Slade Gorton, Gary Hart, James S. Abdnor, John Glenn, Larry Pressler.●

By Mr. NICKLES:

S. 2329. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans and to remove unnecessary barriers to employer participation in those plans by modifying the rules relating to employer withdrawal liability, asset sales, and funding, and for other purposes; to the Committee on Labor and Human Resources.

MULTIEMPLOYER LEGISLATION

Mr. NICKLES. Mr. President, today, I am introducing legislation designed to destigmatize the statutory requirement of withdrawal liability that became law when Congress passed the Multiemployer Pension Plan Amendments of 1980. The Labor Subcommittee has held 3 days of hearings on problems confronting multiemployer pension plans during the past 2 years. Witnesses representing both contributing employers and organized labor have agreed that the 1980 act has acted as a deterrent that keeps new employers from agreeing during collective bargaining to contribute to these plans. Thus, even well-funded plans—and most multiemployer plans are indeed well funded—are facing a future of declining contribution bases as those employers that do cease contributing are seldom replaced by new contributing employers. These plans need to attract new contributors in order to remain healthy.

Testimony before the subcommittee has clearly shown that time is running out for many of these plans. Very little withdrawal liability is actually recovered from withdrawn employers; new employers are setting up single-employer-defined benefit or defined contribution plans rather than agreeing to contribute to a multiemployer plan thus resulting in a burdensome future liability.

Sooner or later Congress will be forced to amend the 1980 Multiemployer Pension Plan Amendments Act to take into account the harm done to the collective bargaining process and the health of these plans. At the same time, we must address once and for all the real problem confronting many of these multiemployer plans—unfunded vested liability. As long as some plan trustees act irresponsibly—by granting benefit increases far beyond what the plan assets and/or contribution levels will support, and thus increase unfunded liability, plan beneficiaries and participants will remain subject to the complicated withdrawal liability provisions that deter employer participation. Thus, the only real answer for these underfunded plans are stricter funding standards that will diminish unfunded vested liability over a short period of time.

The bill I am introducing today has had considerable input from many of the affected parties. I doubt if anyone, however, has all the answers. Hearings have been scheduled for May 15 and 17. I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

Title: Multiemployer plan—Termination Insurance Reform Act of 1984.

Section 2: Findings and Declaration of Policy.

Section 3: Special Trucking Industry Withdrawal Rule: Rewrites current special rule for trucking industry plans. Trucking employers would have withdrawal liability imposed only in circumstances similar to construction industry employers. Additional relief is granted from Withdrawal Liability for those carriers that are being liquidated under Title XI, USC—many of these cases are in court today.

Section 4: Involuntary withdrawal—this section will destigmatize all non-special rule plans (i.e. non construction, trucking, or entertainment plans) by reducing Withdrawal Liability payments to 10 percent in those instances where withdrawal is involuntary (i.e. death of a principal owner, natural disaster, loss of competitive bid-contract, etc.).

Additionally—an Involuntary Withdrawal Liability payment fund is set up in the PBGC to pay the remaining 90 percent of Withdrawal Liability of involuntarily withdrawn employers. The PBGC would assess these plans annually and pay out the 90 percent over time. Thus a true insurance system is set up to reimburse plans. This becomes essentially a risk related premium. By keeping all employers potentially on the hook for 10 percent, these employers can't take a business as usual position, they will keep pressure on the trustees to act responsibly and bring the plan assets up to liability levels.

Section 5: Makes it clear that fully funded plans cannot impose Withdrawal Liability regardless of the method of calculating UVL. Requires PBGC to issue uniform sets of actuarial procedures and assumptions so that all plans are on the same footing.

Section 6: Changes the 1980 Act so that sales of assets will be treated as sales of stock, i.e. does away with the requirement under current law that the buyer post a bond payable to the plan should he withdraw within 5 years. This provision has really had a negative impact on normal business activity in those multi industries that frequently buy and sell assets (trucking, construction, etc.).

Section 7: Requires notice be sent to each employer, if requested, concerning general condition of plan (facts, figures, plan assets, liability, etc.) so that employer can calculate his Withdrawal Liability.

Section 8: Grants PBGC greater authority than current law to grant special Withdrawal Liability rules to plans that request them.

Section 9: Requires plans to pay off 1/15 of UVL calculated annually. This is a strict funding requirement that will limit unsupported benefit increases by plans.

Section 10: Plans in reorganization would have their amortization schedules (for participants) reduced from 25 to 15 years. The 10 year schedule for those in pay states remains unchanged.

Section 11: Asset—Benefit payout ratio change. Plans with less than a 3:1 asset to benefit payout ratio would be required to change the formula for calculating their minimum contribution requirement.

Section 12: Eliminates statutory retroactive provisions of MEPPA.

Section 13: Technical amendment.

Section 14: Transitional rules.

By Mr. HATCH (for himself and Mr. DENTON):

S. 2330. A bill to amend the Internal Revenue Code of 1954 to allow the deduction for certain expenses paid or incurred by an individual in connection with the adoption of a child; to the Committee on Finance.

FAIRNESS FOR ADOPTING FAMILIES ACT OF 1984

Mr. HATCH. Mr. President, Senator DENTON joins me today in introducing the Fairness for Adopting Families Act, a bill designed to address, in a comprehensive way, the issue of tax treatment of the costs of adopting children.

In the simplest terms, this legislation is needed for two reasons. First, it recognizes that, as a Nation, we respect and wish to encourage the building of strong families through adoption. Second, it recognizes that equity of treatment in respect to the way a family is formed—whether by biology or through adoption—can only be achieved by providing assistance in defraying the costs of adopting.

I do not question the variety of tax benefits available to the couple who has a child biologically. However, in contrast, there is but one measure aimed at providing a small tax deduction for people who adopt children with special needs. There is nothing for others who adopt. This must be changed, and the premier purpose of this legislation is to do so.

Mr. President, what would this legislation do? It has three major features. First, it would provide a tax deduction for adoption expenses. Second, it would exclude from the employee's income any payments made by an employer. Third, it would treat any employer contribution to an adoption expense plan as an ordinary and necessary business expense.

Let me explain these three features in a bit more detail.

The tax deduction for adoption expenses would be available for the costs of an adoption, as long as that adoption was in accordance with State and Federal law. This deduction would be available for all adoptions meeting this condition. I recognize that there are significant differences in adoptions, depending on whether they are done within a State, whether they involve interstate placement, or whether they involve a child from a country other than the United States. Each legal adoption is socially useful and beneficial. Each adoptive family, no matter how the adoptive child came to be in that family, deserves our support. Whether that child is a healthy infant, a child with special needs or a child from another country, the adoption expenses may be deducted, as long as all Federal and State legal requirements are met.

Data provided by the National Committee for Adoption shows that the total actual costs connected with the adoption of a healthy infant today are often in excess of $10,000. Because of the voluntary spirit that is so much a part of the adoption scene, the actual fees charged are often less than the costs incurred by agencies—sometimes thousands of dollars less. The difference is made up in fund-raising drives and charitable solicitation. But not every adoption fee is subsidized. And not every adoption is of a healthy infant. The costs of cesarean delivery or premature birth can further drive up the expenses adoptive parents may have to bear.

This legislation should stimulate discussion on the various costs for adoption expenses. I encourage my colleagues on the Finance Committee to look at this proposal with an open mind. If they believe some restrictions are needed, then proposals I have heard discussed include capping the deductible possible at 80 percent of expenses or possibly limiting the deduction for a healthy infant at $5,000, and the expenses of a child with special needs at $10,000.

For those not familiar with adoptions, some of the appropriate costs which make adoptions expensive are: maternity home services, hospital and physicians' costs, attorneys' costs, and the comprehensive costs of complete adoption service incurred by an agency (including, for instance, costs such as those for advertising and outreach to tell pregnant women about their services, costs incurred to provide them with educational services, and costs for job training). However, by limiting these deductions only to those which are conducted in compliance with Federal and State laws, we are insuring that we would not be underwriting the kinds of practices that have recently come to light in my own State of Utah and other States, where people were defrauded by people attempting to act as baby brokers. The illegal adoption brings with it a price tag of $25,000 or more, most of which goes into the pockets of middlemen. Fees for arrangements would not be deductible.

We are also insuring that certain practices that are related to the resolution of infertility, including in vitro fertilization, ovum transfers and transplants, and surrogate parenting arrangements, do not qualify for favorable tax treatment under this bill. These practices are not adoption. Some of these practices are unacceptable, for medical, religious or other reasons, to many Americans. Some of these practices are, however, addressed under other portions of the tax laws. For instance, certain medical treatments aimed at treating infertility, including some of those mentioned above, may qualify for favorable tax treatment.

Two of this legislation's provisions relate to the happy development of interest by many of the Nation's employers in adoption. Thirty-seven com-

panies now provide this benefit, including some of the largest employers such as Control Data, IBM, Time, and Xerox. The actual benefits vary widely, with some providing both a cash payment to help defray expenses and others providing both a cash payment and paid leave. Many of these benefits are flat payments, such as the $1,200 provided by Deseret Mutual Benefit Association in Utah.

There are two problems that exist in regard to employer-provided benefits which we address in this bill. The first problem is that payments made to employees are taxable as income. This means that if a benefit of $1,200 is received, not all of the money can be applied to defraying expenses. Our bill would exclude from the employee's income those payments made by an employer.

The second problem is that currently companies may not treat their contributions to adoption expense plans as an ordinary and necessary business expense. This discourages many companies which would otherwise offer these benefits from providing them. Our bill would solve this problem and remove that barrier to more companies providing adoption benefits.

There are those who will say that we do not need this law at this time, that we cannot afford even the modest revenue loss that this would represent. I do not agree with them. Our families are our most important resource, and we must do everything in our power to be fair to families. The benefits to children and families of this legislation, and to our society as a whole, both in human and economic terms, far outweigh the dollar costs that some may wish to focus on.

At this time, I encourage my colleagues to join me in this effort. I ask unanimous consent that the complete text and summary of the bill be included in the RECORD.

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

S. 2330

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 "Fairness for Adopting Families Act of 1984".

SEC. 2. (a) Subsections (b) and (c) of section 222 of the Internal Revenue Code of 1954 (relating to adoption expenses) are amended to read as follows:

"(b) DENIAL OF DOUBLE BENEFIT.—

"(1) IN GENERAL.—No deduction shall be allowable under subsection (a) for any expense for which a deduction or credit is allowable under any other provision of this chapter.

"(2) GRANTS.—No deduction shall be allowed under subsection (a) for any expenses paid from any funds received under any Federal, State, or local program.

"(c) QUALIFIED ADOPTION EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified adoption expenses' means reasonable and necessary adoption fees (including agency fees), court costs, attorney fees, and other expenses which—

"(A) are directly related to the legal adoption of a child by the taxpayer but only if such adoption has been arranged—

"(i) by a State or local agency with responsibility under State or local law for child placement through adoption,

"(ii) by a non-profit, voluntary adoption agency which is authorized by State or local law to place children for adoption, or

"(iii) through a private placement, and

"(B) are not incurred in violation of State or Federal law.

"(2) ADOPTION EXPENSES NOT TO INCLUDE CERTAIN AMOUNTS.—The term 'qualified adoption expenses' shall not include any expenses in connection with—

"(A) the adoption of a child who was conceived through—

"(i) embryo transplantation,

"(ii) in vitro fertilization, or

"(iii) so-called 'surrogate parenthood', including surrogate mothers who serve voluntarily and without remuneration in jurisdictions where such practice is legal, or

"(B) travel outside the United States, unless such travel is required—

"(i) as a condition of a legal adoption by the country of the child's origin,

"(ii) to assess the health and status of the child to be adopted, or

"(iii) to escort the child to be adopted to the United States.

"(3) CHILD.—The term 'child' shall include any child determined by the State to be a child described in paragraphs (1) and (2) of section 473(c) of the Social Security Act.".

(b)(1) Part III of Subchapter B of chapter 1 of such Code (relating to items specifically excluded from gross income) is amended by redesignating section 132 as section 133 and by inserting after section 131 the following new section:

"SEC. 132. ADOPTION ASSISTANCE PROGRAMS.

"(a) IN GENERAL.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to a program described in subsection (b).

"(b) ADOPTION ASSISTANCE PROGRAM.—For purposes of this section, a program is described in this subsection if it—

"(1) is a separate written plan of an employer for the exclusive benefit of his employees to provide his employees with adoption assistance, and

"(2) meets requirements similar to the requirements of paragraphs (2), (3), (5), and (6), of section 127(b).

"(c) QUALIFIED ADOPTION EXPENSES.—For purposes of this section, the term 'qualified adoption expenses' has the meaning given such term by section 222(c).".

(2) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 132 and inserting in lieu thereof the following new items:

"Sec. 132. Adoption assistance programs.
"Sec. 133. Cross references to other Acts.".

SEC. 3. The amendments made by this Act shall apply to expenses paid or incurred for adoptions which become final after December 31, 1983.

SUMMARY OF FAIRNESS FOR ADOPTING FAMILIES ACT OF 1984

1. Provides tax deduction for adoption expenses. Allowance of a deduction costs of an adoption, in accordance with State and Federal law, including infant, special needs or foreign child adoptions. It excludes surrogate mother and invitro arrangements. It also restricts the deduction of travel outside the United States unless such travel is required as a condition of the adoption, or to assess the health and status of the child, or to escort the child to be adopted to the United States. There is no dollar limitation on the amount of the deduction.

2. Excludes from employee's income adoption expenses paid by an employer.

3. Treats employer contributions to adoption expense plan as an ordinary and necessary business expense.

4. Effective date: applies to expenses incurred or paid for adoptions which become final after December 31, 1983.

Mr. DENTON. Mr. President, I am privileged to join the distinguished Senator from Utah (Mr. HATCH) in the introduction of the Fairness for Adopting Families Act of 1984. The bill would provide badly needed tax relief to persons who form their families through adoption.

The Subcommittee on Family and Human Services, of which I am chairman, has held several hearings on adoption. Although specific tax issues do not fall within the jurisdiction of the subcommittee, many witnesses expressed the need for ending the inequitable tax treatment of adoptive parents.

As we all know, families formed through the biological birth of children are eligible for a tax deduction for the medical expenses of the pregnancy and delivery. Adoptive parents, however, cannot deduct the expenses for adoption, even though, in many cases, they have paid the medical expenses of the baby's birth and of the biological mother's prenatal care, in addition to fees for the adoption agency and the attorney. For many families, those out-of-pocket expenses, which can vary widely from locality to locality, put a substantial strain on resources.

I believe that adopting families truly deserve fair tax treatment and should not be discriminated against under our tax laws.

The bill would offer a tax deduction for all reasonable fees for an adoption that is conducted in accordance with State law. Adoption expenses can vary from as little as $500 to as much as $10,000, depending on the location, the legal situation, and medical considerations. For that reason, the bill does not include a fixed dollar amount for the deduction or impose a limit on it.

The bill would also exclude from taxable income any adoption benefits paid by employers to employees adopting children. Employers would be able to treat the benefit as an ordinary and necessary business expense. That provision would be of inestimable help to both employers and employees.

Because I am interested in encouraging support for adoption in the private

sector, I initiated a provision in the Adoption Opportunities Act reauthorization bill, S. 1003, that would direct the Secretary of Health and Human Services to educate and encourage the private sector to offer adoption benefits to adopting employees.

In a hearing on the bill, the subcommittee received written testimony from a vice president for employee benefits for a private firm, who described the development of adoption benefit plans, 37 corporations now offer adoption benefit programs to their employees. I strongly believe that, if companies were able to consider adoption benefits as an ordinary and necessary business expense, as they now are able to consider many other benefits, many more companies would provide them. Likewise, the benefit would not be considered a part of taxable income for the employee, as is currently the case.

I ask unanimous consent that a recent newspaper article that describes the current efforts of the Department of Health and Human Services to gain the support of the private sector for adoption be printed in full immediately following my statement.

We should allow the private sector to do as much as it can to support adoptive families. The Fairness for Adopting Families Act would encourage business to offer help to their employees.

Finally, the bill would repeal the current provisions for adoption expense for the adoption of special needs children. The legislation would provide more generous support for such adoptions.

Mr. President, many persons in our country are desperate to adopt children. There are older children and children with handicaps who are now in foster care but who could be adopted. There are also infants available for adoption. Young children, including children with handicaps, are also free for adoption from foreign countries. By enacting this legislation to grant tax relief to adopting families, let us help bring the thousands of waiting parents together with infants and children who are waiting for permanent, loving homes.

I urge my colleagues to join Senator HATCH and me by cosponsoring the Fairness for Adopting Families Act of 1984.

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

[From the Christian Science Monitor, Feb. 6, 1984]

CORPORATIONS HELP IN FINDING HOMES FOR HARD-TO-PLACE CHILDREN

(By Metta Winter)

They are children of mixed parental heritage, or members of a sibling group. They may be older children who have been in the foster-care system for several years. Or they may have emotional or developmental disabilities.

But these children all have one thing in common: They need a home.

Children awaiting adoption who have special needs are often the most difficult to place. In New York City alone, most of the nearly 5,000 children awaiting adoption have special needs. And the numbers of such children are on the rise.

"One Company, One Kid," a program recently established by Cornell University's Family Life Development Center, aims to help these children by encouraging businesses and corporations to find and assist employee-families to adopt special needs children.

"Often people want to adopt these children but feel they cannot afford another older child or one who may need special care. We want them to know there is a variety of support services available to them," says Janice Shindler, a "One Company, One Kid" program specialist.

One type of support becoming more common is provided by corporations themselves, in the form of fringe-benefit packages. These include maternity and paternity leave and cost reimbursements for adoptions.

Such support can make a significant difference in the number of children finding homes. IBM was one of the first corporations to expand its benefit packages to cover adoption costs. According to IBM spokesman Brian Ditzler, employees currently adopt several hundred children each year—more than 3,000 children in all, since the reimbursement beneifts were begun more than a decade ago.

There are advantages for the corporations as well. Hallmark Cards, which began adoption reimbursements four years ago, has found it an economical way for the corporation to continue its tradition of financial support to organizations and agencies serving children in need. "Making adoption reimbursements directly to employees is also seen as one way of giving choice in where our charitable contributions are made," says Hallmark spokesman Tim Crouch.

But even among those companies already providing adoption reimbursements, there can be an information gap concerning the numbers of children still available for adoption. Most companies originated their adoption reimbursement programs on the concept of infant adoption, which generally meant healthly, white infants, according to Janice Shindler. That there are comparatively few such infants available today has left some companies with the impression that there are now few adoptable children.

"This is certainly not the case," Ms. Shindler says. "There are plenty of children needing homes. We want to spread that word."

The "One Company, One Kid" program is underwritten by a grant from the United States Department of Health and Human Services. It operates through Cornell University's Family Life Development Center, which provides information training, and technical assistance to organizations and agencies in New York State concerned with strengthening families.

Recruiting will begin with corporations in the New York City area and will expand across the state, and later, the nation.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 2331. A bill to amend section 1601(d) of Public Law 96-607 to permit the Secretary of the Interior to acquire title in fee simple to McClintock House at 16 Williams Street, Waterloo, N.Y.; to the Committee on Energy and Natural Resources.

ACQUISITION OF CERTAIN LAND

● Mr. MOYNIHAN. Mr. President, I rise to introduce a bill to authorize the Secretary of the Interior to acquire the fee simple title to the McClintock house in Waterloo, N.Y. The McClintock house is part of the Women's Rights National Historical Park, which memorializes the birth of the modern women's rights movement. I am pleased to have as a cosponsor my colleague from New York, Senator D'AMATO.

It was at the McClintock house that Elizabeth Cady Stanton, Susan B. Anthony, Lucretia Mott, Mary Ann McClintock, and Martha Wright gathered to draft the "Declaration of Sentiments" later ratified at the first National Women's Rights Convention. This document, which states that equality and justice should be extended to all people without regard to sex, is considered to be one of the Nation's 50 most important documents.

Mr. President, I cosponsored the legislation to create the Women's Rights National Historical Park (Public Law 96-607). At that time, the McClintock house was owned and used by the Waterloo Baptist Church. Although the property was designated as part of the park, acquiring it then was inappropriate. This is no longer the case. The Waterloo Baptist Church has moved to a new location, and the house is for sale.

The bill that I introduce today with Senator D'AMATO is technical in nature and noncontroversial. It merely amends the authorizing language that created the park in 1980. As such, it is deserving of prompt, favorable action by the Senate. I might add that no appropriation will be necessary. The park received $500,000 in acquisition funds under the fiscal year 1984 Department of the Interior and related agencies appropriations bill (Public Law 98-146). These moneys should be sufficient to defray purchase of the McClintock house.

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

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

S. 2331

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1601(d) of Public Law 96-607 (16 U.S.C. 410 11(d)), is amended by striking out the word "through" and inserting the word "and" in lieu thereof.●

● Mr. D'AMATO. Mr. President, I rise today to join in introducing a bill with my distinguished colleague from New

York. This legislation, which is identical to legislation offered in the House by my good friend, Congressman HORTON, would authorize the Secretary of the Interior to purchase the McClintock House in Waterloo, N.Y., the site of the Women's Rights National Historic Park.

When the appropriation for the purchase of the properties previously designated as part of the park was passed last year, this site was not included among those the Secretary was authorized to purchase because it was owned and used by the Waterloo Baptist Church. The Baptist Church, however, recently moved and the potential state-church conflict is, therefore, no longer a concern. This site, where Mary Ann McClintock, Elizabeth Cady Stanton, Lucretia Mott, Martha Wright, and Susan B. Anthony met to organize the first Women's Rights Convention in 1848, was included in the authorizing legislation. Had it not been for the church-state conflict, it would surely have been included in the appropriation bill as well. Therefore, I am urging the approval of this legislation.

Additionally, I would like to point out that funds remain available for this purchase from last year's appropriation and no additional appropriation is needed to complete the purchase of lands authorized to be in the park. It is most fitting that these women, who began a process that changed our Nation for the better, be honored by the completion of this valuable park.●

By Mr. D'AMATO (for himself, Mr. BENTSEN, Mr. HOLLINGS, Mr. DOLE, Mr. COHEN, Mr. CHILES, Mr. LONG, Mr. PERCY, Mr. MOYNIHAN, Mr. LEVIN, Mr. CRANSTON, Mr. DODD, Mr. JEPSEN, Mr. SPECTER, Mr. THURMOND, Mr. INOUYE, Mr. QUAYLE, Mr. TSONGAS, Mr. HECHT, Mr. BOREN, Mr. HEFLIN, and Mr. METZENBAUM):

S.J. Res. 241. Joint resolution to authorize and request the President to issue a proclamation designating May 6 through May 13, 1984 as "Jewish Heritage Week"; to the Committee on the Judiciary.

JEWISH HERITAGE WEEK

● Mr. D'AMATO. Mr. President, as Americans, we can be proud of the diverse culture which we share. The richness of our cultural heritage results from the ideals and values brought to our shores by people of many races and religions.

Among these immigrants, members of the Jewish community contribute significantly to the spiritual and cultural growth of our Nation. These individuals, along with their descendants have brought distinction and honor to every field of endeavor including the arts, humanities, and sciences. Our Jewish citizens have fought and died to preserve and protect the freedoms which this great country stands for.

The Jewish people cherish a tradition and a culture which spans the course of many thousands of years, reaching back to the dawn of civilization.

During each spring, Jews throughout the United States and around the world observe a number of significant dates. Beginning with the observance of Passover, which commemorates their passage from bondage to freedom, along with the observance of the anniversary of the Warsaw Ghetto uprising and concluding with the celebration of Israeli Independence Day, American Jews rededicate themselves to the concepts of liberty, equality, and democracy.

In recognition of the untold contributions of Jews, who have become an integral part of the American heritage, I am introducing the following resolution requesting that the President designate May 6 through May 13, 1984, as "Jewish Heritage Week."

Mr. President I ask unanimous consent that my 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. 241

Whereas, the Congress recognizes that an understanding of the heritage of all American ethnic groups contributes to the unity of our country; and

Whereas, intergroup understanding can be further fostered through an appreciation of the culture, history, and traditions of the Jewish community and the contributions of Jews to our country and society; and

Whereas, the months of March, April, and May contain events of major significance in the Jewish calendar—Passover, the anniversary of the Warsaw Ghetto Uprising, Israeli Independence Day, Solidarity Sunday for Soviet Jewry, and Jerusalem Day: Now, therefore, be it *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President is authorized and requested to issue a proclamation designating May 6 through May 13, 1984 as "Jewish Heritage Week" and calling upon the people of the United States, State and local government agencies, and interested organizations to observe that week with appropriate ceremonies, activities, and programs.●

ADDITIONAL COSPONSORS

S. 249

At the request of Mr. PACKWOOD, the names of the Senator from Oklahoma (Mr. NICKLES), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Rhode Island (Mr. PELL), and the Senator from Alabama (Mr. HEFLIN) were added as cosponsors of S. 249, a bill entitled the "Employee Educational Assistance Extension Act".

S. 875

At the request of Mr. MATHIAS, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 875, a bill to amend title 18 of the United States Code to strengthen the laws against the counterfeiting of trademarks, and for other purposes.

S. 1262

At the request of Mr. GRASSLEY, the name of the Senator from Colorado (Mr. ARMSTRONG) was added as a cosponsor of S. 1262, a bill to amend the Internal Revenue Code of 1954 to improve Internal Revenue Service procedures concerning investigations and audits of churches, and for other purposes.

S. 1657

At the request of Mr. BURDICK, the names of the Senator from South Dakota (Mr. ABDNOR), the Senator from Georgia (Mr. NUNN), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Vermont (Mr. STAFFORD), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Massachusetts (Mr. TSONGAS), and the Senator from Alabama (Mr. HEFLIN) were added as cosponsors of S. 1657, a bill to designate the week in November which includes Thanksgiving Day as "National Family Week."

S. 1733

At the request of Mr. TRIBLE, the name of the Senator from Kansas (Mr. DOLE) was added as a cosponsor of S. 1733, a bill to amend title 18, United States Code, to make a crime the use, for fraudulent or other illegal purposes, of any computer owned or operated by the United States, certain financial institutions, and entities affecting interstate commerce.

S. 1816

At the request of Mr. THURMOND, the name of the Senator from Georgia (Mr. MATTINGLY) was added as a cosponsor of S. 1816, a bill to amend the Textile Fiber Products Identification Act, the Tariff Act of 1930, and the Wool Products Labeling Act of 1939 to improve the labeling of textile fiber and wool products.

S. 2013

At the request of Mr. BUMPERS, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2013, a bill to amend the level of funding authorized for the maternal and child health services block grant for the purpose of insuring no less than the current level of services for fiscal year 1984.

S. 2131

At the request of Mr. DECONCINI, the name of the Senator from Montana (Mr. MELCHER) was added as a cosponsor of S. 2131, a bill to provide for the temporary suspension of deportation for certain aliens who are nationals of El Salvador, and to provide for Presidential and congressional review of conditions in El Salvador and other countries.

S. 2178

At the request of Mr. BOSCHWITZ, the names of the Senator from Vermont (Mr. STAFFORD), and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 2178, a bill to amend the Federal-State Extended Unemployment Compensation Act of 1970 to provide an alternative regional trigger, and for other purposes.

S. 2182

On his own request, the Senator from Texas (Mr. BENTSEN) was withdrawn as a cosponsor of the bill (S. 2182) to harmonize, eliminate, and reduce barriers to trade in wine on a basis which assures substantially equivalent competitive opportunities for all wine moving in international trade.

On his own request, the Senator from South Dakota (Mr. ABDNOR) was withdrawn as a cosponsor of the bill S. 2182, supra.

S. 2224

At the request of Mr. MITCHELL, the names of the Senator from Rhode Island (Mr. CHAFEE), and the Senator from Minnesota (Mr. BOSCHWITZ) were added as cosponsors of S. 2224, a bill to repeal section 140 of Public Law 97-92, 95 Stat. 1200, and for other purposes.

S. 2257

At the request of Mrs. KASSEBAUM, the names of the Senator from Arkansas (Mr. PRYOR), the Senator from Nebraska (Mr. EXON), the Senator from Utah (Mr. GARN), the Senator from Michigan (Mr. LEVIN), the Senator from Florida (Mr. CHILES), and the Senator from South Dakota (Mr. ABDNOR) were added as cosponsors of S. 2257, a bill entitled the "Senior Citizens' Tax Improvement Act."

S. 2307

At the request of Mr. BOSCHWITZ, the names of the Senator from Maryland (Mr. SARBANES), and the Senator from Montana (Mr. MELCHER) were added as cosponsors of S. 2307, a bill making a supplemental appropriation to carry out title II of Public Law 480.

SENATE JOINT RESOLUTION 112

At the request of Mr. THURMOND, his name was added as a cosponsor of Senate Joint Resolution 112, joint resolution to proclaim the month of March 1984 as National Social Work Month.

At the request of Mr. INOUYE, the names of the Senator from Iowa (Mr. GRASSLEY), the Senator from South Dakota (Mr. PRESSLER), the Senator from West Virginia (Mr. BYRD), and the Senator from Oklahoma (Mr. NICKLES) were added as cosponsors of Senate Joint Resolution 112, supra.

SENATE JOINT RESOLUTION 143

At the request of Mr. THURMOND, his name was added as a cosponsor of Senate Joint Resolution 143, joint resolution to authorize and request the President to issue a proclamation designating the calendar week beginning with Sunday, June 3, 1984, as "National Garden Week."

SENATE JOINT RESOLUTION 165

At the request of Mr. MATHIAS, the name of the Senator from Wyoming (Mr. SIMPSON) was added as a cosponsor of Senate Joint Resolution 165, joint resolution to commemorate the bicentennial anniversary of the constitutional foundation for patent and copyright laws.

SENATE JOINT RESOLUTION 193

At the request of Mrs. HAWKINS, the name of the Senator from South Dakota (Mr. ABDNOR) was added as a cosponsor of Senate Joint Resolution 193, joint resolution designating March 6, 1984, as "Frozen Food Day."

SENATE JOINT RESOLUTION 210

At the request of Mr. TRIBLE, the names of the Senator from Vermont (Mr. STAFFORD), the Senator from Alaska (Mr. STEVENS), the Senator from Illinois (Mr. DIXON), the Senator from Alabama (Mr. HEFLIN), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Oklahoma (Mr. BOREN), and the Senator from Nebraska (Mr. ZORINSKY) were added as cosponsors of Senate Joint Resolution 210, joint resolution to designate the period commencing January 1, 1984, and ending December 31, 1984, as the "Year of Excellence in Education."

SENATE JOINT RESOLUTION 211

At the request of Mr. BURDICK, the names of the Senator from Georgia (Mr. MATTINGLY), the Senator from Mississippi (Mr. COCHRAN), the Senator from Indiana (Mr. LUGAR), the Senator from New York (Mr. MOYNIHAN), the Senator from Georgia (Mr. NUNN), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Massachusetts (Mr. TSONGAS), the Senator from Alaska (Mr. STEVENS), the Senator from North Dakota (Mr. ANDREWS), the Senator from Vermont (Mr. STAFFORD), the Senator from California (Mr. CRANSTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Alabama (Mr. HEFLIN), and the Senator from Utah (Mr. HATCH) were added as cosponsors of Senate Joint Resolution 211, joint resolution designating the week of November 18, 1984, through November 24, 1984, as "National Family Week."

SENATE JOINT RESOLUTION 217

At the request of Mr. HEINZ, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Massachusetts (Mr. TSONGAS), the Senator from California (Mr. CRANSTON), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Alaska (Mr. STEVENS), and the Senator from Illinois (Mr. DIXON) were added as cosponsors of Senate Joint Resolution 217, joint resolution to authorize and request the President to designate the week of May 6, 1984, through May 12, 1984, as "Senior Center Week."

SENATE JOINT RESOLUTION 220

At the request of Mr. KENNEDY, the names of the Senator from Arkansas (Mr. BUMPERS), tourthe Senator from New York (Mr. MOYNIHAN), the Senator from Georgia (Mr. NUNN), the Senator from Rhode Island (Mr. PELL), the Senator from Michigan (Mr. RIEGLE), the Senator from Mississippi (Mr. STENNIS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from South Carolina (Mr. HOLLINGS), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. TSONGAS), the Senator from New Jersey (Mr. BRADLEY), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Vermont (Mr. LEAHY), the Senator from Ohio (Mr. GLENN), the Senator from Mississippi (Mr. COCHRAN), the Senator from Wisconsin (Mr. KASTEN), the Senator from Idaho (Mr. McCLURE), the Senator from Alaska (Mr. STEVENS), the Senator from Vermont (Mr. STAFFORD), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Rhode Island (Mr. CHAFEE), the Senator from North Dakota (Mr. ANDREWS), and the Senator from Connecticut (Mr. WEICKER) were added as cosponsors of Senate Joint Resolution 220, joint resolution to designate the week of May 20, 1984, through May 26, 1984, as "National Arts with the Handicapped Week."

SENATE JOINT RESOLUTION 225

At the request of Mr. MOYNIHAN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of Senate Joint Resolution 225, joint resolution designating the month of March 1984 as "National Eye Donor Month."

SENATE JOINT RESOLUTION 239

At the request of Mr. CHILES, the name of the Senator from Kansas (Mr. DOLE) was added as a cosponsor of Senate Joint Resolution 239, designating the week of October 21 through October 27, 1984, as "Lupus Awareness Week."

SENATE CONCURRENT RESOLUTION 91

At the request of Mr. DECONCINI, the names of the Senator from California (Mr. WILSON) and the Senator from Montana (Mr. MELCHER) were added as cosponsors of Senate Concurrent Resolution 91, concurrent resolution expressing the sense of the Congress that the provisions of the Internal Revenue Code of 1954 relating to installment sales and the regulations prescribed by the Secretary of the Treasury under such provisions, or any other provisions of the Internal Revenue Code or regulations, should not be modified or amended in any

way that will alter the manner in which mortgage-backed builder bond transactions are currently taxed.

SENATE RESOLUTION 127

At the request of Mr. ANDREWS, the name of the Senator from Iowa (Mr. JEPSEN) was added as a cosponsor of Senate Resolution 127, resolution to make the Select Committee on Indian Affairs a permanent committee of the Senate.

SENATE RESOLUTION 130

At the request of Mr. GORTON, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as cosponsor of Senate Resolution 130, resolution expressing the sense of the Senate that the President should award the Presidential Medal of Freedom to Barney Clark, to be presented to his family in his memory.

SENATE RESOLUTION 139

At the request of Mr. ZORINSKY, the name of the Senator from California (Mr. WILSON) was added as a cosponsor of Senate Resolution 139, resolution disapproving the recommendation of the Study Group on Senate Practices and Procedures to abolish the Senate Committee on Veterans' Affairs.

SENATE RESOLUTION 333

At the request of Mr. BUMPERS, the names of the Senator from Georgia (Mr. NUNN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Tennessee (Mr. SASSER), and the Senator from California (Mr. CRANSTON) were added as consponsors of Senate Resolution 333, resolution to reinstate the Farmers Home Administration Economic Emergency Loan Program.

SENATE RESOLUTION 350

At the request of Mr. GORTON, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Idaho (Mr. MCCLURE), the Senator from Colorado (Mr. ARMSTRONG), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Delaware (Mr. BIDEN), and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of Senate Resolution 350, resolution congratulating American athletes for their significant accomplishments and bearing at the 1984 Winter Olympics in Sarajevo, Yugoslavia.

SENATE CONCURRENT RESOLUTION 96—CALLING FOR THE SUBMISSION OF A NEW BUDGET BY THE PRESIDENT TO REDUCE THE FEDERAL DEFICIT

Mr. CHILES (for himself, Mr. INOUYE, Mr. BYRD, Mr. EAGLETON, Mr. BAUCUS, Mr. BENTSEN, Mr. BINGAMAN, Mr. BOREN, Mr. BUMPERS, Mr. BURDICK, Mr. DIXON, Mr. EXON, Mr. FORD, Mr. JOHNSTON, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. MATSUNAGA, Mr. METZENBAUM, Mr. PELL, Mr. PROXMIRE, Mr. PRYOR, Mr. RANDOLPH, Mr. RIEGLE, Mr. STENNIS, and Mr. ZORINSKY) submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 96

Whereas the current federal budget deficits are projected to grow to unprecedented levels, exceeding $300 billion a year by 1989, under current tax and spending policies; and

Whereas the growth of the federal deficit would continue even if rapid economic growth were maintained; and

Whereas leading economic experts including the Chairman of the Federal Reserve Board, the Director of the Congressional Budget Office and the Chairman of the President's Council of Economic Advisors have testified that these deficits represent a grave threat to the health of our economy; and

Whereas delaying serious legislation to reduce the deficit until 1985 will delay any actual reduction in the deficit until 1986; and

Whereas the President has submitted a Budget proposal which is estimated by the Congressional Budget Office to produce deficits growing from $192 billion in fiscal year 1985 to $233 billion in fiscal year 1987 and $248 billion by 1989; and

Whereas the President's call for action to reduce the deficit by only a total of $100 billion over the next three years is totally inadequate to deal with the seriousness of the deficit problems, since it would yield deficits still growing to $195 billion by 1987; and

Whereas the Congressional Budget Office estimates that the net deficit reduction due to policy changes proposed in the President's budget equal only $23 billion over the next three years;

It is hereby, *Resolved by the Senate (the House of Representatives concurring)*, That;

A. No later than thirty days following enactment of this Resolution, the President shall submit a revised budget proposal to the Congress;

B. The revised budget should contain specific provisions to reduce the federal deficit by a total of at least $200 billion over the next three fiscal years below the levels most recently estimated by the Congressional Budget Office;

C. The deficit reduction proposals shall contain a balance of fair spending restraint and revenue increases;

D. Congress shall act expeditiously through regular legislative procedures to consider the President's proposals for deficit reduction and enact a package of at least $200 billion in deficit reduction.

Mr. CHILES. Mr. President, the concurrent resolution I submit today along with 27 of my Senate colleagues is straightforward. It calls upon the President to revise and resubmit the budget for fiscal year 1985. It is not an unprecedented step. Something similar was done on the last budget submitted by President Carter in 1980. The alternative balanced budget was submitted in accordance with a Republican-sponsored amendment.

The need for revisions today is far more clear. The President's budget projected a fiscal year 1985 deficit of $180 billion. That is not progress. That is not serious policy. It is an invitation to renewed recession.

Yet the President recognizes the problem, and said as much when he called upon Congress to join him in talks to develop a $100 billion downpayment on the deficit. Certainly, we need reductions. But we need more than $100 billion over 3 years. Therefore, this resolution calls upon the President to propose double that amount—$200 billion—over the next 3 years.

Within the last week, the nonpartisan Congressional Budget Office has reviewed the administration's budget proposal, and the results were breathtaking. CBO's reestimates of the budget show a $192 billion deficit in 1985, $211 billion in 1986, and $233 billion in 1987. They would grow to $248 billion in 5 years—twice the amount the President estimated. If we allow that to happen, we will be on a road to economic ruin rather than economic recovery.

If we reduce that by the $100 billion mentioned by the President we still have a deficit growing to $195 billion by 1987. We need to do better. If we can, under the President's leadership reduce the deficit by $200 billion over the next 3 years, we will bring the deficit down to 3.1 percent of the gross national product. That is still far too high a figure. But it is within the realm of economic tolerance, and certainly a clear signal to the economic forces in our society—from the biggest corporation to the smallest consumer—that America is serious about stabilizing its economic affairs, and our future is a trustworthy investment.

Mr. President, I ask unanimous consent to insert in the RECORD at this point a table comparing the deficits resulting from the President's budget, from $100 billion in deficit reductions, and from $200 billion in deficit cuts.

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

TABLE I.—DEFICIT COMPARISONS

	Fiscal year—			
	1984	1985	1986	1987
President's budget	184	180	177	181
CBO reestimate	186	192	211	233
CBO baseline	189	197	217	245
Percent GNP	5.3	5.0	5.1	5.3
A. —$100 billion option		(20)	(30)	(50)
Deficit	190	177	187	195
Percent GNP	5.3	4.4	4.3	4.2
B. —$200 billion option		(36)	(62)	(102)
Deficit	190	159	155	146
Percent GNP	5.3	4.0	3.6	3.1

[Prepared by minority staff, Senate Budget Committee from CBO estimate.]

Mr. CHILES. Mr. President, the concurrent resolution I have submitted is, in part, a product of the views of the most astute observers of our economic situation. Paul Volcker, the Chairman of the Federal Reserve Board, told a

Florida audience on January 13, that we cannot be confident of a sustained economic recovery without deficit cuts of between $50 billion and $100 billion in each of the next 3 years.

Dr. Rudolph Penner, Director of the Congressional Budget Office has expressed similar sentiments. And those views are shared in varying degrees both by David Stockman, the Director of the Office of Management and Budget, and Dr. Martin Feldstein, Chairman of the President's Council of Economic Advisers.

This concurrent resolution requesting action by the President is in no way an attempt to pass the responsibility back to the President and make it his alone. Last year, Congress went on record in the first concurrent budget resolution to make sizeable deficit reductions. But when it came time to change the laws and put those cuts into effect, many Members of Congress were unwilling to do so without the support of the President. And that support never came. In fact, this year's budget proposals from the White House would reduce the Federal deficit by just $23 billion over 3 years. And the Congressional Budget Office points out that the proposed military spending increases over the next 3 years exceed the proposed cuts in nondefense programs.

So we have much work to do—both Congress and the White House—and little time in which to do it.

This concurrent resolution says Congress is ready to help. And it says we are willing to accept the President's active involvement. It asks the President to forego the posture of a candidate and provide the leadership of a President in the serious and crucial fight to cut Federal deficits.

Mr. President, I ask unanimous consent that two tables reflecting the CBO reestimate of the President's budget and his deficit reduction program as reestimated by CBO be printed in the RECORD.

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

TABLE I-2.—THE ADMINISTRATION'S DEFICIT-REDUCTION PROGRAM AS ESTIMATED BY CBO

[By fiscal year, in billions of dollars]

	1985	1986	1987	1988	1989	Cumulative 5-yr total
CBO baseline deficit	197	217	245	272	308	1,239
Proposed changes:						
Revenues: [1]						
Taxation of health insurance premiums	−4	−6	−8	−10	−12	40
Other tax increases	−6	−10	−12	−14	−17	−59
Tax reductions	2	4	5	5	5	22
Subtotal	−8	−12	−15	−228	−24	−77
Outlays:						
National defense	10	21	23	20	11	85
Entitlements and other mandatory spending	−4	−6	−9	−12	−15	−46
Nondefense discretionary spending	−2	−5	−7	−12	−17	−44
Offsetting receipts	(*)	−1	−2	−4	−6	−13
Net interest	−1	−2	−3	−5	−10	−20
Subtotal	3	7	2	−13	−36	−38
Total policy changes	−5	−5	−13	−32	−60	−115
President's budget as estimated by CBO	192	211	233	241	248	1,124

[1] Revenue increases are shown with minus signs because they reduce the deficit; revenue decreases, which are displayed with no sign, increase the deficit.

Source: Congressional Budget Office.

TABLE I-1.—THE BUDGET OUTLOOK

	Fiscal year—					
	1984	1985	1986	1987	1988	1989
Billions of dollars:						
CBO baseline: [1]						
Revenues	663	733	795	863	945	1,016
Outlays	852	930	1,012	1,109	1,217	1,323
Deficit	189	197	217	245	272	308
Administration's program as estimated by CBO:						
Revenues	665	741	807	878	964	1,039
Outlays	851	933	1,018	1,111	1,204	1,287
Deficit	186	192	211	233	241	248
As a percent of GNP:						
CBO baseline: [1]						
Revenues	18.6	18.7	18.7	18.7	19.0	18.9
Outlays	23.9	23.8	23.8	24.0	24.4	24.6
Deficit	5.3	5.0	5.1	5.3	5.5	5.7
Administration's program as estimated by CBO:						
Revenues	18.7	19.0	19.0	19.0	19.3	19.3
Outlays	23.9	23.9	24.0	24.1	24.1	23.9
Deficit	5.2	4.9	5.0	5.1	4.8	4.6
Memorandum: Gross national product (billions of dollars)	3,563	3,910	4,251	4,612	4,987	5,379

[1] The CBO baseline figures are preliminary revisions of those appearing in Congressional Budget Office, "Baseline Budget Projections for Fiscal Year 1985–1989" (February 1984).

Source: Congressional Budget Office.

AMENDMENTS SUBMITTED

DUTY-FREE ENTRY OF CERTAIN ARTICLES

DECONCINI AMENDMENT NO. 2712

(Ordered to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to the bill (H.R. 3398) to change the tariff treatment with respect to certain articles, and for other purposes; as follows:

At the appropriate place, add the following new section:

"SEC. . (a) the Secretary of the Treasury is authorized and directed to admit free of duty any scientific and technical equipment necessary for the sub-mm telescope project and designated to be provided by the Max Planck Institute for Radioastronomy of the Federal Republic of Germany, which the Vice President for Research, University of Arizona, certifies as being required for the construction, installation, or operation of a sub-mm telescope in the State of Arizona which is the subject of a joint astronomical project undertaken by the Steward Observatory of the University of Arizona and the Max Planck Institute for Radioastronomy of the Federal Republic of Germany.

(b) the provisions of subsection (a) shall apply with respect to articles entered for consumption before November 1, 1993.

SMT TELESCOPE

● Mr. DECONCINI. Mr. President, I send an amendment to H.R. 3398 to the desk, and ask unanimous consent that it be printed in the RECORD. The amendment is very simple and it is consistent with the substance of H.R. 3398. My amendment would provide duty-free entry for items related to a joint project between the University of Arizona and the Max Planck Institute for Radioastronomy in Bonn, West Germany. The collaboration will result in a new sub-mm telescope (SMT). The amendment is a perfected version of the bill I introduced last fall, S. 1986. The SMT will be contructed in southern Arizona on a site provided by the University of Arizona. The cost of the project is to be shared by the University of Arizona and the Max Planck Institute. The West Germans will be providing the telescope mount, reflector panels, support structures, mirrors, and other necessary material. This project will further cooperation between our Nation and the Federal Republic of Germany while expanding our knowledge of the universe. I hope that my colleagues will support me in this amendment. I ask unanimous consent that a description of the project be printed in the RECORD at this point.

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

SUB-MILLIMETER TELESCOPE FACILITY

The Sub-Millimeter Telescope is a joint project of the University of Arizona, Steward Observatory, and the Max Planck Institute for Radio Astronomy in West Germany. Together the two institutions are working to construct a ten meter diameter telescope to study celestial emissions at wavelengths between the radio and the infrared regions of the spectrum. To effectively collect these feeble signals requires an unprecedentedly precise reflecting antenna located at an extremely dry site. Sub-millimeter astronomy can only be done at very high and dry sites because water vapor in the earth's atmosphere absorbs most of the incoming signals. Arizona is fortunate in having mountains within the state which are suitable observatory sites for the next generation of telescopes. Supreme among these is Mt. Graham because of its high altitude (10,700 ft.) and dry, clear skies.

The University of Arizona's Steward Observatory and Optical Sciences Center have developed new technologies in the areas of glass casting, glass grinding and polishing, and structural design using carbon-fiber-reinforced-plastic composite materials which will allow a tremendous improvement in the accuracy of the lightweight panels which form the telescope mirror. The Sub-Millime-

ter Telescope will be protected by an economical integrated enclosure which is literally built around the telescope. This innovative feature significantly reduces the facility costs by reducing the size of the enclosure and mimics the successful design of the Multiple Mirror Telescope facility which was built and is being operated jointly by the University of Arizona and by the Smithsonian Institution.

THE SUB-MILLIMETER TELESCOPE (SMT): A JOINT ASTRONOMICAL PROJECT OF THE STEWARD OBSERVATORY, UNIVERSITY OF ARIZONA, AND MAX PLANCK INSTITUTE FOR RADIOASTRONOMY (MPIfR), BONN, WEST GERMANY

The Submillimeter Telescope (SMT) is an advanced technology 10 meter diameter radio telescope to be constructed on a mountain top site outside Tucson, Arizona. Its high precision surface makes possible operation at the shortest radio wavelengths (1/3 millimeter) at which radiation from astronomical objects can still penetrate the earth's atmosphere. This wavelength range, which is still largely unexplored, appears to hold the key to understanding the interstellar medium and the process of star formation.

The SMT is being constructed jointly by the University of Arizona and the Max Planck Institute for Radio Astronomy (MPIfR) of Bonn, West Germany. MPIfR is responsible for constructing the telescope and mount; the University of Arizona for the building, site, and operation. Both will provide observing instruments and share the observing time. A portion of the Arizona observing time will be available to the U.S. astronomical community.

The telescope design incorporates many state-of-the-art technological features. The reflector and backup structure will be made of carbon fiber reinforced plastic (CFRP), also known as graphite epoxy, which has remarkable high strength and low thermal expansion coefficient. The reflector surfaces will be made of precision replicated sandwich panels formed out of aluminum core and CFRP face sheets utilizing a recent breakthrough in this technique under a University of Arizona-West German collaborative effort. These panels will be replicated from very high accuracy Pyrex molds generated at the University of Arizona's Optical Sciences Center.

The telescope building is a novel compact low cost design which might prove to be a prototype for other telescope projects of the future.

The SMT is a partial realization of the recommendations of the National Academy of Sciences "Field" Committee Report, "Astronomy and Astrophysics for the 1980's, Report of the Astronomy Survey Committee" (1982) and the National Science Foundation "Barrett" report, "Report of National Science Foundation Astronomy Advisory Committee Subcommittee on Millimeter and Submillimeter Astronomy" (1983). Both committees recommended construction of 10 meter class submillimeter radio telescopes.

The SMT provides an opportunity for U.S. astronomers to maintain and extend leadership in an area of radio astronomy which they have largely created. It involves an innovative new technology which is likely to be applicable to future far infrared and submillimeter space telescopes such as the Large Deployable Reflector (LDR) now under consideration. The SMT is an international cooperative project, and the first international observatory effort in Arizona.

MAX PLANCK INSTITUTE FOR RADIO ASTRONOMY, BONN, WEST GERMANY

The Max Planck Institute for Radio Astronomy (MPIfR) is one of approximately fifty Max Planck research institutes operated by the Max Planck Society of West Germany with funding principally from the West German Federal Government and from individual states. The MPIfR is located in Bonn. It consists of a number of radio astronomers and supporting technical staff, who have established a high level of capability for research in radio astronomy as well as for constructing, operating, and instrumenting radio telescopes.

The MPIfR constructed and operates the 100 meter Effelsberg radio telescope, the largest fully steerable radio telescope in the world. This telescope operates down to wavelengths as short as 1 centimeter.

The MPIfR is responsible for construction of a 30 meter millimeter wave radio telescope on the Pico Veleta in Spain. This telescope is being built for the Institute for Radio Astronomy at millimeter wavelengths (IRAM) a joint German and French venture. This telescope, scheduled to become operational in 1983, is the largest of its kind in the world.

Currently the MPIfR is collaborating with the University of Arizona in the construction of a 10 meter Submillimeter Telescope (SMT) to be located on a mountain top site near Tucson, Arizona. This telescope will operate at the very shortest radio wavelengths for which radiation from astronomical objects can penetrate the earth's atmosphere.●

PERISHABLE AGRICULTURAL COMMODITIES

BOREN (AND OTHERS) AMENDMENT NO. 2713

(Ordered to lie on the table.)

Mr. BOREN (for himself, Mr. BOSCHWITZ, Mr. BAUCUS, Mr. ABDNOR, and Mr. HART) submitted an amendment intended to be proposed by them to the bill (H.R. 3867) to amend the Perishable Agricultural Commodities Act, 1930, by impressing a trust on the commodities and sales proceeds of perishable agricultural commodities for the benefit of the unpaid seller, and for other purposes; as follows:

Strike out line 3 and insert in lieu thereof the following:

"TITLE I—PERISHABLE AGRICULTURE COMMODITIES

"SECTION. 101. Section 5 of the Perishable Agricultural Commodities";

On page 4, line 1, strike out "SEC. 2" and insert in lieu thereof "SEC. 102"; and

On page 4, after line 4, insert a new title as follows:

"TITLE II—WHEAT

"SEC. 201. This title may be cited as the "Wheat Improvement Act of 1984".

TARGET PRICES

SEC. 202. Section 107B(b)(1)(C) of the Agricultural Act of 1949 is amended by striking out "$4.45 per bushel for the 1984 crop, and $4.65 per bushel for the 1985 crop" and inserting in lieu thereof "and $4.38 per bushel for the 1984 and 1985 crops".

1984 WHEAT ACREAGE REDUCTION AND DIVERSION PROGRAMS

SEC. 203. Section 107B(e) of the Agricultural Act of 1949 is amended by—

(1) striking out in the first sentence of paragraph (1)(A) "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)";

(2) adding at the end of paragraph (1) the following new subparagraph:

"(C) Notwithstanding any previous announcement to the contrary, for the 1984 crop of wheat the Secretary shall provide for a combination of (i) an acreage limitation program as described under paragraph (2) and (ii) a diversion program as described under paragraph (5) under which the acreage planted to wheat for harvest on the farm would be limited to the acreage base for the farm reduced by a total of 30 per centum, consisting of a reduction of 20 per centum under the acreage limitation program and a reduction of 10 per centum under the diversion program. As a condition of eligibility for loans, purchases, and payments on the 1984 crop of wheat, the producers on a farm must comply with the terms and conditions of the combined acreage limitation program and diversion program. The Sercetary shall permit all or any part of the acreage reduced under the acreage limitation and diversion program to be devoted to hay and grazing. The closing date for signup in such programs shall not earlier than March 30, 1984."; and

(3) inserting at the end of paragraph (5) the following: "Notwithstanding the foregoing provisions of this paragraph, the Secretary shall implement a land diversion program for the 1984 crop of wheat under which the Secretary shall make crop retirement and conservation payments to any producer of the 1984 crop of wheat whose acreage planted to wheat for harvest on the farm is reduced so that it does not exceed the wheat acreage base for the farm less an amount equivalent to 10 per centum of the wheat acreage base in addition to the reduction required under paragraph (2), and the producer devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the wheat acreage base under this paragraph. Such payments shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the additional acreage diverted under this paragraph. The diversion rate shall be established by the Secretary at not less than $3 per bushel, except that the rate may be reduced up to 10 per centum if the Secretary determines that the same program objective could be achieved with the lower rate. The Secretary shall make not less than 50 per centum of any payments under this paragraph to producers of the 1984 crop as soon as practicable after a producer enters into a land diversion contract with the Secretary and in advance of any determination of performance, but in no case prior to October 1, 1984. If a producer fails to comply with a land diversion contract after obtaining an advance payment under this paragraph, the producer shall repay the advance immediately and, in accordance with regulations issued by the Secretary, pay interest on the advance. Notwithstanding any previous announcement to the contrary, in carrying out a payment-in-kind acreage diversion program for the 1984 crop of wheat in addition to the land diversion program required under this paragraph, the Secretary of Agriculture shall

make available to producers compensation in kind at a rate equal to not less than 85 per centum of the farm program yield.".

ADVANCE PAYMENTS

SEC. 204. Section 107C of the Agricultural Act of 1949 is amended by—

(1) inserting in subsection (b)(1)(B) "(except that for the 1984 crop of wheat, the Secretary shall make available)" after "may make available", and

(2) striking out in subsection (c)(4) "1983 crops of wheat," and inserting in lieu thereof "1983 and 1984 crops of wheat, and the 1983 crops of".

CONGRATULATING OLYMPIC ATHLETES

GORTON AMENDMENT NO. 2714

Mr. GORTON proposed an amendment to the concurrent resolution (S. Res. 350) congratulating American athletes for their significant accomplishments and bearing at the 1984 winter Olympics in Sarajevo, Yugoslavia; as follows:

In the preamble delete the words "Wilmington, Delaware" and insert in lieu thereof "Burlington, Massachusetts".

NOTICE OF HEARINGS

SUBCOMMITTEE ON LABOR

Mr. NICKLES. Mr. President, today I am introducing legislation amending the Multiemployer Pension Plan Amendments Act of 1980. Congressman JOHN ERLENBORN has introduced identical legislation in the House of Representatives.

These amendments are designed to destigmatize the withdrawal liability provisions in the 1980 act in the eyes of contributing employers and to address the real problem presented to the title IV insurance program, that is, that many of these plans are drastically underfunded and in need of substantial reform.

The Senate Labor Subcommittee will hold 2 days of hearings on this legislation on May 15 and 17, 1984. Persons wishing to testify should submit a written request to Chairman DON NICKLES, Subcommittee on Labor, 428 Dirksen Senate Office Building, Washington, D.C. 20510. Requests to testify should be submitted no later than March 30. If you have any questions concerning the hearing, please contact Chuck Carroll, on the subcommittee staff, at 202-224-5546.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, February 22, to hold a hearing on recommendation made by the Grace Commission regarding the Department of Agriculture.

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 Wednesday, February 22, to hold a hearing on the following nominations:

David Jordan to be Ambassador to Peru; and Harold Phillips to be on the Board of Directors of the Inter American Foundation.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BAKER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, February 22, at 2:00 p.m., to meet in closed session to consider intelligence matters.

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

SUBCOMMITTEE ON STRATEGIC AND THEATER NUCLEAR FORCES

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Strategic and Theater Nuclear Forces, of the Committee on Armed Services, be authorized to meet during the session of the Senate on Wednesday, February 22, at 2:00 p.m., to receive testimony on Soviet strategic force developments.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, February 22, to hold a markup on Committee budget requests.

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

COMMITTEE ON THE JUDICIARY

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, February 22, in order to receive testimony concerning the following nominations: James Harvie Wilkinson III, of Virginia, to be U.S. Circuit Judge for the Fourth Circuit and Pauline Newman, of Pennsylvania, to be U.S. circuit judge for the Federal circuit.

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

ADDITIONAL STATEMENTS

STATUS REPORT ON BUDGET

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate a status report on the budget for fiscal year 1984 pursuant to section 311 of the Congressional Budget Act.

Since my last report, the Congress has cleared for the President's signature the Veterans' Compensation and Program Improvements Amendments of 1984 (S. 1388).

The report follows:

STATUS OF THE FISCAL YEAR 1984 CONGRESSIONAL BUDGET, ADOPTED IN HOUSE CONCURRENT RESOLUTION 91

REFLECTING COMPLETED ACTION AS OF FEBRUARY 10, 1984

[In millions of dollars]

	Budget authority	Outlays	Revenues
Second budget resolution level	922,125	852,125	679,600
Current level	921,414	854,057	665,286
Amount remaining	711	0	0

BUDGET AUTHORITY

Any measure providing budget or entitlement authority which is not included in the current level estimate and which exceeds $711 million for fiscal year 1984, if adopted and enacted, would cause the appropriate level of budget authority of that year as set forth in H. Con. Res. 91 to be exceeded.

OUTLAYS

Any measure providing budget or entitlement authority which is not included in the current level estimate and which would result in outlays exceeding $0 million for fiscal year 1984, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in H. Con. Res. 91 to be exceeded.

REVENUES

Any measure that would result in revenue loss exceeding $0 million for fiscal year 1984, if adopted and enacted, would cause revenues to be less than the appropriate level for that year as set forth in H. Con. Res. 91.●

EXECUTIVE OF THE YEAR—WILLIAM ANDRES

● Mr. DURENBERGER. Mr. President, Corporate Report—Minnesota has named as its "Executive of the Year" William Andres, chairman of Dayton Hudson Corp. A brief look at the man and at the success of the corporation under his leadership reveals that Bill Andres is truly worthy of this honor.

Bill worked his way up from management trainee over 25 years with Dayton Hudson. By the time he was named chief executive officer in 1976, the corporation had grown into a $2 billion operation with 386 stores in 38 States. Today that $2 billion has tripled and the number of stores has surpassed 1,000 in 47 States, plus the District of Columbia and Puerto Rico. Through shrewd management that is often called the best in the industry, Dayton Hudson continued to prosper during a recession that hit many other retailers hard. In terms of revenue, it

is now the Nation's fifth largest non-food retailer. It is the second largest publicly held corporation in the upper Midwest. Last September Bill stepped down as CEO, staying on as chairman and head of the executive committee.

Bill Andres is known for his people-oriented philosophy, a man "who never forgot where he came from," as one fellow executive put it. It is a philosophy that is reflected in the corporation as a whole. Dayton Hudson continues as a consistent leader in corporate social responsibility, offering not only philanthropy but also other innovative projects for solving problems and meeting needs of the community.

The philosophy and success of William Andres and Dayton Hudson should be a model for corporate America. I ask that an article about Bill and his Executive of the Year Award, from Corporate Report—Minnesota, be printed in the RECORD.

The material follows:

[From Corporate Report, January 1984]

EXECUTIVE OF THE YEAR: WILLIAM ANDRES

(By Mary Bader Papa)

Walking through the third floor of Dayton's Minneapolis store, William A. Andres checks his watch and decides he had better call his secretary. The nearest phone is steps away, just behind an unattended cosmetics counter. He slips behind the counter and strides to the phone, picks up the receiver and begins punching buttons.

A young clerk watches him warily. She slips behind the counter and confronts the intruder: "Who are you?"

Not very loudly he answers her:

"I am the chairman of the board of Dayton Hudson Corporation."

A sure-and-I'm-the-Queen-of-England look flashes briefly across her face. It disappears and a blush fills in the few spots not already colored with makeup. The tall, narrow stranger in the pin-striped suit stops punching buttons and looks at her. "But I appreciate your asking," he says. She is speechless. As he leaves, he pauses to reassure her, "Really, I appreciate your asking."

Like most top executives in town, Bill Andres belongs to the Minneapolis Club. But it doesn't seem to have occurred to him that there's anything undignified about being behind a cosmetics counter. An inflated sense of self-importance is something Andres neglected to acquire on his way up the corporate ladder. He was too busy tending to other details, such as slowing his pace long enough to make sure that one of Dayton's approximately 90,000 employees does not feel embarrassed about having done her job right.

"People often think there's some mystery, some magic to it," Andres said recently in a speech to retailing students. But the truth is, he said, that success in the retail business "is a matter of doing a lot of little things right."

In his 25 years with Dayton Hudson, Andres has been behind many counters, and he has never ceased believing that the success of a retailing operation depends on the people who stand on either side of those counters. "He is a CEO who never forgot where he came from," says one executive who has known him for the past quarter century.

In September, Andres turned over the CEO position to his handpicked successor, Dayton Hudson president Kenneth Macke, completing a dynamic, seven-year chapter in the corporation's history. He continues as chairman and chairman of the executive committee.

Dayton Hudson had already expanded dramatically beyond its family department-store roots when Andres became CEO in September 1976—the first CEO from outside the Dayton family. Guided by the Dayton brothers, the family business by then had gone public and expanded to become close to a $2-billion diversified retailer with 386 stores in 38 states. Today, it is a more-than-$6-billion-corporation with 1,083 stores in 47 states, plus Puerto Rico and Washington, D.C.—and 68 percent of those stores were added while Andres was CEO. Despite the recession in which some retailers foundered, Dayton Hudson continued its uninterrupted 10-year history of increasing profits. It emerged from the recession stronger than ever. Earnings for the first nime months of the current fiscal year were up 25 percent. Its stock has quadrupled in value since 1976.

Behind the litany of numbers that impress investors is an impressive record of management, a management that has not only steered the corporation through the recession but also positioned it for long-range growth with a clear sense of mission and clear strategies. And, while making a profit, that management has continued the corporation's tradition of returning a share of its wealth—plus volunteer talent—to the communities in which it operates. In recognition of his solid record of professional management, the publisher and editors of Corporate Report Minnesota have selected William A. Andres as our 1984 Executive of the Year.

When Dayton Hudson went public in 1967, Sears Roebuck, the nation's largest retailer, was 40 times its size. today, Sears' retailing operations are less than four times the size of its Minneapolis-based competitor. This past year, Dayton Hudson achieved a long-sought goal when it became the fifth-largest (in revenue) non-food retailer in the nation. Last year, too, Dayton Hudson became the second-largest publicly held corporation in the upper Midwest, trailing only 3M in revenue.

"Sometimes," says Kenneth Dayton, Andres' mentor and predecessor as CEO, "we'd move so fast we wouldn't get everything right." He counted on the hard-working perfectionist Andres to set things right.

Dayton says he is sure that Andres is "the outstanding retailing executive" in the United States at this time—"In my opinion, there isn't a person who could touch him."

Andres' longtime friend Jim McClune, a former Dayton Hudson executive who is now president of Crown Center Retail Properties in Kansas City, Missouri, calls Andres "the right man at the right time in Dayton Hudson history."

Self-disciplined and organized, Andres started at the bottom of the corporation—literally. At the age of 32, he found himself hauling coats from the sub-basement to the basement at the downtown Minneapolis store. He had taken what appeared to have been a step down in order to join the Dayton organization as a management trainee. His wife, Betty, remembers how he used to come home discouraged by the sub-basement and wondering whether he had made a mistake. She advised him to sit tight.

In 1958, the Andreses and their three little boys had been living in Ohio, where he was a divisional merchandise manager for Edward Wren, a department store. Andres had interviewed that year for a position in Minneapolis with Munsingwear, and although they had decided he was too young for the job, they had been so impressed with him that they had sent his resume to Dayton's. So while visiting family in Iowa, Andres drove to Minneapolis to see Kenneth Dayton. There was no opening on Andres' level, but Dayton told him that if he took a trainee's job, he'd be paid a general merchandise manager's salary. "He was smart enough to know that if we were willing to pay his general merchandise manager's salary, we wouldn't keep him as a trainee long," says Dayton.

Kay Sexton, now a vice president for Dayton Hudson's B. Dalton Booksellers chain, was one of Andres' first supervisors in the basement budget store. "At Christmas time, he ran the robe outpost," she remembers, "and—I might add—very efficiently." At one point, Kenneth Dayton asked Sexton how good this new man was. "I told him," says Sexton, "he had the ability to run the entire basement."

Andres never had that particular opportunity. Instead he moved rapidly up the organization, becoming vice president of the home-furnishing division in 1968, then general operations manager and senior vice president of the department stores. From 1971 to 1974, he was executive vice president of all the corporation's retail operations. He became president and chief operating officer of the corporation in 1974 while Kenneth Dayton was CEO. Then in 1976, Andres was selected to be the first non-family CEO in Dayton Hudson history, an important transition that had long been planned by the Dayton brothers. Andres became chairman and CEO the next year.

Like the Daytons, Andres was born into a retailing family. His parents ran a general store in Fayette, a northeastern Iowa town that had a population of 1,000 in those days. He was an only child. "That's why I'm so agreeable, I think," he says.

On Saturday nights it was his job to candle the eggs that farmers had brought for trade. Later, in the evening, he would go to a nearby tavern and round up the farmers to collect their merchandise, so the store could close at midnight.

Business was never booming. In fact, Andres' parents had to sell their house and move into the back of the store, where they stayed for most of Andres' childhood. The future chairman of the board had his first lessons in retailing there.

"The retail business in smaller towns were caught in an unfavorable trend [the Great Depression]," he recalls. "I guess what you learn from that is that it's very important to have the right business strategy. If you do, life can be much easier for you than if you have the wrong one. No matter how well you manage, sometimes it's pretty hard to overcome being in the wrong place at the wrong time."

In those days a kid needed ingenuity and luck to get ahead. Andres had both. He also had a skill—he was an amateur magician. While still in high school, he and a friend earned money going from one small Iowa town to another, staging magic performances. They rented the stage, passed out handbills, and swept the floor when it was over. Later, magic also helped him get a college education. During his high school years he had a job traveling from town to town

with recruiters from Upper Iowa University, a small school in Fayette. After young Bill entertained high school assemblies, the recruiters gave their pitch for the college. In exchange, Andres received his college tuition.

World War II interrupted his education. The Army gave him his first trip away from home. He arrived in Germany on V-E Day.

While home on leave, he met Betty on a blind date. He resorted to magic again, pulling a half dollar out from behind her ear. "Wow," she thought, "with a guy like this, I'll never go broke." After they were married, Betty taught fourth grade until Andres finished college on the GI Bill and completed a masters degree in retailing at the University of Pittsburgh.

In the analytical style for which he is known, Andres weighed his options before choosing a career. He considered dentistry, but he ruled that out after failing chemistry. He settled on retailing after reading a series of magazine articles.

Department stores and the entire retailing industry have changed drastically during Andres' career. The corporation he joined in 1958 bore little resemblance to the corporation he leads today. Before Andres joined the company, the course for change had already been set by the Daytons, who were adept at staying ahead of changing consumer habits. When demographics showed a population shift to the suburbs, the Daytons bet on shoppers' desire to shop close to home; they built Southdale, the world's first fully enclosed, two-level shopping center—beginning a retailing revolution that is taken for granted today. When customers started trading department-store ambience for discount-store bargains, the Daytons started Target. And when the well-educated baby-boom generation started coming of age, the Daytons started a bookstore chain.

Under Andres' leadership, the changes continued. Generally, the more recent changes have put the corporation in a better position to benefit from two major trends: the rapid population growth in the South and West, and the increasing price-consciousness of consumers.

Perhaps the most significant of these changes was the 1978 merger with Mervyn's, a California-based department store chain. The merger made Dayton Hudson the second-largest department store company in the country. (In 1967, Dayton's had merged with Detroit-based Hudson's department stores to form Dayton Hudson.) Not only was Mervyn's sunbelt location a plus for the corporation, whose major investments were until then concentrated in frost-belt states with modest to bleak prospects for growth, but Mervyn's retailing strategy was proven, profitable, and growing.

In the eyes of Dayton Hudson management, Mervyn's was onto an important trend—"value orientation" is what Andres calls it. (You can get the idea by walking through Dayton's department stores these days. "Valueplus" signs are everywhere on selected racks of merchandise.) Price, of course, is a big part of what is meant by value. But the term, as used by Dayton Hudson subsidiaries, also includes quality, fashion, convenience, and other things important to customers. Each operating company decides how its particular customers are likely to define value, and each tailors its strategies accordingly. Value orientation doesn't mean that customers always buy the cheapest product available; it does mean that the customer wants to get the most for the money. Under Andres' leadership, Dayton Hudson has been adapting to this trend increasingly since the mid-1970s recession.

The importance of Mervyn's to the corporation can be seen in one number: Mervyn's now provides one-third of the corporation's operating profit. It is mainly because of Mervyn's that Dayton Hudson now earns more of its revenue in California than in any other state

And Mervyn's continues to expand, with the goal of becoming a national chain. There were 69 Mervyn's stores in 1980; today there are 109. A month ago, Dayton Hudson announced its plans to open 126 new Mervyn's stores during the next five years.

What Dayton Hudson's pleased stockholders might not realize about the addition of Mervyn's to the corporation's portfolio is that it almost didn't happen. Satisfied that the important merger was all set, Andres was preparing to fly to New York to accept an award when the call came from Mervyn's that the deal was off. Andres quickly sent a stand-in to New York, while he flew to California to salvage what was probably the biggest deal of his career. "That," he says, "was a nervous one."

A second major growth area of the corporation under Andres has been the Target division. It's now the largest division of the corporation (by revenue), and, like Mervyn's, it accounts for one-third of the corporation's operating profits. A chain of discount stores where the value orientation is indisputably on price, Target went from 137 stores in 1980 to 205 stores at the end of 1983.

An important part of Target's expansion, too, was its entry into the growing western and southwestern markets. At the end of 1977, the corporation had 103 stores in the states of California, Arizona, and Texas combined. By the end of 1983, there were 356 stores in those states—almost a third of all Dayton Hudson's stores. (With 61 stores, Minnesota is now only a distant third behind California, with 205, and Texas, with 111.)

As important as the acquisitions during Andres' tenure as CEO was his move to sell some of the corporation's assets. The largest of these divestitures was the 1978 sale of nine regional shopping centers. It was a strategic decision to get out of the real-estate business—a tough decision, but a logical one for a publicly traded retailing company that didn't want to tie up its growth capital.

Responding to change—"managing change," as Andres puts it—is the nature of Dayton Hudson's business. The numbers tell the story of how successful that management of change has been:

In 1977, Andres' first full year as CEO, the bulk of corporate operating profits were produced by the department-store division (58 percent) and Target (26 percent). By 1982, the change was dramatic—the department-store division had dropped to 25 percent, Target had climbed to 33 percent, and Mervyn's was at 33 pecent.

The rate of growth among the divisions was telling: While Target and Mervyn's at the end of 1982 had a compound five-year growth rate of 26 percent and 32 percent respectively, the older department-store division—the corporation's cornerstone—had a growth rate of only 2 percent.

It is numbers such as these that help determine the future of the corporation, for growth capital is allocated to Dayton Hudson subsidiaries according to their potential for producing future profits. Accordingly, 85 percent of a recently announced $2.5-billion, five-year capital investment program is earmarked for expansion of Target and Mervyn's. There's no room in this process for sentimental attachment to favorite old stores or strategies, or for ideas that worked well yesterday.

The strategic planning process at Dayton Hudson calls for management to be testing at least one and no more than two new retailing strategies at any given time. Not surprisingly, the current test strategy involves off-price retailing, the fastest-growing retailing phenomemon in the country now. Some retailing analysts predict that off-price retailing, which now accounts for only 6 percent of the apparel business, will account for 20 percent of the apparel trade by the end of the decade. Dayton Hudson's entry in this competition is a chain of four stores called "Plums—The Elegant Discounter." Located in the trend-setting and populous Los Angeles area, Plums' strategy combines off-price retailing with discounting of moderate to classy clothes. It's too early to tell where this test strategy is going, Andres says, refusing to be drawn into judgments until there are supporting numbers. There are emotional elements of the retailing business, to be sure, but they are not on *his* end of the business. It's interesting to remember, however, that B. Dalton Booksellers, a 700-store subsidiary now, began as a test strategy with one store at Southdale in 1966.

It doesn't take much imagination to realize that there will be even more change to manage for department stores like Dayton's, Hudson's, or the corporation's smaller department store groups in the Southwest, John A. Brown and Diamond's. The number of stores in this division has remained static. One new Hudson's store opened in Michigan this past year, but in Detroit the downtown store closed its doors. In the Twin Cities, however, both downtown stores have received major investments for remodeling. Value orientation doesn't automatically mean death to the traditional department store. Andres notes that some merchandise is still "ego-oriented"—new fashions, for instance—and customers want a certain amount of atmosphere when shopping for such things. These customers want more than clothes; they want a shopping experience. But the department stores are changing, too.

A particularly interesting example of this change might first be noticed by a Dayton's customer who hears recorded loon noises. It means that customer has been lured into one of Dayton's new Boundary Waters departments, veritable Northwoods boutiques in which the company's Boundary Waters private label is applied to everything from turtlenecks to chocolate ducks. This department-store strategy combines the corporation's value orientation with the trend to private label merchandise that can be bought only at the department store. Of course, there is only the loosest of regional connections to the real Boundary Waters wilderness. It is, after all, several hundred miles away from the Nicollet Mall and even farther from Edina. But the idea seems to be to sell a little wilderness mystique along with dependable quality at a price that is neither cheap nor outrageous—unless one is not accustomed to paying $50 for chocolate ducks.

Of course, if a Dayton's customer doesn't like Boundary Waters slippers shaped like mallards, no problem. All of the corpora-

tion's stores have an unlimited return policy. The policy, Andres says, is "one of the best forms of consumerism that you can have," for it puts pressure on the merchandiser, who in turn exerts pressure on the manufacturer to improve the quality of the product. The policy is also one of the best examples of the department stores' service orientation that builds customer traffic and loyalty in ways that trendy low-overhead discounters can't.

Catering to the changing department-store customer includes providing some services—even at a loss—to reinforce the relationship with the customer. "We never lose money when we have customers in the store," says Andres, explaining why Dayton's operates its ticket service for concerts and plays at a loss. Were they to cut such services, he says, the high-profit departments would suffer from reduced traffic.

Keeping up with the changing customer is an ongoing process. "We try to approach it," Andres says, "not with giant leaps forward of looking into the future, but in making sure that the business is changing day to day the way the customer is changing." Taken into account in strategic planning, for instance, are the facts that the population is aging, that a still-growing number of women are working outside the home, that couples are having fewer children, that customers have become diversified groups with a plethora of specialized interests from jogging to pasta-making. Thus, the trend toward specialized retailing has developed.

It is not a field for nostalgic traditionalists.

Charting change and anticipating what the customer demand will be—even before the customer knows—is a broadly distributed function at Dayton Hudson. "What we try to do is enlist the help of almost everyone in this subject of change, so it isn't confined to the staff area's vision of the future," says Andres. "We think that change is occuring almost everyday. You go to the sales people on the floor of Dayton's or Target, and I think that they'd have a pretty good idea of how we need to change and how we see the customer changing." The process is institutionalized in the corporation as "trend merchandising." Under this system, it is as important to know when a trend has peaked and is on its way out as it is to recognize an incoming trend.

"Our ability to adapt, to understand and capitalize on change, is very important, not only in the merchandising area but in the areas of finance, real estate, personnel, and others," Andres says. The principle of broad, decentralized responsibility for keeping up with change, first begun on the sales floor at Dayton's when buyers were given the responsibility for spotting fashion trends, now applies throughout the corporation.

"Up here," says Andres, sitting in his corner office on the 15th floor of the IDS Tower, "your job isn't so much to be knowledgeable about every trend in every department. What you do try to do though is to have *people* leading those departments who are very attuned to trends. Your job up here is to listen a lot. You try to study the figures. You try to discover an understanding about what's going on. Hunches will occur to you. Where there's an opportunity of a problem, you try to collect clues. If you listen hard enough and long enough on a subject, pretty soon an awful lot of things will come through to you, confirming or not confirming a thought that you had about a business opportunity or problem. Therefore, it seems to me that this job is somewhat of an extension of a buyer's job, because I always felt in buying, if you listened to you sales people, to your customers, studied the trends or the hunches, pretty soon it would come through rather conclusively where something was going in terms of a fashion trend."

His hardest decisions involve people: "Making the final decision approving the discharge of an executive is tough. You spend a lot of time mulling that over." At such times, he says, "I like to treat people the way I would like to be treated if it were the other way around."

Andres' management team was deliberately shaped to provide a balance in the corporation between the creative, risk-taking entrepreneurial types and the hard-nosed financial managers. That has been a clear corporate strategy at Dayton Hudson even as the financial executives have gained dominance in other established corporations. "I think you have businesses in trouble when one side overwhelms the other," Andres says. "You can go off the deep end in terms of being creative or risk-taking, and ignore the financial implications."

Within the corporation, Andres is known for his participative management style—a style for which the Japanese usually get credit. "The old autocratic, unparticipative management style isn't going to serve many institutions well in the future," he says. ". . . The young people today want to work where they can express their views, where they can express their ideas, where they can have some real autonomy for how their business departments are conducted. And they want to be consulted and recognized." Did this style come naturally to him? Andres laughs. "It was a struggle for me. Initially I probably over-controlled. I had to learn the hard way that you have to let people make their own decisions and use their initiative. And you have to have tolerance because they don't do it exactly the way that you would do it. . . . Eventually, I came to the conclusion that it was the best way to get the job done."

Kenneth Dayton observes that, as CEO, Andres ran probably the most decentralized major corporation in America: "He would rather trade a pound of efficiency for an ounce of motivation," Dayton says.

Macke, who like Andres rose through the merchandising ranks, has regarded Andres as a mentor for 20 years even though he has worked directly for him for only the past three years. Among the lessons of those years was Andres' indirect teaching method, which included the freedom to make mistakes. Macke managed to rise to the top despite an inauspicious beginning as a handkerchief buyer just as Kleenex cornered the market.

When Macke was Dayton's scarf buyer, he remembers, Andres once stopped in his department and opened a drawer—"where we used to hide the things that weren't selling."

"How's this doing?" Andres asked, looking at the unsold scarves.

Not very well.

"Do you have any plans for it?"

Oh, yes.

"When do you suppose they'll be gone?"

After Christmas.

About January 15, Andres came around again and looked in the drawer. The scarves were still there, says Macke. "Bill looked at me, and he said, 'Oh, are these the same scarves?' That was his style. Not, 'Gee, you didn't do what you said you'd do.' He established very clearly that if you told him something, he was going to check back with you," Macke says. As soon as Macke marked down the scarves and put them on the counter, Andres walked by again. But this time he remarked, "Gee, it's nice to see you're getting rid of those scarves."

In Macke's view, Andres' strongest characteristic as a manger is his "ability to maximize the strengths of others and overlook their weaknesses." In fact, on his office credenza, sometimes covered up with papers but always nearby, is an editorial Andres clipped from a trade publication years ago. Its message, yellowed by time and framed behind glass, is simple: Concentrate on your strengths. It's a philosophy Andres applies to himself, to managing people, and to corporate strategies.

When asked to describe his proudest accomplishment as CEO, Andres doesn't hesitate: developing what he calls "the Dayton Hudson team." Macke considers Andres exceptional in this regard and credits him with making team-playing a "major part of the Dayton Hudson culture." This is no small accomplishment in a business that attracts high-powered, creative egos.

Because of this, Andres' personal style is surprising. He is controlled, low-key—not in the least flamboyant. His "people" skills are an important part of his success, says Kay Sexton: "That's really important because you're working with all these super egos in retailing." People don't feel threatened by him, and they are willing to do their best for him, she adds. "He always remembers the people he worked with. A lot of guys forget the ones who helped them along the way." Andres' unpretentious nature impressed her long ago. She remembers a night in New York many years back when both of them were part of a buyers' group having dinner in Greenwich Village. Andres suggested a postdinner drama and led the way: a visit to New York City's night court.

When Andres relaxes, his tastes are fairly simple. He likes golf, but he loves fishing. "The minute he puts one foot in a boat he is a different person," says Betty Andres.

Andres' friend Jim McClune, who has hunted and fished with him, says Andres is such a skillful fisherman that once the guide of a fishing expedition started following Andres' boat.

The Andreses are building a log home on Lake Vermilion and a vacation home on Florida's Sanibel Island. Their permanent residence is a bright, modern home overlooking a wooded pond in Edina. A spiral staircase leads from the entry hall to a lower-level amusement room where one wall is taken up with pictures of a growing family mingled with mementoes of an executive success story. There are pictures of young Bill the magician, pictures of their sons as babies and again as young men: Robert, 34, a dentist and lieutenant commander in the Navy, stationed in Okinawa; Charles, 31, a doctor in Minneapolis; and Richard, 30, a buyer with Target.

In the midst of the family memorabilia is another picture, this one of an ocean-going oil tanker. "My ship," Betty explains. She christened it for the Exxon Corporation in Taiwan. Suddenly the visitor is reminded that the boy who candled eggs and performed magic tricks in Fayette, Iowa, now sits on the board of directors not only of Dayton Hudson but also of Exxon, the largest corporation in the country.

Andres serves on other boards as well: First Bank Systems, International Multifoods, and The St. Paul Companies. In the

non-profit sector, he is on the board of Minneapolis United Way and the New York-based Catalyst organization, which focuses on women's career development.

Despite a style that doesn't call attention to himself, Andres' accomplishments have attracted attention. He has been named CEO of the Year for retailing by *Financial World* magazine three times.

There have also been honors that reflect on his entire management team. Last June, *Survey of Wall Street Research* magazine polled industry analysts to create a list of the best-managed companies. In the retailing division, Dayton Hudson was tops by a wide margin. In 1982, Columbia University awarded the corporation its first Lawrence A. Wien Prize in Corporate Social Responsibility. In a speech in New York accepting the latter award, Andres proved himself the philosophical heir of the Daytons, who began the practice of giving 5 percent of their corporation's pretax profit to charitable and cultural organizations in the community. Andres wondered aloud about what others might call "corporate irresponsibility":

"Could it not be that some of the problems currently besetting some of this country's major industries (industries now suffering decline)—could it not be that some of these problems might have been lessened, had their managements been more involved in their communities, more sensitive to changes in society and more responsive to those changes?

"Could some of the unsuccessful efforts to manage change be traced to lack of attention of broader issues, a lack of involvement in addressing the needs of society as a whole, rather than just the business?

"Might not many of the changes have been more apparent to management, and management better able to respond, had there been more corporate involvement? More volunteerism, more philanthropy, more strategic planning with an eye toward the changing consumer, and more targeting of corporate resources into solving problems that affect the total society, and thus business?"

These days we've grown accustomed to hearing those "declining industries" blame their troubles on the Japanese. Andres is one American executive who doesn't feel threatened by the Japanese: "They're very good students. When they come in here [the leading Japanese retailer has been studying Dayton Hudson] they have their notebooks and they write things down. I have great admiration for the professionalism with which they approach something. I think that technique works very well—listening, studying, and collecting information, whatever the problem or opportunity. They do it superbly."

Could the Japanese do to the U.S. retailers what they have done to the U.S. auto manufacturers? Andres doesn't think so. What he does think possible, however, is that Dayton Hudson could some day form a joint venture with a Japanese retailing company in the developing Asian market. "We have no plans like that," Andres hastens to add, "but I think we always try to keep studying, knowing how things are changing."

Given the shortsightedness of some U.S. executives these days, and given some pessimism about the United States' eventual competitiveness in an increasingly global economy, Andres' and Dayton Hudson's aggressive approach to managing change is welcome information, information that—for a change—originates in Minneapolis and not in Tokyo. All the more reason for naming William A. Andres our Executive of the Year.●

NUCLEAR WASTE POLICY ACT

● Mr. JOHNSTON. Mr. President, little more than a year ago the Nuclear Waste Policy Act was signed into law. That event was the result of many years of diligent, bipartisan effort by those who recognized the importance of having a specific, statutory program for dealing with this most vital issue.

While I am concerned that we still do not have a permanent director for the office of civilian nuclear waste management, which was established by the act, I am generally pleased that some program under the act has been made.

Recently, an article appeared in Shreveport magazine which discussed the act and its impact on my home State of Louisiana. I commend that article to the attention of the Senate, and ask that it be printed in the RECORD at this point.

The article follows:

[From the Shreveport Magazine, October 1983]

THE SEARCH FOR A HIGH-LEVEL NUCLEAR WASTE REPOSITORY SITE—WILL LOUISIANA GET BURNED?

(By Dan Baldwin and Gary Cascio)

In 1978, then Louisiana Governor Edwin Edwards signed an agreement between the State of Louisiana and the federal government stating that for considerations, the state would have final veto power over establishment of a high-level nuclear waste dump within state borders. Almost before the ink dried, the federal Department of Energy began issuing internal legal opinions, not forwarded to Edwards, stating that the document was not legally binding and that the department could place a waste site within any state without regard to the Louisiana agreement.

The Principles of Understanding or "gentlemen's agreement" as it has been referred to, was initially a significant, but small part of *Shreveport's* overview of the impacts a nuclear waste dump could have on Ark-La-Tex people, institutions and economies. As research proceeded, the story grew.

The agreement is often referred to as the ultimate protection for area residents, yet its legal standing is apparently undetermined, with opinions generally divided along state and federal lines.

In researching this story, *Shreveport* interviewed geologists and scientists, reviewed hundreds of pages of documents and nuclear-related literature, interviewed state, local and federal officials, including former Governor Edwards, Governor Dave Treen, U.S. Representative Buddy Roemer, U.S. Senator J. Bennett Johnston and representatives for DOE and the White House.

New information continued to develop through press time and we are still waiting on promised responses, including an official legal opinion from federal officials. Any significant development will be reported in a follow-up or updated article.

Since the first man-made nuclear chain reaction in 1942, we have been busily creating thousands of tons of deadly military and commercial nuclear wastes of all types. And for nearly four decades scientists, the military, politicians and the government have failed miserably to find a safe means of handling this poison. Until now.

This fall, DOE will recommend to President Ronald Reagan three of five candidate sites for site characterization (detailed on-location studies and evaluations) to determine a permanent site for storage of high-level nuclear waste. The two sites not chosen will be dropped from all further consideration.

According to Louisiana Senator J. Bennett Johnston, Vacherie is number five on the list. Johnston is one of the principle sponsors of the Nuclear Waste Policy Act of 1982 (NWPA), the first national program to fully address the growing problem of radioactive waste storage. It calls for selection of a single location by March, 1987. Following a series of licensing and approval steps, a facility will be constructed ready to accept delivery of material before the end of the century.

The bill, called by Reagan as one of the most complicated pieces of nuclear regulation ever passed, has four main purposes: (1) to provide a schedule on developing repositories for disposal of high-level radioactive waste, (2) set forth a research, development and demonstration program, (3) establish federal policy and responsibility and (4) devise fees ensuring that the cost is borne by owners and generators of radioactive waste.

HIGH-LEVEL NUCLEAR WASTE

High-level waste is the byproduct of defense and commerical nuclear reactors. It is thermally hot and emits radioactivity that in some cases can kill within a matter of hours. These wastes have a mixture of varying decay rates and must be isolated from humans and the environment for 10,000 years or more . . . much more.

As stated by U.S. Representative Charles "Buddy" Roemer, "It is a serious problem. . . . This waste, depending on its half life could last in terms of its endangering human life, for as long as a half-million years or more . . . it's a national problem . . . it's growing and . . . it's not going to go away."

The waste, currently in temporary storage throughout the country, is rapidly and literally reaching the bursting point. Many of the current storage facilities cannot accept additional material. Others are already wearing out and are beginning to leak.

By 1980, 10 million cubic feet of liquid and solid waste had accumulated. If all this waste was solidified, a requirement for repository storage, it would take up 670,000 cubic feet of space. By the year 2000 it is estimated that there will be 1.3 million cubic feet of nuclear waste.

It's not going away, but it may be coming to Louisiana.

SITE SELECTION

Authority and responsibility for a repository is scattered throughout the bureaucracy, but in general, the DOE has responsibility for management of the facility and "ownership" of the waste material. The Nuclear Regulatory Commission (NRC) has licensing and regulatory authority and the Environmental Protection Agency (EPA) exercises control over environmental standards.

The process of site selection is complex and involves a series of detailed steps. Already accomplished as far as Vacherie is

concerned are the national, local and area screenings.

Prior to nomination/licensing of a permanent location, three of five possible sites will be nominated for a process called site characterization to determine specific suitability for location of the permanent facility. Of significant importance here is the drilling of a large exploratory shaft to repository depth.

Later a test and evaluation facility will be constructed. Tests may include experiments with nuclear and nuclear waste materials. Eventually a site will be recommended, selected and licensed. Licensing could occur as early as 1984 and a repository could be in operation by 1998. The site chosen will be one of those with the early exploratory shaft.

The actual amount of land to be utilized is as yet undetermined, but it is DOE policy to minimize the land it must own and the surrounding areas over which it must have controls.

A "central area" consisting of buildings and facilities will cover approximately 400 surface acres within an "inner controlled area," which will require approximately another 2,000 acres and possibly a buffer zone of about 800 feet. Additionally, an "outer controlled area" of at least 1¼ miles will be established with restrictions on surface activities. DOE will exercise "any jurisdiction and control necessary" in all areas.

The repository itself will house two kinds of industrial facilities: a waste handling area on the surface and a 2,000-acre mining facility located between 2,000 and 4,000 feet underground.

Excluding research, development, transportation, support services and government overhead, the actual construction cost is estimated to be between $1.6 billion and $5.5 billion in 1980 dollars.

Nuclear waste will be solidified (in glass or ceramic, for example), and shipped to the site in specially-built cannisters. The material, in lined casks will be stored in holes inside the mine, and therefore isolated from contact with the environment by a series of man-made and natural buffers.

There are four sometimes overlapping phases in the "life" of a repository: (1) Escavation and construction which includes additional testing prior to its final acceptance or rejection, (2) the operational phase in which waste is stored, but is retrieveable with conventional technology in the event of an accident or discovery of a better disposal method, (3) the thermal stage after the repository is sealed lasts approximately 1,000 years during which the surrounding rock mass is subjected to thermal, mechanical and chemical changes caused by waste-generated heat, (4) a post-thermal phase in which the host rock returns to ambient temperatures.

The 1982 NWPA Act created a complex, bureaucratic, scientific and political process and even at this early stage the process is generating controversy.

For example, the government has repeatedly used the phrase "step-by-step" approach to describe what they claimed would be a careful, well-planned, informative process.

Several states, notably Texas, Mississippi and Utah, are concerned that the federal government is not living up to that promise. And according to *Science* magazine, the "DOE has chosen to go a dual-track approach. Construction of the exploratory shaft will proceed while . . . collection of hydrological data continues—data on which originally the site's selection for full characterization was in part based."

Exploratory shaft construction and location testing is expected to run between $30 million and $50 million. *Science* further states: "DOE is gambling that the site will not be disqualified" by further planned hydrological tests—information that can be gathered prior to such costly construction.

Not surprisingly, the evaluation of this "step-by-step approach" by local and state officials has generated conflicting views.

For example, in the booklet, *DOE Presentation For Public Hearing In Louisiana*, the department promises it ". . . has attempted to keep state and local officials, media representatives and the public in Louisiana informed about progress and major activities."

Dr. Hall Bohlinger, a member of a state advisory committee to DOE and a representative for Governor Dave Treen at a DOE-sponsored public meeting in Minden, states, "I know some of the other states are concerned that they are receiving some of the data late, but members of our committee seem fairly satisfied with our relationship with the DOE and the contact at this point . . . I have very little complaint."

Government officials around the Vacherie area have expressed different views. Tylon Blanton, president of the Webster Parish Police Jury, commenting on the government's early research activities, noted they "had been going on for months and months before people really realized what the purpose was."

He further stated that local officials eventually had to contact DOE and "ask them that the juries in the area be informed step-by-step . . . so, very hastily they had a meeting and met with us."

When asked how effective were these meetings, Blanton replied, "they've had our objections on recored many times, but you don't get many answers . . . I think that they are window-dressing to let us think that we're having a say."

Construction, testing and implementation of a nuclear waste dump will affect five major impact areas—population, economy, fiscal, community service and social—in a small community, such as those around the Vacherie salt dome. Because the nuclear waste dump will be a major industry, the influence on these five impact areas will have varying effects upon all cities and towns in the Ark-La-Tex.

A repository will take five to seven years for construction and will require between 1,700 and 5,000 workers. During the 30- to 40-year occupational period, 870 to 1,000 workers will be employed. These will be primarily highly-skilled young adults with high incomes and lifetyles different from those of long-time local residents.

Wages, business activities and local employment opportunities will be increased as will the cost of living, particularly food and housing. The poor and persons on a fixed income will definitely feel a greater pinch.

Although local business activity will increase, local merchants may not enjoy the full benefits as large and chain-store operations may be attracted by the sudden increase in population.

Social changes may not meet the approval of long-time residents and citizens may begin to miss the past informality of small-town life.

Fiscally, there may be an increase in tax revenues and additional demands will be made on police and fire protection, water and sewerage, schools, roads and bridges and other community services. There may also be a lag between demand for services and the increased tax revenues.

Others fear the new industry will drive away potential new business opportunities. "you are going to see a mass exodus," says Blanton. "What good are all these (recently completed) industrial parks going to do when people aren't going to come and locate here. They simply will not do it."

A major concern to many residents is the development of a "boomtown" economy, causing a dramatic effect on a tax base that, according to Blanton, is already overloaded, a tax base that has not been increased since the late 1940s.

The exact effect on all these impact areas is difficult at best to determine, but it is certain that they will be significant. The sudden population increase alone guarantees that. No one has ever built a permanent high-level nuclear waste respository before and, as one Minden resident stated, "This one is an experiment. No one knows what will happen."

NUCLEAR WASTE TRANSPORT

Of the 100 million U.S. shipments of hazardous materials every year, approximately 3 million involve nuclear materials and only a small percentage of that figure is high-level waste. The International Atomic Energy Agency (IAEA) reports that currently 8 million packages of radioactive material are being shipped worldwide each year and there have been "no accidents with serious consequences to the public . . . "

Yet accidents have happened and they will continue to happen at a higher rate statistically once the nation's 40-year stockpile begins flooding toward the repository. How these wastes are transported becomes an increasing safety concern—especially for those living near the primary means of transport, the interstate highway system and the nation's railways.

Wastes shipped by rail will travel in 75- to 100-ton containers. Diesel trucks will haul 25-ton containers. Both methods are rated about equally safe, but because railcars can carry more per load, they are preferred.

Vehicles, will travel in routine commerce with normal traffic. Standard industry heavy-duty vehicles and equipment will be used as present traffic standards, rules and regulations, including speed laws, are considered sufficient. Transport standards are set by the NRC and regulated by the Department of Transportation (DOT).

Although interstate highways are preferred (because of their superior construction, upkeep and generally straighter paths) truck shipments will eventually have to utilize local roads to enter a repository site.

Road conditions through Webster Parish are of varying quality, but police juror Blanton cited an additional problem when he mentioned Webster's "old, inadequate bridge system."

Considering the extreme weight, state and parish bridges will have to withstand, Blanton believes a repository located in the parish would require "a crash program to replace and repair all these many bridges . . . we had 19 bridges that were judged hazardous, some that were condemned." Webster currently has a $500,000 federal bridge program, but "it's going to take years and years" for completion.

To date, nuclear transportation has a remarkable safety record. IAEA reports that the Transportation Technology Center at Sandia National Laboratories (New Mexico) studied all U.S. transportation accidents be-

tween 1971-80. Less than 1 percent (660) of the 86,500 hazardous material shipment accidents involved radioactive materials and only five of those involved release of radioactivity.

Still, no highway, railway or bridge is accident proof. The risk of exposure in a traffic accident is a major concern although the National Academy of Sciences Panel on Transportation of Radioactive Waste concluded in 1974 that ". . . it seems likely that the overwhelming risk in transportation is that of direct death and injury and damage to property from conventional traffic accidents . . ." and that the ". . . total adverse effect of that transportation is still acceptably small."

A traffic accident involving a nuclear waste shipment becomes a problem for local fire, police and emergency personnel. Because no one can predict when or where an accident will occur and because local emergency personnel at any given location will most likely lack sufficient equipment, training and expertise to handle a serious accident involving radioactivity release, the main defense against a radiation leak is the waste cannister itself.

SHIPPING CONTAINERS

Raymond L. Murray, Professor Emeritus of the Nuclear Engineering Department at North Carolina State in *Understanding Radioactive Wastes* writes: "the philosophy of protecting the public against radiation in transportation has been that accidents are inevitable and that protection must be provided by the packaging . . ."

High level nuclear wastes will be shipped in solid form within extremely heavy, shielded containers which must meet various DOT and NRC safety standards so that, according to DOE, the effects of a traffic accident will be "(1) noncatastrophic, (2) manageable in terms of public hazard and (3) small when compared to the nonnuclear effects of the accident."

The primary radiological danger of such an accident will be to persons involved in such an accident—fire, police, emergency personnel and anyone who happens to be in the immediate vicinity.

Murray cites four types of protection built into these casks: (1) containment to prevent release of material, (2) shielding to prevent radiation exposure, (3) heat management to keep outside temperature from reaching a dangerous level, (4) criticality prevention.

Hundreds of tests have been conducted at the Sandia Laboratories to determine how these casks will withstand high speed impact, heat, punctures and immersion in water. These tests include a 30-foot free fall onto an unyielding surface; a 4-foot free fall onto a 6-inch diameter steel plunger; exposure to 1,475 degrees Farenheit for a half hour and immersion in 50 feet of water for eight hours. All testing was done to simulate potential road and railway accidents.

Further tests from 1975 to 1977 included dropping two shielded casks from a height of 2,000 feet onto the desert floor; 60 and 80 mph truck crashes into concrete barriers; and a locomotive crashing into the side of a cask placed on a truck trailer.

According to DOE, these tests "fully support the belief that all similarly constructed casks will equally well withstand severe accidents without leakage."

The Sierra Club environmental group disagrees. In a 1980 fact sheet, Shipping Casks: Are They Safe?, the organization claims the safety tests were flawed, testing requirements are inadequate and that there are significant uncertainties about casks safety. Their report quoted from several sources including Atomic Energy Commission (AEC) reports, NRC studies and others.

First, notes the report, "all the tests used a now obsolete model cask," a model currently withdrawn from service. The replacement cask has not been tested and even the manufacturer has stated it may not be equivalent to the design tested.

Furthermore, "no casks in use by the (nuclear) industry today have actually been subjected to the full-scale NRC testing requirements," and only scale models or computer simulations have been conducted. A January 1978 DOE booklet confirms that not all tests are actually performed. "Each high-level waste cask design prototype must be tested . . . or be evaluated analytically . . ."

Irradiated fuel within a cask will generate considerable heat which in turn could significantly affect the integrity of that cask. Yet tested casks contained only fresh fuel without heat elements inside. During testing only one cask was pressurized and then only at 30 times less possible pressurization requirements.

Sandia's testing requirements were questioned. The 30-foot free-fall drop to simulate a 30 mph crash was called inadequate because carriers will be traveling at normal highway or railway speeds. If the fall was to correspond to a fall off a bridge, there are numerous bridges in excess of 30 feet throughout the country.

A Battell Pacific Northwest Laboratory study stated that casks could be ruptured by crashing sideways into a bridge abutment at speeds below 15 miles per hour. Other accidents at speeds around 40 mph could cause the rupture disk to vent or the cask cavity seal to fail.

The 1,475 degrees Fahrenheit fire test was called into question because the average highway fire temperature is 1,850 degrees Fahrenheit with a range of 1,400 to 2,400 degrees Fahrenheit. Diesel burns at a high temperature and nuclear waste carrier trucks will likely carry extra fuel to avoid extra stops.

Also questioned was the 30-minute duration of the fire test. In general, the higher the temperature and the greater the length of the fire, the greater the chance of a cask failure. The Sierra Club questioned whether a local or volunteer fire department could reach the scene of a rural crash much less put out the blaze in half an hour.

Fire damage could weaken the lead casing which shields intense gamma rays, presenting a danger to emergency personnel or bystanders. Depending upon the heat and duration of burn, a valve could fail and release coolant in the form of steam which could carry off radionuclides in the water. Cracks could form and spread releasing deadly radiation as early as two hours after the accident.

Additionally, a number of seals leaked or were damaged during Sandia testing. The effect of impact and fire damage on valve performance has not been sufficiently tested, and, in general, there is a severe lack of reliable knowledge about cask performance.

The organization closes with a powerful statement reading in part, "Until shipping casks are better designed and subjected to more rigorous testing; until communities are pre-notified about irradiated fuel shipments; and until communities are adequately trained and equipped to handle radiation emergencies, irradiated fuel should not move on our highways or railroads."

A PILLAR OF SALT

Salt as a medium for nuclear waste storage was first recommended by the National Academy of Science in 1957, and is therefore the most researched of all possible host media. According to DOE, salt is an excellent choice because it possesses long-term stability, dryness, strength and has good heat dissipating characteristics.

Salt is easily mined and the technology for mining is proven and in existence. The January 1978 issue of the *Review of Modern Physics* (which was devoted entirely to the nuclear waste issue), notes: "Conventional mined cavities constitute the only deep continental geologic isolation concept based on a demonstrated technology for both the emplacement and the retrieval of radioactive waste."

Mining, particularly in salt, is the most ready, most studied and fastest method. This is not to say it is the best.

For nearly two decades scientists studied salt almost to the exclusion of all other possible media. One would think most questions about the effectiveness of salt as a storage medium should be answered. Local residents, geologists, politicians, national environmental groups (such as the Sierra Club) and scientific organizations (such as the American Institute for Physics) say otherwise.

Virtually everyone agrees that salt is a stable medium. A geologist, Dr. Nolan Shaw of Shaw Petroleum, stated that "Vacherie is a very stable area" and "at this point it is very stable."

Further research indicates, however, that the term stable geologically can be easily misunderstood. Harriet Belchik, who holds a master's degree in geology and who has made extensive studies of North Louisiana salt domes, recently stated that salt domes are in constant motion and that "while salt beds aren't going anywhere . . . dome salt is stable, but it always moving and growing."

This feature is called plasticity or "creep" and it is often touted as an advantage for waste storage. Should the salt fracture, the gradual movement would eventually "self seal" the break.

This advantage could also be considered a major disadvantage because the gradual movement is enhanced and speeded up by heat generated from high-level nuclear wastes. An article in the *American Scientist* noted: "The effects of heating appear to be a major cause of uncertainty . . ." uncertainties that ". . . are expected to be reduced by information obtained during repository construction."

The types of rock movement most likely to cause major problems in a waste repository are faulting, fracturing and diaprism. Diaprism is the large scale movement of rock masses without fracturing and it is most common in salt formations.

Estimates of salt movement vary and each dome is unique, but the *Review of Modern Physics* estimated "a maximum of about 0.3 mm per year . . . salt mobility would not be capable of transferring the waste containing salt to the biosphere during the period of concern."

Belchik, who studied the unexpected mine flooding of the Winnfield salt dome, noticed significant movement in as little span of time as 10 years. "Salt does flow. Salt is not like a rock . . . a semi-plastic flow and you can actually see it in an existing mine . . . if they have put timbers up to build an underground office, within a few years the timbers are buckled."

DRYNESS

Dryness is a critical factor in selection of a repository site because many scientists believe the only significant means of radioactive transport to the biosphere to be water and according to the Atomic Industry Forum (AIF) ". . . since salt is soluble, its very existence testifies to separation from water."

As with the definition of stable, "separation from water" does not mean salt is dry.

While he was director of the LSU School of Environmental Studies, Dr. Joseph Martinez conducted studies of North Louisiana salt domes, studies sponsored by DOE. While preferring not to be quoted by the news media, he has previously stated that ground water flowing around the Vacherie dome presents an "engineering problem."

Vacherie is wet. A DOE spokesman admitted that there is a "small swamp" on top of it. Ground water flows around it and the LSU scientists were "puzzled" to find water pockets within it.

Salt dome mines can flood and with amazing speed. The Carey Salt Co. mine at Winnfield flooded overnight about 20 years ago. Harriet Belchik noted that ground water gradually ate into an area which was drilled too close to a ground water source. In addition to the rapid flooding, the salt fractured, causing significant damage through surface level.

As noted by the Review of Modern Physics, "Although a proposed site may at the present time be 'dry' and seem free of the effects of ground water, it undoubtedly is, or at some time during the period of concern, will be in fact, located within an active groundwater flow system."

The report further noted that "The solubility of salt is a clear disadvantage if the medium is exposed to water."

In addition to the ground water around it, Vacherie contains water in it—in addition to the pockets that "puzzled" the LSU researchers. *Science Magazine* estimated that Vacherie contains 0.0001 to 0.007 percent of trace water. "Microscopic brine inclusions are observed in natural salt samples, and it is possible that this brine will migrate to a nuclear waste repository."

Water in salt, brine, is highly corrosive and it travels toward a heat source. Temperatures around a nuclear waste cannister could reach 300 degrees Fahrenheit, surrounding the cannister with a hot, corrosive liquid with the potential of breaching that cannister. Brine has been called the "universal solvent."

If the cannister is breached, the heated brine could dissolve the glass blocks containing the radioactive wastes. This would permit the waste to escape and possibly find its way into a ground water system and eventually to have contact with the surface.

As the temperature of brine increases so does its corrosive strength. A problem associated with brine migration is the buildup of potentially explosive gases around the waste cannister. During Project Salt Vault (see related story) the surface of simulated cannisters and heaters were maintained at temperatures above the boiling point of brine causing extensive stress corrosion cracking to a depth of one-half the wall thickness . . . and ". . . much more severe was the cracking of the stainless steel conduit feeding this heater."

Robert O. Pohl, professor of physics at Cornell University, has stated, "If we further consider the highwater solubility of salt and the corrosiveness of the resulting brine, we cannot help but conclude that, quite apart from geologic considerations, salt formations must be judged unsuitable for the disposal of nuclear wastes (or in fact, any highly toxic wastes.)"

Vacherie has water above, around and in the salt dome and is therefore far from dry.

HUMAN INTRUSION

Human intrusion, through solution mining or drilling, represents the most serious threat to the long-term isolation of a nuclear waste repository. Human intrusion is a serious problem from our recent past and it presents a moral dilemma concerning the future.

Dr. Shaw noted that in the early days of oil exploration drillers sought out salt formations because of the oil and gas frequently associated with those formations.

Since the 1940s, records of drilling have been accurately maintained, but prior to that, records were poorly kept, if at all. How many wells, where and at what depths is anybody's guess.

Inadequately plugged or unplugged wells can allow water to enter the dome, dissolving the salt. This could lead to sinking of the rock formations above the dome. More water could then enter through new pathways, dissolving more salt and possibly allowing the brine to return to the surface after making contact with nuclear waste materials.

In discussing pre-1940s drilling in Webster/Bienville parishes, police juryman Blanton said, "(There has been a) tremendous amount. There's no way they can document and identify all the test holes and boring sites that have been done."

One of the major factors in the aborted Project Salt Vault was the discovery of unreported drilling holes making the repository area appear like "a piece of Swiss cheese."

Salt is a resource. A serious moral dilemma is our duty to future generations. It is impossible to predict future drilling activity, particularly hundreds and thousands of years in the future.

Salt, the oil and gas associated with salt and the minerals and the water around it are resources important to human survival. Extraction of these resources is virtually assured. Professor Pohl states: "a human intrusion into the general use of a nuclear waste depository within a few hundred years must be considered a near certainty."

Do we solve our own problems with nuclear waste or do we pass them on to the grandsons and granddaughters of our grandsons and granddaughters?

Clearly there are significant problems associated with storing nuclear waste in salt, particularly in salt domes. As Senator J. Bennett Johnston, a co-author of the Nuclear Waste Policy Act and major force behind its passage, states: ". . . there is mounting evidence that salt domes are the least desirable of all the formations under consideration."

Dr. Shaw mentions that there are "many" better rock types for a repository—granite for example.

Granite has a much greater capacity to store heat. It is stronger than salt and it does not have the problems of brine migration. The *Review of Modern Physics* states: ". . . granites which are located in sparsely populated areas in the most stable parts of the earth's crust, are typically characterized by low permeability and generally are unattractive with regard to mineral resources and agriculture."

Salt may be an ideal medium for waste storage, but the salt at Vacherie is not. It is stable, but in constant motion. It has water in, around and above it. Water could dissolve it and cause massive rock fracturing as in the Winnfield mine disaster. The area has been drilled and it is likely that numerous unrecorded and unplugged wells offer opportunities for ground water intrusion.

Additionally, there are better mediums, granite for example, located on federal government land far, far away from populated, productive areas and in locations that are unlikely to be mined by future generations.

As Congressman Roemer said, "Louisiana is characterized by two things . . . a lot of underground salt domes and a lot of aboveground and below-ground surface water formations. Add to that the years of oil and gas exploration in our state where we've punched holes in the first 5,000 to 10,000 feet of the earth's surface, almost every five miles in any direction from which you stand, would lead me to conclude that the salt formation is not smart strategy . . ."

AND THAT'S THE WAY IT IS . . .

After 40 years of brewing our own poison and 20 years of intensive research and study we now know that nuclear waste can be safely transported unless there is an accident in which someone is killed . . . study after study proves the feasibility of waste storage although the tests have proven inadequate . . . salt is stable except that it moves . . . it is dry except for the water . . . and our knowledge is sufficient except for the things we do not know.

Clearly, when speaking of nuclear waste storage, there are at least two sides to everything. And nowhere is there a better illustration of the confusion, contradiction and variance of interpretation than in the so-called "gentleman's agreement" between the State of Louisiana and the federal government.

A GENTLEMEN'S AGREEMENT

On Feb. 27, 1978, then Governor Edwin Edwards and DOE Deputy Secretary John O'Leary signed an agreement entitled "Principles of Understanding" which, for certain specific considerations, gives Louisiana an absolute veto power over construction of a nuclear waste respository within the state boundaries. It is often referred to as "the gentlemen's agreement."

Louisiana local, state and federal officials have stated their support of the document and their intentions to hold the federal government to the agreement. Presidential candidate Ronald Reagan telegraphed his support of the document to Governor Treen and both Treen and former Governor Edwards refer to the document as a binding contract.

And that should be that, except now that Louisiana has lived up to its part of the bargain, DOE states the document is legally "questionable" and unenforceable because the department did not have the authority to enter into such an agreement in the first place, and, to quote Edwards, President Reagan is "strangely silent" on the matter. (After repeated contact with White House officials, Shreveport was unable to obtain a statement from the President.)

The document in question is a two-page, 10-point agreement stating in point number 8: "All federal Government studies relating to nuclear waste disposal in the Vacherie Salt Dome in Webster Parish and the Rayburn Salt Dome in Bienville Parish will be subject to this stipulation: The Department of Energy will not construct any nuclear waste respository in Louisiana if the state objects."

In return, Louisiana has allowed the federal government certain considerations, including the right to study storage of petroleum and the study of nuclear waste disposal matters within the state.

Backing up this agreement are (1) it was written into state law, (2) there is a personal assurance from Ronald Reagan, and (3) state vetoes were written into the federal (NWPA) law. Further study reveals each bit of protection has its own vulnerability.

Effective Jan. 1, 1980 the "Principles of Understanding" were made part of Louisiana state law, reading in part "Notwithstanding any law, order or regulation to the contrary, no salt dome within the jurisdiction of the state of Louisiana shall be utilized as a temporary or permanent disposal site for radioactive waste or other radioactive material . . ."

That's fine as far as it goes, but a few paragraphs later, the state law recognizes federal superiority if the ". . . United States government nullifies or abrogates the February 27, 1978, agreement through executive or congressional action . . ."

Dr. Bohlinger confirmed this. ". . . if they select the Vacherie dome as a waste disposal site, then we would have no control whatsoever on the waste going into it . . . We've adopted rules and regulations that speak to the disposal of radio-active waste in Louisiana, except for those two exceptions . . . which we have no jurisdiction over." The two exceptions are high-level and military nuclear wastes, the exact type of material the DOE would store at Vacherie.

Therefore, the state does have a law prohibiting nuclear waste storage, but it is a law that recognizes a federal right to nullify or abrogate that law and offers little protection.

A telegram from presidential candidate Reagan to governor Treen offers more assurance, "the (Principles of Understanding) . . . agreement was entered into in good faith and if the citizens of this country are to have confidence in its government, such agreements must be honored. They will be in my administration."

Treen feels confident that Reagan will live up to his commitment in that telegram. "The bottom line for me is that Ronald Reagan has expressly stated . . . that he intends to live up to it . . .," Gov. Treen told *Shreveport*.

Edwards, who is running against Treen for governor, doesn't share that confidence. In a letter to Reagan this year he stated, "I was surprised and dismayed to learn that Louisiana has been designated as a possible nuclear waste dump site." His letter called attention to the Principles of Understanding, and to Reagan's telegram of support and asked for a reconfirmation of that telegram.

Although it has been reported by the media that Reagan responded to Edwards in the affirmative, Edwards denies this, adding, ". . . and President Reagan has been strangely silent, now that he has been elected and is the President and apparently does not wish to reconfirm his commitment made during the political campaign."

Although *Shreveport* requested a statement from President Reagan and made numerous calls to both DOE and the White House seeking the President's current position, no official response has been received.

Should Reagan not feel bound by his telegram or should another man be in office when and if Louisiana utilizes the veto granted in the Principles of Understanding, Governor Treen states, "then you have to fall back strictly on your legal arguments."

What are our legal arguments? Are the Principles of Understanding a legally enforceable document? As you might guess, Yes and No.

The representative of Louisiana who signed the document (Edwin Edwards) emphatically says it is a legally enforceable document. In his March 29, 1983, letter to Reagan he refers to it as a contract between the U.S. Government and the state. In an interview with *Shreveport* he stated, "I regard it as legally enforceable and morally binding . . . We could take the matter up with the federal courts and I'm satisfied as a lawyer . . . it is an agreement and the courts will enforce it."

Treen agrees. Referring to the agreement he says, "There was a quid pro quo . . . the state of Louisiana did give up something which is what we call consideration and therefore makes it a binding agreement."

Dr. Bohlinger confirms that the state has and is continuing to live up to its part of the bargain, adding strength to the legal validity of the agreement.

U.S. Representative Charles "Buddy" Roemer states that if the state veto issue comes up he will work "hand in glove" with the state . . ." and ". . . we would be a strong advocate of the state's position and that means any and everything in this office." Yet, Roemer, who realizes that the legality of the agreements is "unclear," says it is a "politically enforceable document," explaining, "Now I don't know if those principles are enforceable in law, but I think politically, the fall-out, pardon the pun, would be so great if this President were to go back on his word that he won't do it, that he'll find another way to solve the problem."

Therefore "yes" there are legal, moral and political principles that bind the federal government to the agreement. Of course the "no" side can also offer strong legal and political arguments.

The controversy is not merely a matter of splitting legal hairs. The Principles of Understanding give the state an absolute veto power, period. The veto available to all the states under the NWPA provides a veto power, but one that can be over-ridden by a majority vote of both houses of Congress. Furthermore, the federal government has issued legal opinions that the DOE is legally free to "choose a location without regard to a state's objection."

There are then two vetoes. One through federal legislation available to all states and one through the principles for Louisiana only that, if legally binding, is far stronger.

On March 13, 1978, just two weeks after signing the agreement, the DOE issued an internal memorandum backing down from its commitment. In essence, only the secretary of energy or his officer or an employee within DOE, according to the memo, has final decision-making power.

In other words, the DOE says it never had the authority to enter an agreement with Louisiana in the first place. The following are several quotes from that document:

"The plain language of this provision (the Secretary's authority to delegate) precludes any suggestion that the Secretary may be authorized to delegate final decision-making authority outside the Department . . . only that the Secretary or some other DOE employee or officer must retain the final decision-making function . . . once a veto is given to one state, it must, as a matter of political necessity, be given to all. This, in turn, gives rise to the possibility that no state would agree to accept a nuclear waste repository . . . and the Secretary would have made it impossible to fulfill his statutory duty of establishing such facilities . . ."

In conclusion the memo states, "In light of the foregoing, DOE lacks authority to permit states to veto the location of nuclear waste repositories within their respective jurisdictions."

Edwards (Governor at the time) says he was never sent a copy of this memorandum.

DOE has a problem. As stated in a 1979 letter from Thomas C. Newkirk, DOE assistant general counsel for legal counsel, "it remains the Department's policy not to make a final decision to proceed with construction . . . within a state if that state had indicated that it did not concur." But what if all the states decide not to concur?

A June 1978 letter to U.S. Representative John D. Dingell, chairman of the Subcommittee on Energy and Power, says the federal position was stated by acting Comptroller General of the United States R. F. Keller.

This letter supports and expands upon the DOE position. The following quotes are from that document:

". . . the vesting of authority in DOE by the 1977 (DOE Organizational) Act does not include the right to redelegate or share the nuclear waste disposal site selection authority with the states . . . we find nothing in the (DOE) Act . . . which would support a conclusion that the States could be given a 'veto' power . . ."

Citing the March DOE memorandum, Keller states "We agree with this view. In the absence of statutory authority permitting such action, we believe that any agreement by the Secretary of Energy, or any of his subordinates, with a State to make DOE's choice of a nuclear waste repository subject to rejection or disapproval by the State, is legally unenforceable."

He concludes by noting that if each state exercised a veto none would be available for establishment of a repository and "in such circumstances, if DOE is to exercise its authority to establish waste storage facilities, it would have to abandon its policy and choose a location without regard to the State's objection (as it is legally free to do)."

And what is the Department of Energy's policy today?

When questioned, the DOE response was that the NWPA has given all states a veto power. DOE spokesman Phillip Garon told Shreveport, "The NWPA reinforces the Principles of Understanding because it gives to Louisiana and any other state * * * the authority under federal law to veto (site) selection."

"It's probably unnecessary to quibble about the principles anymore * * it is a matter of federal law that Louisiana and any other state that has potential to be recommended for a repository has this right."

(In a subsequent interview Garon stated that DOE was attempting to get a "reading from the White House" about their current interpretation of the Principles of Understanding. This new interpretation was to be forwarded to Shreveport, but was not received by press time.)

It is inaccurate to state that the Principles of Understanding have been incorporated fully into federal law, a fact Garon confirms, "I will concede that it has been (incorporated) up to a certain degree, but not entirely."

As of this writing, then, the DOE does not know what its policy is, "doesn't have an official stance on it right now" and is waiting for instructions from the White House.

When contacted about the legality of the Principles of Understanding, Senator John-

ston said they are not. "This administration * * * said that they would not store waste here. That doesn't mean a great deal because the storage of nuclear waste would not be until the very latter part of the decade of the 90s or until the next century."

Johnston later added "I don't know of any lawyer who has ever thought seriously that this was an enforceable agreement. The Secretary of Energy simply wasn't empowered to make a forceable binding agreement that would bind other administrations.

The U.S. Senator from Louisiana also indicated that President Reagan has reconfirmed his commitment. "Nevertheless, in my view, it never was a binding legal contract, but it was a gentlemen's agreement which we would nevertheless expect to be enforced and which President Reagan has reconfirmed." He again stated that "it doesn't mean very much" because the storage will not begin until the end of the century, long after the Reagan presidency.

In February of 1978, a representative for the people of Louisiana entered in good faith into a "gentlemen's agreement" with representatives of the federal government. It is an agreement the people of Louisiana have honored, yet an agreement the federal government has, almost from the moment of signing, declared "legally unenforceable . . . unclear . . . and questionable."

At present the legal status of the Principles of Understanding is at best undetermined. About all one can be sure of is that of those assigned to uphold the gentlemen's agreement, not all are being gentlemen.

THE (SHREVEPORT) TIMES, JUNE 21, 1983

Engineer of derailed train indicted . . . Livingston (Louisiana)—The engineer of a chemical train involved in Louisiana's worst railroad disaster was indicted Monday for recklessly handling of hazardous materials . . . three railroad employees were fired after their 101-car train derailed September 28, 1982, triggering nearly two weeks of fires, explosions and the evacuation of about 2,700 people . . . damages were estimated at $12 million and millions of more dollars are being sought in dozens of lawsuits . . .

BEST ESTIMATE

In 1946 the Marshallese people of Bikini Island in the Pacific were moved to permit testing of U.S. atomic bombs. Between 1946 and 1958, a total of 23 were exploded.

By 1966, the people of Binkini requested permission to return to their homeland. Tests were conducted in 1967. In 1968 President Lyndon Johnson announced that they could return. In 1969 the U.S. Government cleaned out the debris, planted coconut trees and other fruit plants, built houses and other buildings and returned the islanders to their home.

Despite government assurances of safety, further tests showed the people were exposed to greater doses of radioactivity than predicted. They were again moved off the island in 1978.

In a brochure "The Meaning of Radiation at Bikini Atoll," the DOE explained to the islanders that, "Even though the scientists in 1967 followed as best they could the information they had gathered, the amount of radiation the people received after returning and living on their atoll was larger than the amount the scientists had estimated they would receive."

PROJECT SALT VAULT

During the 1960s' Project Salt Vault, an extensive study effort to evaluate salt's potential for storage of nuclear waste, was initiated in an inactive bedded salt mine at Lyons, Kansas. Results of initial studies encouraged use of the site as a "pilot demonstration repository," Physics Today reported that the 1971 Congressional hearings on authorizing legislation were filled with assurances by officials and technical experts that the project was sound.

Project Salt Vault was cancelled in 1972 due primarily to two factors. One, the mine area was literally honeycombed with unreported, unplugged drilling holes from early oil and gas exploration. Second, scientists discovered pockets of brine within the salt. Additionally, it was learned that commercial miners, a few miles south of the Lyons site, used the solution mining process, in which water is injected into one bore hole and emerges from another and is pumped to the surface as brine. In one 1965 incident, the miners reported an unexpected, unexplained disappearance of 175,000 gallons of water.

[Telegram]

GOV. DAVID TREEN,
Governor's Mansion, Baton Rouge, La.

DEAR DAVE: Confirming our conversation in New Orleans today I am making the following policy statement:

I have reviewed the February 1978 agreement between the United States Department of Energy and the State of Louisiana. I have discussed with Governor Treen the circumstances surrounding its origination and the development since that time. As long as the State lives up to its obligation, as President I will see to it that the Federal Government lives up to all the obligations which it has undertaken in that agreement, including, specifically, the obligation set forth in paragraph 8 which provides, in the words of the agreement, that the Government "will not construct any nuclear waste repository in Louisiana if the State objects".

The agreement was entered into in good faith and if the citizens of this country are to have confidence in its Government, such agreements must be honored. They will be in my administration.

Sincerely,

RONALD REAGAN.

MONITORED RETRIEVABLE STORAGE

(Excerpts From an Interview With Senator J. Bennett Johnston)

"As you know the Louisiana salt dome . . . was selected as one of the five sites to be considered. My information is . . . reliable information . . . is that Louisiana is probably fifth . . . and it will therefore be dropped from consideration in due course and that will mean we're home free as far as the salt dome is concerned.

"There is a separate track called Monitored Retrievable Storage, or MRS. That provides for storage in below ground manmade facilities where the spent fuel rods (waste) are retrievable and where it is monitored.

"I much prefer that, and it is my view, that has the much greater chance of success . . . because it is technologically better. You see, the big problem with fuel rods are radioactivity . . . toxicity . . . and waste heat, and of the three characteristics, waste heat is probably the most difficult to manage.

"So when a big quantity . . . is put in a salt dome it would tend to melt the salt . . . or otherwise deform or melt the medium in which it is put.

". . . you can also locate a monitored retrievable storage facility anywhere . . . it doesn't have to be where nature just happened to locate a salt dome.

And MRS. "makes it possible, therefore, to locate a waste disposal site in an area like, for example, the Hanford, Washington, area which now has thousands of employees connected with the nuclear industry. They, first, have a big stake in the nuclear industry. They make their money from the nuclear industry. They understand nuclear matters.

"So monitored retrievable storage is a much better solution in my view than geologic. The practical outcome of . . . I think what's really going to happen is they're going to try to move forward on geologic, but they're likely to run into either these vetoes . . . or some scientific objection from the geologic community . . . so I think it's entirely possible that they could run into very difficult problems with geologic, which is why I think it is so important to have the other track, the multiple retrievable storage.

EDWARDS CAMPAIGN,
Baton Rouge, La., March 29, 1983.

THE PRESIDENT,
The White House, Washington, D.C.

MY DEAR MR. PRESIDENT: I was surprised and dismayed to learn that Louisiana has been designated as a possible nuclear waste dump site. I respectfully call to your attention a written contract that exists between the United States Government and the State of Louisiana, copy attached, whereby nuclear waste dumping is prohibited, absent the consent of the State.

Further, I respectfully remind you that during your Presidential campaign, you made a commitment (widely circulated by Governor David Treen) that you would honor and respect that agreement. As the Governor at the time the agreement was made, I ask that you honor the U.S. Government's contract and your own campaign commitment and by Executive Order I ask that you remove Louisiana from the list of possible nuclear waste sites.

Louisiana has done more than its share for the past fifty years relative to the energy concerns and needs of our Nation. We do not need nor do we deserve the designation as a nuclear waste dump site.

As a matter of equity and fairness, as a matter of contract between the U.S. Government and the State of Louisiana, and as a matter of honoring campaign commitments made between you and Louisiana's present Governor, I ask that the name of our State be stricken from the list.

All Louisianians await your decision.

Sincerely yours,

EDWIN W. EDWARDS,
Former Governor of Louisiana.

TO QUOTE SOURCES

"Last July, Utah's Governor Scott Matheson, disturbed at a DOE decision that the selection of a salt site for an exploratory shaft shall not be subject to a full environmental impact review, ordered state agencies to withhold all assistance from DOE—for example, denying permits for the transport of overweight drilling rigs on state roads. The effect has been to put the Para-

dox Basin (salt bed) investigation under a virtual moratorium."

—Science Magazine, Dec., 1982.

Radiation effects manifesting themselves in the exposed individual are called somatic. The effects are called acute if they occur within several weeks of the exposure, or latent, in which they may occur tens of years later. Acute effects follow the delivery of very large doses to all or most of the body within a time interval of hours. There is roughly a 50 percent chance that death will result within several weeks from failure of blood forming tissue . . . while at much higher doses . . . death will almost certainly occur in much shorter time as the result of failure of the gastro-intestinal system or even the central nervous system . . . It is generally conceded that the most important somatic effect in man is cancer . . . Equally important are the mutagenic effects of radiation . . ."

—Review of Modern Physics, January 1978.

"But, what is our moral responsibility, if we kill some people by what we're doing, but it's separated in time by several thousand years. Does that relieve us of the moral responsibility?"

—Dr. Robert Kemmerly, Minden Resident.●

THE SOCIAL IMPORTANCE OF CORPORATE PROFITS

● Mr. DURENBERGER. Mr. President, I have long been connected with efforts to clarify and further the role of the private sector in fufilling public needs. Such efforts travel under various names, including "corporate responsibility" and "private sector initiatives," but they seek the common goal of improving the way goods and services are delivered in our society by redefining the functions and goals of the private sector. An excellent articulation of this approach is found in an address given by Jack J. Crocker of Minneapolis-based Super Valu Stores, Inc.

Jack is former chairman of Super Valu, and now chairs its executive committee; he was named 1981 executive of the year by Corporate Report Minnesota. His philosophy is straightforward: The purpose of the free-enterprise system is to protect and serve the consumer. That implies a responsibility for businesses to use their profits for the benefit of the consumer—not only by putting money back into the business to improve its service or product, but also by helping answer the needs of the community and the society as a whole. Education, training, health care, and medical research all are examples of areas that can benefit from closer private-sector involvement.

The future of a free America—the social, cultural, academic, economic standards of our people—depend far more upon business leadership than anyone else.

Mr. Crocker concludes:

(T)he ultimate measurement of our combined efforts is not limited to the profitability of our individual companies, but rather encompasses the overall economic and social standards of all our citizens.

Mr. President, I highly recommend Mr. Crocker's address to my colleagues, and I ask to place in the RECORD an adaptation of the speech printed in a recent issue of Corporate Report Minnesota.

The speech follows:

THE SOCIAL IMPORTANCE OF CORPORATE PROFITS

(By Jack J. Crocker)

It has long been apparent that as individuals, we simply cannot perform most effectively within an environment limited only to intellectualism and scientific analysis. To perform our best, we all seem to need the self confidence that stems from believing in ourselves as well as believing in what we are asked to do in our daily work.

I am convinced that the overwhelming majority of all employees are able to commit their total skills and energies to corporate goals only if they believe those goals to be meaningful.

During my tenure as chief executive officer of Super Valu, I devoted much of my time to helping our people believe in themselves, and also understand and believe in the principles of economic freedom and the free-enterprise system. I knew that if they believed in themselves and the principles of competition and free enterprise, together we would succeed.

As business leaders we must accept the fact that the competitive free-enterprise system was never meant to protect our companies' financial viability; it was never meant to assure our companies' future growth. In fact, it was never meant to even assure our companies' continued existence. Competition within free enterprise is a rather ruthless weeding-out process that refuses to take a helpful interest in any business enterprise.

The system is meant to protect only the ultimate consumers. Through their choice of what they buy and where they buy, it is the consumers who decide which companies will achieve sufficient sales and earn adequate profits.

The competitive marketplace, responding to consumer demands, will ruthlessly push aside any company's management or labor unions—or any other group—that tries to obstruct or impede new efficiencies or new technology that may ultimately result in lower costs and better values to the ultimate consumer.

Through the competitive weeding-out process, the ultimate consumer, who is every citizen, is always assured that our nation's capital resources and human resources will be directed by companies and business leaders who prove themselves to be most qualified. The kindness of the competitive system stems from its seemingly selfish cruelties. It has no sympathy for the weak. It will not permit the weak to lead.

What it all adds up to is that all citizens, when acting as consumers, constitute the absolute authority deciding which manufacturers, wholesalers, retailers, and service organizations will succeed, and to what extent they will earn profits so that they can grow and give more jobs to more people.

Consumers have shown that they are smart, tough buyers who will buy products and services from the companies that serve them best—and that they will show no mercy or loyalty for those products or businesses that they perceive as inferior. We have only to look at the U.S. auto industry to see clearly just how tough consumers are in determining which companies they will not allow to profit and grow—even if it means their bringing an entire industry to its knees.

Size of company means very little—what counts is only the ability to efficiently serve.

Only 12 years ago a well-known investment banker advised me to buy International Harvester, Chrysler, A & P, and Wards as safe long-term investments because they were the giants. In recent years we have all seen customers refuse to support several mass-merchandising stores such as W.T. Grant, White Front, Fed Mart, and Woolco, forcing them to close their stores.

However, during this same period, those same customers, through their buying habits, have encouraged Target to open new stores at an unbelievable rate. Why? Because Target served them better. Consumers will not allow the weak to grow.

An interesting incident occurred recently: Mrs. Crocker and I entered a restaurant at about 7 p.m. A charming woman in charge said "We have seating for over 400 people, but we are totally filled. It will be about an hour-and-a-half before we can serve you. We are opening an additional restaurant in a few weeks so that we can serve our customers even better." We thanked her and walked across the street to a similar size restaurant where the manager seated us in a corner away from the view, even though the restaurant was only one-fourth full.

I asked him why he sat us there instead of at the nice tables. He explained that each waitress had a particular area and he wanted to give each waitress the same number of customers. After eating cold soup and chicken that was red in the middle, we commented to the manager, "Business seems slow." He replied, "Yes, with high interest rates and 11-percent unemployment, business is really tough."

What was the difference? The first restaurant was committed to serving customers better.

In reading the outstanding article in CORPORATE REPORT on today's [Executive of the Year] recipient, one sentence stood out among all others: "In a group, Gerry Rauenhorst is the guy who will serve others."

Thirty-five years in business have taught me many lessons, the most important of which is this: "Those who serve the customer best will profit best."

What more meaningful objective can you, as business leaders, have—what greater sense of achievement can you experience—than to know that your business success and profits can come only from serving your customers better?

From all this, it becomes apparent that in the highly competitive marketplace, a company's profits become the proof of its efficient use of both human and natural resources in serving customers better. The proper reinvestment of these profits is a company's only long-term financial source of economic growth, prosperity, and more jobs for more people. There is not one company in Minnesota that has not depended upon profits for its growth and additional employment.

Can a farmer buy a modern new tractor without profits? Can a manufacturer buy additional machinery without profits? Can Super Valu enlarge its warehouses without profits? Could McDonald's have expanded nationwide without profits? Could the Opus Corporation have opened new offices in sev-

eral cities had they not been profitable? The answer, of course, is "No."

Not long ago, I walked through one of our newly enlarged warehouses. I observed the computers, the network of telephones, the huge insulated building with all its refrigeration, employees driving modern lift trucks, the huge tractors and trailers being filled with thousands of pounds of fresh produce, meat, and groceries. I observed how all the equipment and machinery helped the employees increase their productivity many times. I asked myself, "How effective could any of us be without silent partners of modern technology, working side by side with us?" The fact is, we would be no more effective than our early forefathers, who were so limited in their ability to produce.

As I walked through that warehouse, I also thought back to the day when our management team agreed to use a portion of that year's profits to enlarge that warehouse, buy that modern equipment, and create more jobs. Without those profits, we could not have done it.

Your company's profits do not mean greed and selfishness. Losses do not mean kindness and generosity.

Lack of profits for any company prevents the flow of new capital into new growth. Lack of profits prevents a company from investing in the most modern technology to remain efficient and competitive. Lack of profits eliminates income-tax revenues for all public needs, including schools, parks, and roads.

Lack of profits prevents additional employment. The lack of profits reduces pension funds, including those of the labor unions. Lack of profits, in preventing additional investments, reduces competition and encourages inflation. Lack of profits eliminates the job security necessary for all families.

Lack of profits helps no one, and hurts everyone.

We have learned in recent times that as profits drop or disappear, resulting in high unemployment, more than economic standards suffer. High unemployment breeds social problems, and education becomes more difficult to finance. In fact, there is no phase of our lives that is not adversely affected by an overall drop in business profits.

A few years ago, International Harvester was paying millions of dollars of income taxes, hiring more people, and rewarding its shareholders with dividends. Is International Harvester hiring more people today? In three years it has laid off 50,000 employees. Is it paying millions of dollars of income taxes today, or is IH maybe claiming refunds from tax payments you and I are making? Not one individual—any place in America—has benefited from this once-great company changing from a profitable company to one with great losses.

What more meaningful objective can you, as business leaders, have—what greater sense of achievement can you experience—than to know that your business profits earned from serving customers better are the major financial source of economic progress, prosperity, and more jobs for more people?

In a nation of free people, the wealth created through profits must be personal wealth. Otherwise, the government would own it and the competitive marketplace would give way to political rule.

If you leave this city today and drive elsewhere, every piece of farm equipment you see, every truck you pass, every train you stop for, every manufacturer, warehouse, store, or hotel you pass will be owned by free citizens. This ownership, evidenced by shares of stock, bonds, or certificates of title, is the true personal wealth of our nation. It is the personal wealth of individual citizens.

Personal wealth is far more than personal possession. It is, in reality, a responsibility, a trust, assigned to us to use only so long as we use it efficiently to serve the economic needs of our citizens. This assignment can be, and frequently is, temporary. Those who do not use their capital and wealth efficiently to serve economic needs will risk losing it. Capital and wealth in a free, competitive society will always flow to those areas where economic needs of citizens are best served.

There is within our society a responsibility of great intensity that business leaders have only partially accepted, because it does not lend itself naturally to free enterprise and competition—and because the benefits are hard for a company to measure.

The responsibility stems from the fact that in years to come, the knowledge and skills of our nation's people will be the determining force in establishing economic, social, and educational standards. For that reason, we must invest in the education and skill development of all our people, but especially young people. That is even more important than capital investments in machinery, computers, and other technology.

We must also invest in funds to overcome alcohol and drug abuse, and all the crippling and mental diseases. Not as charitable, tax-deductible contributions, but rather as an important investment in the human resources of our society.

The fact that our system does not encourage this kind of investment does not give us just reason to see this challenge as someone else's responsibility. As business leaders, we must become more involved and help seek solutions. It is our responsibility.

You and I have a greater responsibility than any other group to help maintain a strong and free America, where all our citizens may enjoy acceptable economic, social, and educational standards.

The constant criticism of corporate profits and personal wealth that we continue to read and hear strikes at the very heart of economic prosperity and more jobs for more people. In the highly competitive marketplace, the relative profitability of the private sector will be the single most important force in determining the living standards of all Americans.

How said it is that not one political leader in America would dare make such a statement.

As long as so many of our citizens fail to understand the importance of corporate profits and personal wealth, we will continue to see greater controls and restraints on economic freedom, and free enterprise will continue to be more limited than it should be in its effectiveness. If there continues to exist, among such a large segment of our society, antagonism, jealousy, resentment, and confusion toward personal wealth and company profits, the core of strength of a free America is basically lost.

It is not enough that we here today believe in the system. It is a must that all citizens in our country believe in the system. But how can they believe in it when no one, including you and me, helps them to understand it?

When the business leadership of this country realizes that it is as important to communicate the benefits of economic freedom, free enterprise, and corporate profits as it is to sell the benefits of Coca-Cola, Pepsi-Cola, and Crest toothpaste, we will serve all our citizens in the most meaningful way possible. You and I represent that business leadership.

Our social and economic challenges will not be solved by debating the issues of Republicans versus Democrats.

The future of a free America—the social, cultural, academic, economic standards of our people—depend far more upon business leadership than any one else. It is we who have the responsibility of directing our nation's human and natural resources, and the ultimate measurement of our combined efforts is not limited to the profitability of our individual companies, but rather encompasses the overall economic and social standards of all our citizens.

The responsibility is ours.●

MIKE WHITE, OUTSTANDING COACH

● Mr. DIXON. Mr. President, Senator PERCY and I should like to call the Senate's attention to an individual who has given this country an exhilarating football season and provided Illinoisans with national recognition and a deep sense of pride.

We refer, Mr. President, to Mr. Mike White, the head coach of the University of Illinois' Fighting Illini football team, who this year guided his team to an outstanding 10-2 season, capping it off with a trip to the prestigious Rose Bowl in Pasadena, Calif.

In his fourth year at the University of Illinois, Mike White is nationally recognized in the Big Ten Conference as a top offensive theorist. And well he should be. Under Coach White's direction, Illinois teams have set seven NCAA passing records and more than 30 Big Ten passing marks.

The Illini's leader began his coaching career as a graduate assistant coach at the University of California-Berkeley under former Illini Head Coach Pete Elliott in 1958 and joined Elliott's staff as a full-time assistant the following year, becoming freshman coach.

In 1964 he moved to Stanford University as offensive coodinator, where over the next 8 years he helped to produce two consecutive Rose Bowl victories following the 1970 and 1971 seasons.

In 1972, he returned to his alma mater, California-Berkeley and posted a 6-year record of 35-30-1.

Before coming to the University of Illinois, Coach White served as an assistant coach and administrative assistant with the San Francisco 49'ers of the National Football League during the 1978 and 1979 seasons.

It has been with that background and experience that he has become regarded as one of football's top offensive strategists. He has developed some of the finest quarterbacks ever to play college football. The records of players such as Craig Morton, Jim Plunkett, Mike Boryla, Steve Bartkowski, Vince

Ferragamo, Joe Roth, Rich Campbell, Dave Wilson, and Tony Eason stand as a testament to Mike White's talent for molding a top quarterback.

In 1974 Coach White was named "Coach of the Year" by the Northern California Sportswriters Association and in 1975 received the same honor from Scholastic Coach and The Sporting News. More recently, for the 1983 season, he has been named national Coach of the Year by the Walter Camp Football Foundation, United Press International and by The Sporting News. In addition, he has been named Big Ten Coach of the Year by Associated Press, United Press International and by the Big Ten Association. Accordingly, he is in constant demand on the speaking circuit and at coaching clinics.

Mr. President, Mike White has given Illinoisans a great deal to be proud of. He has returned the Fighting Illini to the national football map and in so doing has inspired us, entertained us and brought us together behind our great State university. Such is the true nature and virtue of sporting endeavors, and therein lies the debt and admiration we feel toward Coach White. We are very grateful.●

SAMMY D'S OF DINKYTOWN TO CLOSE

● Mr. DURENBERGER. Mr. President, the opening and closing of a restaurant has become a commonplace occurrence, especially in a place like Washington. Restaurants come and go with the trends. On great occasion, however, an establishment becomes so tied to a community that its closing leaves a preceptable void. Such a case is the closing of Sammy D's, a Minneapolis restaurant that has fed and nurtured students in the University of Minnesota's Dinkytown area for more than two decades.

If "nurtured" seems an odd word to describe the function of a restaurant, it is because Sammy D's is no typical restaurant and its owner is no ordinary restauranteur. Giovanna D'Agostino—known by all as Mama D—has taken the student community under her wing, ladeling out motherly affection and advice along with the platefuls of pasta. Her annual St. Joseph's Day feast, offering a free meal to anyone who comes through the door, is a local tradition. Her cooking has gained national attention in magazines and on television.

Mama D's feeling toward "her students" is reciprocated by those who have frequented her restaurant, co-owned with her three sons. When she ran for mayor of Minneapolis in 1981—admittedly just trying to "shake things up" a little—an impressive organization sprang up to support her. She got 10,000 votes.

In these days of fast food and plastic hanging plants, how refreshing and how comforting it is to know there are restaurants with that inimitable personal touch; restaurants that do not just exist in a community, but become part of it. Happily, Mama D is devoting energy to a new establishment elsewhere in the Twin Cities. But Sammy D's and its owner will be missed by Dinkytown and the students who congregate there. Restaurants will move in and move out, but it won't be the same without Mama D.

I submit for the RECORD a newspaper article about Mama D from the Minnesota Daily.

The article follows:

[From the Minnesota Daily, Feb. 15, 1984]

BYE, BYE, MAMA D

(By Mary J. Pitzer)

"I'm going to miss you," a customer at Sammy D's tells the white-haired woman behind the counter as he hands her a check.

"I'm going to miss you too," says Mama D, opening the cash register. "Every time I think about it I'm going to cry."

A big hole will be left in the heart of Dinkytown when Mama D closes for the last time the Italian restaurant she owns with her three sons. For 19 years Mama D—Giovanna (Jennie) D'Agostino—has charmed customers, fed free meals to the downtrodden, and mothered thousands of University students. Her restaurant attracted celebrities, and she became one herself, appearing on national television and running for mayor.

"There's always a place that's a second home to people. Mama D's restaurant fits that mold," says Albert Hofstede, former Minneapolis mayor, who declared a Mama D Day in 1978. "I was very sad when I heard she was about to close up. It's a real loss. Nobody's going to replace her."

In spite of such affection, business at Sammy D's has been bad for the last few years, and hours have been cut to just three day's a week. Mama D says she has received several offers for the restaurant but doesn't know exactly when it will be sold. She now spends more time at her new restaurant in St. Paul, called Mama D's than she does in Dinkytown.

"Parking is so bad," she says of the problems that are forcing Sammy D's to close. "People come and go around and around. They tell me they can't come in because they can't find a place to park."

There are other reasons too. The proliferation of fast-food restaurants and pizza joints drew away students on tight budgets. Then Mama Rosa's, a West Bank restaurant, was closed in the late 1970s because of food poisoning.

"People started abandoning Mama D's restaurant, and 'Mama' is not even in the name," says Maury Bernstein, a local musician who used to play at Sammy D's, located at 1305 Fourth St. S.E., since 1971.

The confusion still lingers. Two businessmen recently approached Mama D at her St. Paul restaurant and asked her to explain to their friend that she is not Mama Rosa.

Despite the recent troubles, the 69-year-old grandmother looks back on her years in Dinkytown as the happiest of her life. "It made up for the love I didn't receive as a little girl. The Big Boss upstairs—He balances the books," she says.

Mama D's love affair with University students began in 1965 when she came from Chicago to give her son a three-week reprieve from his sandwich shop, located next to the Dinkytown post office. Her husband had just died after a long illness, and she was recovering from a car crash. "I was as down as I could go, and I thought, '"Those University kids are going to be snotty," she says.

But the kids immediately adopted her, and she just naturally looked after their needs, filling their stomachs with food and their heads with advice and homespun philosophy.

The sandwich shop was just a hole-in-the-wall then, but the menu wasn't restricted to sandwiches for long.

Students would come in and ask if Mama D made spaghetti. "I'd say, 'Come back tomorrow.' Then somebody'd say, 'Mama, do you make lasagne?' 'Come back tomorrow,' "she says. When her son returned, the menu filled four pages. "He almost had 10 fits. He said, 'Who's going to make all this food?' "

But because of a customer's request, Mama D invented an antipasto salad with hot roast beef and sausage. That recipe earned her a three page spread in Better Homes and Gardens.

Her kids, however, don't remember her growing fame as much as the personal touches that made Sammy D's a favorite hangout.

"If I saw a good-looking boy and girl, I would squash them together," she says. "They'd say, 'Mama, there's no room in here.' And I'd say, 'Shut up. You should have that much room in heaven.' " She smiles and adds, "I should have been Jewish, I would have made a good yenta."

Craig Vogel, who now owns a Minneapolis piano repair business, recalls that during his freshman year in 1968, Mama D came by his table with a tray and offered him a cookie she said was "hot from the oven, made with love."

"She had an aura about her that she did really care," Vogel says. "It was good for the hipsters to see that the concept of brotherly love didn't start in 1968."

In those days some people were critical of her acceptance of students and vagabonds, no matter what they looked like. "They told me I would have a high-class place if I got rid of the hippies. And I said, 'Would you throw out the Lord if He walked in?' " To drive the point home that long hair and beards didn't bother her, she hung a picture of Jesus on the wall. It's still there, surrounded by pictures of celebrities who have met her and have eaten at Sammy D's—including Tony Bennett, Frank Sinatra, and the 1980 U.S. Olympic Hockey Team.

Mama D's generosity is legendary, and she was always ready to rescue a student in distress. If she saw someone in her restaurant picking food off a friend's plate, she figured the kid needed something to eat. So she would bring out an extra meal.

"They'd say, 'Mama, I didn't order. I don't have money to pay.' I'd say, 'Who aked you, anyway? Shut up and eat,' " she says.

Some students owed her hundreds, even thousands of dollars, Bernstein says. But the debts didn't bother Mama D because she was happy to help out. Most of the students paid her back, she says, even if it was years later.

Although friends warned her against it, she loaned $100 to Mark Hall, the Gopher basketball player who ran up monumental long-distance phone bills two years ago and

charged them to the University. Instead of paying her back, Hall forged a check at Sammy D's before slipping into obscurity.

But Mama D's faith in people remains untarnished, and she hardly cares if she sees the money again. "If he would just straighten out," she says, "it would be OK."

Mama D's generosity is perhaps best remembered from the annual St. Joseph's Day meal on March 19. That's when Mama D opens the restaurant to anyone who's hungry and has no money. That night the line at Sammy D's stretches around the corner.

"She never refused anyone," says Dick Peldo, manager of the Lancer's next door. "The actual hours were from 6 to 10, but you could come at midnight and she'd feed you."

The first time the restaurant celebrated St. Joseph's Day, Mama D recalls, she asked a priest at St. Lawrence Church if she could borrow its statue of St. Joseph, the patron saint of the poor. He consented, but when she arrived to pick it up, two other priests refused to let her have it. So she sneaked into the church and plucked the statue from the altar. The priests didn't know what had happened to the statue until Sammy D's appeared on the evening news, she says. Now she has a statue of her own perched in a corner of the restaurant.

Moving out of Dinkytown will not cancel the St. Joseph's Day tradition there, she says. "Even if we close before March 19, I will get one of the churches to loan me a basement. I promise as long as I live I will have a St. Joseph's Day."

She even started writing cookbooks to help someone. The first one raised money for a friend in the Minneapolis symphony who had kidney failure. It sold more than 500,000 copies. Her fourth cookbook, which is about vegetarian cooking, is at the publisher's, and so is her autobiography, titled Shut Up, I Want to Tell You Something.

She already was a local celebrity when she started getting invitations to demonstrate her cooking and dispense philosophy on television shows such as Mike Douglas. She says she received more than 9,000 letters after she appeared on Donahue. A few addressed to "Mama D, Dinkytown, U.S.A." and "Lasagne, Minnesota" found their way to the right place.

The local spotlight once again focused on Mama D when she ran as an independent for Mayor of Minneapolis in 1981. "I didn't want to win", she says. "I just wanted to at least rattle the cages of those people at City Hall."

Sammy D's became a center for the campaign. Customers were routinely handed lawn signs as they walked out the door and Dinkytown merchants passed out campaign literature. In the end she garnered 10,000 votes. Perhaps this campaign saying summarizes her candidacy best: "It's nice to be important, but it's important to be nice."

And so when Mama D closes Sammy D's for good, she will leave behind a lot of memories. The pictures and memorabilia on the walls will be packed, and it is doubtful that they will be transferred to the new place, Mama D says. There, the lunch and breakfast traffic is brisk—better than business has been for years in Dinkytown. "It's a good location," she says. "But I miss my kids."●

HONORING THE BRAVE LITHUANIANS

● Mr. DIXON. Mr. President, it is with the utmost pride that I rise to honor and commemorate the 66th anniversary of the Declaration of Lithuanian Independence. Those of us who share the common bond of freedom have a duty to support an independent Lithuania and to recall the bitter past.

Lithuanians have suffered greatly. Since 1940 the people of Lithuania have been subjected to a blatant denial of self-determination and constitutionally protected individual rights. Soviet domination and subjugation of these people continue unabated. The freedom of speech and the freedom of religion have been discarded by a bankrupt ideology which depends upon force, manipulation, and lies for survival. Nothing could be more alien and unfair to a people who have chosen to be free.

In spite of Soviet domination and repression, Lithuanians persevere in their battle to regain their freedom and national identity. Religion continues to be practiced despite persecution and punishment. Organized resistance marches forward even in the face of imprisonment and execution.

We honor these people because their ideals are our ideals. The freedom so ardently espoused by the Lithuanian Nation of 1918 persists in the hearts and minds of Lithuanians in the 1980's. Soviet terroritial domination and repression cannot reach the collective spirit of the Lithuanian people.

I salute the brave people of Lithuania, knowing that one day they will regain their lost independence.●

LITHUANIAN INDEPENDENCE DAY

● Mr. WEICKER. Mr. President, on February 16, 1918, the Lithuanian people proclaimed an independent and free republic based upon democratic principles. This proclamation represented an end to the foreign domination and intervention that had plagued the people of this small nation for centuries. Given the opportunity to govern themselves, the Lithuanian people produced a constitution that accorded the freedoms of speech, assembly, religion, and communication. They made significant advances and improvements in agriculture, education and social legislation. World War II brought an abrupt end to the modern Lithuanian republic. Caught between two warring powers, overrun by troops of the Russian and German armies, and finally declared a Soviet "republic" in 1940, the Lithuanian people suffered the loss of life, property and liberty.

On behalf of the 1 million Lithuanian Americans, I rise today to call the world's attention to the great injustices the people of Eastern Europe have endured at the hands of the Soviet Union. And yet, after 40 years of Soviet occupation, the Lithuanian's love for freedom and spirit of independence remains strong. Their unique language, literature and culture, which clearly sets the Lithuanians apart from any other ethnographic group, continues to flourish. The basis of U.S. foreign policy is and always has been human rights. We remain committed to the basic values of human life and continue to support and defend these ideals around the world. The Soviet Union's actions in Lithuania are a challenge to these principles and should not be tolerated. Mr. President, the oppressed peoples of the world must not be forgotten nor should their struggle be allowed to die. This Nation must reaffirm its support and dedication to human rights and freedom for all nations.●

HEARINGS ON WARRANTIES ON WEAPONS SYSTEMS

● Mr. TOWER. Mr. President, I wish to announce today that the Committee on Armed Services will hold hearings on February 28 on the issue of warranties on weapons systems.

It is my understanding that the author of section 794 of the Department of Defense Appropriations Act for fiscal year 1984, Senator MARK ANDREWS, will lead off these hearings. The committee is most pleased that Senator ANDREWS can participate in our oversight on the issue of warranties and we look forward to his testimony. It is also anticipated that there will be witnesses from the Department of Defense, including senior military officers who have been intimately involved with the procurement process. The third group of witnesses will be representatives of various defense contractors and trade associations who have an interest in the warranty matter.

Since the question of warranties on weapons systems is one which has received the attention of all Senators, I wanted to make certain that the full Senate was aware of these anticipated hearings.●

CONTINUED CONCERN ABOUT CHEMICAL WEAPONS

● Mr. KENNEDY. Mr. President, the proposed defense budget contains a request of $107 million for the production of chemical weapons. Apparently, the Reagan administration has not yet learned that the American people do not want them. It has been the policy of the last three administrations, Republican and Democratic alike, to oppose U.S. production of new chemical weapons. There is no plausible reason to reverse this broadly accepted and longstanding bipartisan policy. It

appears however that another debate will occur this year, and that the administration will once again raise the level of fear and encourage the production of chemical weaponry.

Senator PRYOR and Senator HATFIELD will once again be leading the attack on this proposed funding. Both of these Senators are longstanding, outspoken, and effective opponents of these weapons. Senator HATFIELD has been an opponent of these weapons since the 1960's, when, as Governor of Oregon, he opposed an attempt to store nerve gas in his State. Senator PRYOR has also been a consistent opponent of chemical weapons production.

Mr. President, I ask that the article, "The Gassing of Washington" from the February 1984 issue of the Washingtonian, be inserted in the RECORD at this point. I encourage my colleagues to read it and to note the courageous commitment of Senators HATFIELD and PRYOR to prevent the production of chemical weapons.

The article follows:

[From The Washingtonian, February 1984]

THE GASSING OF WASHINGTON

(By Blaine Harden)

On November 7, 1952, a man identified only as "J.A." was poisoned by nerve gas. J.A. was walking near a puddle of it at the Dugway Proving Ground in Tooele, Utah, when according to an Army report, he began to feel "giddy." Thus began the most severe human exposure to nerve gas ever reported in the United States.

"Within 10 seconds [J.A.] turned, clutched at his chest, and started toward the ambulance at a fast walk. He called frantically for his gas mask. His gait soon became stumbling, and as he staggered, one arm extended and flexed in a jerky manner. * * * [His breathing] was accompanied by a high-pitched screeching sound, and low-pitched gurgles," according to Chemical Corps Medical Laboratories Research Report Number 151, a declassified document in the non-public library at the Army Chemical Center at Edgewood, Maryland.

J.A. was immediately injected with atropine, a nerve-gas antidote, and taken by ambulance to a hospital. On the way, the report continues, "he was noted to have convulsive jerks recurring at five-second intervals and lasting for about one second. These motions consisted of hyperextension of the spine and legs and rapid, forceful extension of the * * * arms above the head."

After five minutes, J.A.'s "pupils were pinpoint and the eyes were open, fixed, and staring in a central position." After 25 minutes, his "breathing was characterized by coarse, bubbling * * * growls of low pitch. * * * The skin was deep blue and dry." After 35 minutes, during which time he'd been admitted to a hospital, injected with more atropine, and placed in an iron lung, J.A. was completely paralyzed and "there was no reaction to painful stimuli. The pupils were pinpoint and [the surface of his eyes was] dry and covered with dust." After 135 minutes, "the patient's hands involuntarily grasped at his throat. * * * It was necessary to forcibly restrain his upper extremities."

J.A., the report concludes, survived his encounter with nerve gas only because of immediate hospitalization, artificial respiration, and large doses of atropine.

What happened to J.A. out on the Utah desert more than 30 years ago lies at the core of an extraordinary confrontation going on today in Washington between Congress and the Pentagon. With Ronald Reagan's sanction, the Pentagon wants to end a fifteen-year freeze on the production of chemical weapons and make more nerve gas. Congress, by the narrowest of margins, has resisted.

The opponents of nerve gas, thus far, have defied a bureaucratic axiom in this city that says Congress is all but incapable of stopping a presidentially sanctioned weapons system. The specter of J.A.'s poisoning—the possibility that millions of human beings could die after such unholy suffering—has tainted nerve gas. The weapon is perceived as a repulsive, insidious, perhaps even un-American way to kill people. As such, it is an emotional monkey wrench in Washington's revved-up defense-spending machine. For the time being, nerve gas has changed the way Washington works.

Listen to two students of chemical warfare, one a supporter of nerve-gas production, the other an opponent, on the capacity of the gas to unnerve officials in Washington.

"The problem is that nerve gas is so repulsive to many minds that logic and reason go out the window. Many of your military minds are repulsed by it and do not give it the attention it deserves. The chemical companies that might produce it are afraid to touch it. They are afraid that their plants will be picketed and bombed," said Richard Ichord, a Washington-based military consultant and former congressman from Missouri. Ichord is cited as the individual in Congress most responsible for raising chemical warfare as an issue. Ichord's 1979 Reader's Digest article, "The Deadly Threat of Soviet Chemical Warfare," served as the starting point for congressional debate on the subject. According to Ichord, nothing can be done to meet the Soviet threat until "the hysteria ends and this revulsion calms down."

John Isaacs, legislative director of the Council for a Livable World, which lobbies against nerve-gas production, has used military, technical, diplomatic, and security arguments against the weapon. Yet Isaacs agrees with Ichord that the key anti-gas argument, even when it remains unspoken, is emotional.

"Logic doesn't play a major role in this decision," says Isaacs. "In this Congress, so far, you can shoot 'em, you can nuke 'em, but you can't gas 'em. A lot of 'true believers' don't believe in nerve gas. Nuclear weapons are a test of manhood. Real men need nukes. Maybe real men don't need nerve gas."

Whether real men need nerve gas or not, the history of defense votes in Washington indicates that sooner or later the Pentagon is likely to get what it and the President want.

"The Pentagon can outlast the opponents. Where major weapons systems are concerned, it is very unusual that Congress kills them," says William Kaufmann, a former Defense Department consultant who helped formulate the nation's doctrine of nuclear deterrence.

Since Ronald Reagan came to Washington three years ago, the military's winning percentage in Congress has gone up dramatically. The Pentagon is on a five-year, $1.3 trillion roll. There is money for billion-dollar weapons such as B-1 bombers, MX missiles, and nuclear-powered aircraft carriers. There is money to make this year's defense bill the largest postwar spending measure in the nation's history, larger than the entire federal budget for 1973. The Pentagon has wrested money from Congress for the production of every major weapons systems on its wish list—except nerve gas.

By Pentagon standard, nerve gas is a small item, a $124 million sliver in this year's $258 billion defense package. Nerve-gas-producing money, had it been appropriated, would be barely enough to buy three Air Force F-15 fighter jets.

While Congress has refused to spend money to make new nerve-gas weapons, it has shown no reluctance to spend money to defend against the stuff. Defensive spending for chemical warfare, totaling more than half a billion dollars this year, has grown tenfold in the past five years. No one in Congress objects to spending this money. It is nerve gas itself, not gas masks, that draws the fire.

The refusal by Congress to allow nerve-gas production has provoked more hours of floor debate per dollar requested than any other item on the defense budget. In the trenches of World War I, entire Allied army units, fearing a German chemical attack, would sometimes break and run as soldiers showed signs of chemical injuries. War scholars call it "gas hysteria." In the past two years, some members of the House and Senate, even those who vote for making more nerve gas, have succumbed to a rhetorical version of this malady.

"It is so unsavory and unpleasant. * * * It is much worse to be gassed than it is to be blown up," says Representative William L. Dickinson, a Republican from Alabama, who led the unsuccessful 1982 House fight for nerve gas.

"Even more repugnant than the horrendous destructive force of nuclear weapons," says Senator Ted Stevens, a Republican from Alaska, who, as chairman of the Senate subcommittee on defense appropriations, led last year's protracted fight in that chamber for the weapon.

"The horror is indescribable," says Senator John Warner, a Republican from Virginia and another key supporter of nerve gas.

Nerve gas also has caused unpleasantness off the House and Senate floors. Before their marriage ended in 1982, John Warner and Elizabeth Taylor had bitter arguments over the senator's support for nerve-gas production, according to Senator David Pryor, an Arkansas Democrat to whom Warner mentioned the arguments. (A spokesman for Warner says the senator has "no recollection" of talking to Pryor on this subject and that Warner has no comment on arguments he may have had with his former wife.)

Presidential aspirant John Glenn's votes for nerve gas have allowed his principal opponent former Vice President Walter F. Mondale to criticize Glenn as an "out of step" Democrat who offers the Pentagon a "blank check." Glenn's votes incited dissent within his staff with political types telling the Ohio senator that support of nerve-gas production would seriously hurt his chances of getting the Democratic nomination.

The Democratic-controlled House has consistently rejected nerve-gas production, while the Republican Senate has narrowly supported it. A tie in the Senate in November forced Vice President George Bush to cast his second tie-breaking, pro-nerve-gas vote of the year. These are the only two votes Bush has cast in the Senate and are the first such tie-breakers in six years. After the first vote last July, Bush told the Presi-

dent that if he ever again had to vote for the weapon, Reagan would have to call his mother and explain why. The President placed such a call to Dorothy Bush on November 8. According to Mrs. Bush, who is appalled by nerve gas, the President reassured her that George is the "best Vice President ever."

Two scenarios frame the impasse between the Pentagon and Congress over nerve-gas production. The first appeared in former congressman Ichord's Reader's Digest story. It describes a sneak nerve-gas attack in Western Europe by the Soviets.

Bodies of American and NATO soldiers are "slumped on air strips and in cockpits; at entrances to radar bunkers, gun emplacements, and missile sites." In the end: "Masked and goggled troops of the Red Army and its satellite forces now moved quickly to take advantage of the deadly invisible miasma of their own making. And while the United States, fearful of massive Soviet retaliation, held back its nuclear weapons, it became clear that Western Europe—its industrial and military infrastructure left largely intact for the conquerors' uses—was falling."

The second scenario was imagined by Matthew Meselson, a professor of biochemistry at Harvard and a critic of the Pentagon's plan to produce nerve gas.

"It was at night and I was in bed," said Meselson, who was interviewed in his Harvard office, a room cluttered with stacks of research papers and assorted chemical-warfare paraphernalia, including a gas mask, protective suit, and gas antidotes. "I had the thought of a family trapped in the basement of their house [during a war], thinking they would be safe. Then the thought occurred to me that, for nerve gas, being inside does not help at all. The gas comes over and goes into the cellar, and it becomes a gas chamber. I had the thought of a family and children seeing each other totally lose control of their bodily functions, writhing and dying and not knowing why."

These two visions color all the nerve-gas debate, charging it with an emotionalism that is not easily swayed by reason.

The Pentagon says it wants to build only enough new "binary" nerve-gas weapons to replace the nation's aging stockpile of gas-filled artillery shells and bombs. Those older weapons, last built in 1968, are kept in West Germany and in munitions depots scattered around the United States.

Binary weapons, the Pentagon says, are safer than the old "unitary" weapons because they keep the ingredients for nerve gas in two separate, non-lethal containers. Binary shells contain lethal gas only after they have been fired and the ingredients have been mixed together. Soon, the Pentagon warns, old nerve-gas weapons will become unsafe, unreliable, and useless, and the United States will be unable to retaliate in the event of a Soviet chemical attack. Finally, the Pentagon says, the only way to force Soviet concessions in arms talks on chemical weapons is to demonstrate resolve, and nerve-gas production demonstrates resolve.

Sound arguments, perhaps, but not convincing to someone haunted by visions of children writhing to death in front of their parents.

Opponents of binary production argue that existing U.S. nerve-gas weapons are more than adequate to deter the Soviets. They say the binaries are untested and that the Pentagon, slavering after new weapons, doesn't know how long existing weapons will be useful. They also say that ending the 1969 freeze on making chemical weapons will further complicate U.S.-Soviet relations and delay disarmament talks on chemical warfare. Finally, the opponents say, it is stupid to make new chemical weapons because the nations of Western Europe, where the gas must be placed if it is to be useful, have said they will not allow deployment.

Sound arguments, perhaps, but not convincing to someone haunted by fears of the Red Army gassing the free world into submission.

How willing and capable is the Soviet Union of a nerve-gas attack? The Soviets have made extensive defensive preparations for a chemical war. They have between 60,000 and 80,000 troops trained specifically for chemical warfare, compared to about 8,000 in the U.S. military. They have tanks and armored vehicles with air-pressure systems that are designed to keep out contaminated air. They have hundreds of vehicles capable of decontaminating soldiers and equipment. Warsaw Pact armies routinely practice anti-chemical maneuvers.

Evidence about the Soviets' offensive chemical capability is less firm. A Department of Defense report late last year said the Soviets can place chemical ammunition on weapons ranging from mortars to long-range tactical missiles. The U.S. has useful nerve-gas ammunition only on short-range artillery shells.

The Pentagon report, based on analyses of unspecified "information collected over many years," says "the Soviets have continued to test, produce, and stockpile chemical weapons." Yet, according to the Congressional Research Service, there is little evidence that the Soviets have increased their stocks of chemical weapons since the US stopped production fifteen years ago. Estimates of the total size of the Soviet chemical-weapons stockpile vary from as little as 30,000 tons to as much as 700,000 tons. The US stockpile is estimated at 150,000 tons.

While most experts agree that the Soviets have made elaborate preparations for chemical war, there is little agreement as to why. Here, too, it depends on which scenario one chooses to worry about. Those who fixate on the dying-family scenario tend to see Soviet preparations as defensive. They say the Soviets are justifiably frightened of a US chemical attack. They tell advocates of nerve-gas production that the Soviet buildup is a logical response to a similar American buildup in the 1950s, and '60s. They remind nerve-gas advocates that the US, unlike the Soviets, procrastinated for half a century, from 1925 to 1975, before signing the "no first use" Geneva Protocol on chemical weapons.

Those who fixate on the Red-takeover scenario remind anti-gas moralists that the Soviets have not succumbed to squeamish hand-wringing about nerve gas. The Russians have refused to respond to the US freeze on chemical-weapons production with a freeze of their own. Those who favor nerve-gas production claim that Russia is better prepared to make the gas in time of war and that Soviet military field manuals indicate a willingness to exploit a chemical advantage on the battlefield.

The scarcity of hard information allows nerve-gas arguments to drift away from real military questions. This, of course, is not peculiar to nerve gas. As James Fallows writes in The National Defense, "When arguments about defense come unmoored from the facts, they stop being about defense at all. * * * Most frequently they concern ideology, as one military program after another becomes a mere proxy for a general world view that the United States is too weak or too strong, too intrusive in the rest of the world or not assertive enough. * * * The general cast of mind of the left in defense debates is to overestimate the importance in international relations of moral examples and to underestimate the role of force. * * * On the right, the corresponding tendency is to overestimate the utility of force as a cure-all. * * *

The middle ground in the nerve-gas debate is so elusive that many participants have stopped looking.

"You have to go in [to Congress] and out-emotionalize the emotions that already exist. The point has long since passed when you could sit everyone down and, with an open mind, come up with an objective agreement," says George F. Mohrmann, a defense consultant and retired Army lieutenant colonel who, as an aide to Ichord, helped write the Redscare scenario for Reader's Digest.

On the other side of the issue, Saul Hormats, a retired federal official who supervised production of most of the nation's existing chemical-weapons stockpile and who is convinced that binary weapons won't work, has stressed in his recent testimony before congressional committees the "killing babies" aspect of nerve gas.

"How do you counter guys who are waving the flag?" Hormats asks. "Which is more terrible: the atheistic, communistic Russians or killing babies? Which is better emotion?"

Chemical warfare has been a moral conundrum ever since an April afternoon in 1915 when a cloud of greenish-yellow gas drifted downwind across a battlefield near Ypres, Belgium. The Germans routed French troops and horrified the world.

Without hesitation, the Allies mixed up their own lethal gas and retaliated in kind. "At the Ministry of Munitions we were the bees of Hell, and we stored our hives with the pure essence of slaughter," wrote Winston Churchill of the preparations for gas warfare.

While preparing its own essence of slaughter, the U.S. launched a massive and successful propaganda campaign against the Germans for using chemical weapons. Such behavior, one general wrote in the New York Times in 1915, disregards "all the laws of humanity and civilization."

American public opinion on chemical warfare was carefully manipulated by the federal government during World War I, according to General Frederic J. Brown, in his authoritative book "Chemical Warfare: A Study in Restraints." By the end of the war, Brown writes, "gas propaganda had run the gamut—the illegal and inhumane act of a murderous aggressor in 1915; just and humane retaliation in 1916; [news] blackout in 1917; and a triumph of Allied industry in 1918."

In the U.S. military, there has always been an unease with gas. There is nothing manly or glorious about leaking lethal chemicals into the air. Chemicals befoul the battlefield, complicating the tactics officers learn in war college, forcing soldiers into bulky suits and uncomfortable masks. According to Brown, both German and Allied commanders concluded after the war that once the element of surprise was lost and both sides were suited up, "a mutual exchange of gas would create a toxic battle environment causing more problems to be raised than could be solved." Chemicals are

difficult to aim, they drift uncontrollably in the wind, and they are useless in the rain.

The two most commonly used chemicals in World War I were chlorine and mustard gas. These agents, especially mustard, are highly toxic. But they are not in the same league with nerve gas.

Nerve gas was discovered by accident in 1936 by a German scientist looking for a better way to kill bugs. What he discovered was an odorless, tasteless, invisible compound that, according to Hormats, "was remarkably effective against insects but, strangely enough, even more effective against man."

In World War II, the Germans did not use nerve gas because, in part, they feared that the Allies had also developed it. The Germans also believed, according to postwar interrogation of Germany's top chemical officer, that using gas would slow down the blitzkrieg invasion of Western Europe and divert scarce resources away from more useful weaponry. After the war, both the U.S. and the Soviet Union seized the German gas, took it home, and began making it. The Soviets dismantled two entire German nerve-gas plants and reassembled them in the Soviet Union. In the U.S., as manufacture of the gas started, researchers looked into the killing power of the new weapon.

Nerve gas, it was found, is capable of killing any living creature with a nervous system. It can enter the human body through the lungs by inhalation or through the skin by absorption. The gas, an organophosphorus compound related to Raid and other household insecticides, works by blocking the action of an enzyme that is part of the normal on-off function of the nervous system. The enzyme, in effect, is needed to turn nerves off. Nerve gas "binds" the enzyme and keeps it from turning off nerves. The result is uncontrolled firing of the entire nervous system. Victims "overstimulate" to death.

From a series of accidents involving Army employees—including J.A.'s poisoning in Utah—plus controlled tests with 6,720 soldier volunteers, the Army has put together a list of nerve-gas symptoms. Much of this testing and analysis took place near Washington, at the Edgewood Arsenal about 20 miles north of Baltimore, and later at the Army Medical Research and Development Command at Fort Detrick near Frederick, Maryland. Although human tests with nerve gas were stopped in the mid-1970s, chemical-warfare research continues at both installations.

Nerve-gas symptoms begin with nausea, sweating, heartburn, and tightness in the chest. Then come drooling, abdominal cramps, vomiting, wheezing, and diarrhea. The chest fills with mucus, and there are involuntary muscular twitches. Psychological effects begin with jitteriness, restlessness, and excessive swings of emotion, followed by insomnia. Under prolonged sublethal exposure, there are headaches, tremors, drowsiness, difficulty in concentrating, slowness of recall, mental confusion, and excessive dreaming. There is no record of what one dreams excessively about.

Chemical weapons like nerve gas are unique among modern weapons of war in that they are harmless to a soldier wearing protective clothing, which is standard issue to US and Soviet soldiers. Military strategy, in fact, is not to kill enemy soldiers with nerve gas, but to force them into their clumsy rubber protective suits, get them all sweaty and uncomfortable, and thereby reduce their fighting efficiency.

With nuclear warfare, deterrence depends on "mutual assured destruction." A chemical-war threat is really an "encumbrance" strategy. If the US has enough weapons to force the Russians into their rubber suits, then it has achieved its goal. If both sides have the offensive weapons and defensive suits, neither side could use nerve gas to military advantage and chemical warfare would be unlikely.

If the encumbrance strategy doesn't work, most of the dead in a chemical war will be civilians. Meselson, the Harvard biochemist and student of chemical warfare, estimates that a nerve-gas attack in central Germany intended to kill one of five soldiers (before they scramble into protective clothing) would drift downwind, under normal weather conditions, in a 24-mile-long, tear-shaped cloud. The invisible cloud would, according to Meselson's calculations, kill every unprotected person within twelve miles of the attack and incapacitate everyone else who does not have a gas mask handy.

"You are talking about killing 100 civilians, 200 civilians, for every soldier who is a casualty," says Meselson, who estimates that millions of civilians would die in a chemical war in Western Europe.

Grim statistics about civilian death and the distasteful nature of nerve gas have not gone unnoticed by the military. Compared to swords, bullets, high explosives, and even nuclear weapons, chemical weapons have always been, according to General Brown, "too technologically demanding and psychologically disquieting to be assimilated by the military profession."

Yet the military needed chemical weapons in World War I, and the Army created a bureaucracy—the Gas Service, which later became the Chemical Warfare Service, which later became the Chemical Corps—committed to meeting that need. Like any bureaucracy, the Chemical Corps is committed to perpetuating itself. The continued existence of the Chemical Corps means that for the past 69 years, someone in Washington has had career-related reasons for going to work every day, writing memos, making phone calls, and thinking about a chemical battlefield where, in the words of Senator John Warner, "the horror is unthinkable." The existence of a chemical-warfare bureaucracy guarantees requests for weapons to fight in such a war.

"If they are not doing chemical-warfare production, they don't have a job," says Senator David Pryor, who is convinced that the U.S. already has more than enough nerve gas to deter the Soviets. "It is kind of like the reasons we don't have a flat tax system. If you have a flat tax, you are going to have a lot of Internal Revenue Service agents out of work. If you don't have a chemical-warfare program you are going to have some people without a job. You know, you gotta have some way to spend the day."

Since 1918, when the U.S. last fired a chemical weapon at hostile forces, the Chemical Corps' biggest battles have been for its own survival. It has not been easy. The Corps has survived decades of public obloquy. In 1923, the *New York Herald* wrote: "Ordinary killing is bad enough, but that man should treat his fellow as he treats a rat or a cockroach is inherently repugnant to all from whom decent instincts have not fled." The Corps survived Presidents who wanted it abolished. Franklin D. Roosevelt said in 1937, "I do not want to aggrandize or make permanent any special bureau of the Army or the Navy engaged in [chemical warfare]. To dignify this Service by calling it the 'Chemical Corps' is, in my judgment, contrary to a sound public policy." And the Corps survived repeated attempts by the Army itself to reorganize it to death. The first of those attempts failed in 1919, the last in 1973.

The Corps could not have survived so long in Washington without bureaucratic skills. Like most government agencies that deal with unappetizing subjects, the Corps sanitizes chemical warfare with jargon and camouflages it in acronyms. Unplanned killings of civilians in a chemical attack are "collateral effects." Saul Hormats, who spent 37 years with the Chemical Corps at Edgewood, explains: "Talking about killing children or old people is no way to discuss something as important as chemical warfare. If you talk real, the program is dead, so you have to talk collateral effects."

A more important part of the Corps' bureaucratic battle for survival has been its ability to ingratiate itself with the right people in Congress. When the Army planned to dismantle the chemical service in 1919, the chief chemical officer, General Amos Fries, single-handedly kept it alive by sidestepping his military bosses and appealing to the chairmen of the House and Senate Military Affairs committees. Fries had made it his business to befriend these men, one on a trip to the Philippines, the other on a military assignment in Oregon.

More recently, the Corps had the good fortune of seeing retired Lieutenant Colonel George F. Mohrmann, a former Army legislative-affairs officer who for years had lobbied for the chemical program, go to work in 1976 for Ichord, then a ranking member of the House Armed Services Committee. Four years later, even though President Carter had not asked for it, Ichord pushed a bill through Congress to build a factory in Pine Bluff, Arkansas, for the manufacture of nerve-gas weapons.

The new nerve-gas plant, which has yet to make any weapons, symbolized for the Chemical Corps the end of eleven years of wandering in the bureaucratic wilderness. That exile, which almost killed the Corps, began in 1969 when President Richard Nixon halted U.S. production of chemical weapons. The late 1960s was not a politic time for making nerve gas. The U.S. was being criticized for its use of the defoliant Agent Orange in Vietnam, the environmental movement was gaining political momentum, and arms negotiators were seeking multinational treaties banning both chemical and biological weapons. The Chemical Corps also kept embarrassing itself with leaks and spills of its gas. In March 1968, an Army plan accidentally leaked nerve agent over a Utah pasture, killing more than 6,000 sheep. That incident, says an Army public-relations officer, "delivered a crippling blow to the nation's chemical-biological warfare program."

When President Nixon lowered the boom, Bobby Charles Robinson was a promising young Chemical Corps officer at the Army Command and General Staff College at Fort Leavenworth, Kansas.

"It was rough," recalls Robinson. "I remember very clearly going to class the next morning, after it had hit the news, and my classmates said, 'Aha, what are you going to be doing?"

Robinson was a bright, plainspoken farm boy from North Carolina who had majored in chemistry and biology at Wake Forest University. The campus ROTC program there had introduced him to the Chemical Corps. During his Army chemical training

at Fort McClellan, Alabama, Robinson was scarred by mustard gas.

"They really made believers out of you. . . . Most officers who went through basic training down there have a little item to remember," Robinson says, pointing with pride to a scar on the inside of his left forearm. The scar is the result of a training exercise in which small amounts of dilute mustard gas, a "blister agent" that causes chemical burns, were dripped onto the arms of prospective chemical officers. They then "decontaminated" themselves. "It gave you total confidence," Robinsons says.

Robinson believed then, as he believes now, that "somebody has to be looking at the chemical threat." So back in 1969, while all around him were deserters and program cutbacks, Robinson kept the faith. Many of the best and brightest officers in the Corps transferred to other Army branches in search of promotions. The Army chemical school at Fort McClellan was closed, funding for research dried up, and the number of Chemical Corps officers slipped from 1,375 to 700. The Secretary of the Army made plans to abolish the Corps.

During these dark days, Robinson was transferred to Fort Hood, Texas, where he bided his time and made sure his batallion of support soldiers was "one of the best-trained units for chemical protection that we had." Then, quite unexpectedly, the Corps was pulled back from the brink. This time it was the Soviets who saved the day. In the 1973 Arab-Israeli war, a Soviet tank was captured that, along with other equipment, indicated the Soviet Union was prepared to fight a chemical war. Lieutenant Colonel Robinson was called to Washington because there was no one at the Army's Nuclear Chemical Plans and Policy Division who knew nerve gas the way he did. Before he had even found his desk, Robinson was asked to write a paper explaining what binary nerve-gas weapons were all about. Robinson helped write a secret report that became the driving document behind the Army's effort to get serious again about chemical warfare. The lieutenant colonel was on his way to becoming a brigadier general, and the Chemical Corps was back in business.

The Corps needed a man like Robinson. He is warm and likable, and his southern courtliness belies stereotypes of chemical officers "as gas-and-bugs types."

"If they are looking at me as a test-tube guy, then they got me all wrong," says General Robinson in an interview in his office on the tenth floor of the high-security Army materiel headquarters in Alexandria. On one wall of his office is the insignia of the Chemical Corps (crossed test tubes over a benzene ring); on the other, framed photographs of his three children. Pointing to the photographs, Robinson explains his life's work: "I think we would be very, very remiss if we didn't provide those folks, my sons and daughters and their friends, and every soldier, the capability to survive and do his or her job on that battlefield."

Until there is a "truly effective and verifiable treaty which indeed eliminates" the possibility of chemical war, Robinson says, "you are very, very foolish if you are not prepared to counter the threat."

During the Ford and Carter administrations, according to a budget analyst at the Office of Management and Budget who took a special interest in the nerve-gas issue, Robinson was the Pentagon's best lobbyist on chemical warfare. He succeeded in scaring members of Congress about a chemical war without being scary himself.

General Robinson objects to the word lobbyist. "The Army is not authorized for lobbying. * * * You interface with the congressmen and the senators to support your program, [and the Soviet] threat comes out," he explains.

With General Robinson interfacing on the Hill, the Chemical Corps made a high-speed bureaucratic comeback. The chemical school in Alabama was reopened, chemical specialists were reassigned throughout the Army, and officer ranks were rebuilt to pre-exile levels. All the while, requests for money to make new nerve-gas weapons grew increasingly credible.

The game of bureaucratic survival in Washington is not played in a vacuum. Just as events conspired in the level 1960s to kill the Chemical Corps, so they fell into place in the late 1970s to revivify it. In 1979, an outbreak of anthrax near a suspected Soviet biological- and chemical-weapons factory in Sverdlovsk in the Ural Mountains led U.S. intelligence to suspect a Russian violation of the Biological Weapons Convention of 1972. That treaty, signed by the U.S. and the Soviets, banned production, possession, and use of biological, or "bug," weapons such as anthrax, plague, or Venezuelan equine encephalitis. It did not ban production and possession of chemical weapons.

Evidence and eyewitness accounts in Southeast Asia and Afghanistan also led the U.S. to conclude, despite reservations from some respected scientists, that the Soviets were using "yellow rain" toxins and chemical weapons.

The Soviets, in countless ways, have been midwives to the rebirth of the Chemical Corps. Pentagon lobbyists have attempted to prod reluctant congressmen into supporting nerve-gas production by giving them eight-by-ten glossies of General V. K. Pikalov, commander of Soviet chemical warfare. On the House floor two years ago, Representative G. William Whitehurst, a Virginia Republican, invoked the name of Marshal Nikolai Ogarkov, chief of staff of the Soviet Army, and warned his colleagues that nerve-gas moneys must be approved or else: "If you listen carefully, you will hear the echo of Ogarkov's laughter in the Kremlin."

In the final House debate on nerve gas last year, Representative Samuel S. Stratton, a Democrat from New York and member of the House Armed Services Committee, argued for nerve-gas production by pointing to "a dramatic new piece of evidence." Stratton, who in an earlier debate had brought a gas mask and full-protective suit into the House, said, "The Soviet Union has developed a new kind of gas that can actually penetrate our gas masks, feeble and limited as they are." Asked later about his source for this revelation, a press aide for Stratton said the congressman could find no written support for his statement, but he "swears he was told that by someone within DOD."

The Department of Defense, in the person of General Robinson, responded to Stratton's assertion by saying, "I don't know about the situation you are talking about here. I have no idea who might have told him that. I don't recall seeing any secret document but * * * I share the concern."

Invocations of the Soviet threat have become so common when Congress votes on nerve-gas funding that Senator Pryor has given them a name. He calls it "the white-knuckle show."

The white-knuckle show, according to Meselson, the Harvard biochemist and former State Department consultant who was instrumental in putting together the 1972 ban on biological weapons, "encourages sloppy intellectual performance in intelligence matters. Sooner or later it is going to hurt us."

In at least one instance, sloppy intelligence work embarrassed the Army. Among the chemical-warfare equipment found on the Soviet tank seized in the '73 Arab-Israeli war, the Army discovered a new antidote for nerve gas. The antidote, called TAB, was rushed to the U.S., copied, and, after limited testing, made the standard antidote for American soldiers. At the Army's request, Survival Technologies, Inc., a Bethesda firm, made 4 million TAB antidote injectors at $3.50 each. TAB was sent off around the world. Further testing, however, proved that the Army had been too quick to embrace Russian technology. According to a 1981 Army Chief of Staff memorandum, "studies have indicated that TAB is incapacitating in itself, causes hallucinations, and does not contain sufficient atropine to be effective."

Dr. Stanley J. Sarnoff, founder of Survival Technologies, describes the effects of TAB when taken by a soldier in the field: "He may lose his sense of proportion and his respect for authority. He could tell his sergeant to bugger off." While Sarnoff defends the $14 million TAB affair as a "a reasonable choice at the time" and one that is easy to criticize in hindsight. Meselson sees it as symptomatic of the military's thinking on chemical warfare.

"'Wow, it's Russian. It must be ten years ahead of us.' That's how the Army reacted," says Meselson. "If there had been a war, even if the Russians hadn't used gas, but we had sounded the alarm by mistake, every man would have injected himself [with TAB]— and we would have had no Army. It sounds like a joke. But it was no joke. The Russians could have just walked through."

TAB, ironically, is not even Russian. It is a Bulgarian insecticide antidote, says Meselson, that was purchased on the world market by the Egyptian army and placed in the Soviet tanks captured by the Israelis. Major Robert Pilnacek, an Army spokesman, denied that TAB is an insecticide antidote, while confirming its Bulgarian origin. The spokesman added, "TAB was presumed to be of Russian origin when captured. Going beyond that, I get in an area that I can't talk about."

Sloppy or precise evidence, real or imagined, suspicions and white-knuckle theatrics related to the Russians have all fueled bureaucratic victories for the Chemical Corps. One of the major victories was prompted by a defense Science Board study in 1980 that concluded that the US needed a "high-level focal point" for chemical warfare. So, for the first time, such a position was created within the Office of the Secretary of Defense. The position is now held by Ted Gold, an engineer who, like General Robinson, is a warm, personable, and career-driven proponent of the chemical program.

The 1980 election brought even more good news to the Chemical Corps. President Jimmy Carter had never allowed requests for nerve-gas-production money on his budgets. But the new President—who in his first press conference said the Soviets reserve "unto themselves the right to commit any crime, to lie, to cheat"—quickly saw the need. Production of nerve gas, President Reagan said, is "essential to the national interest." With a President unafraid of nerve gas and with a high-level advocate for "chemical matters" in Secretary of Defense

Caspar Weinberger's office, the Chemical Corps was primed for an assault on Congress.

On Capitol Hill, few members knew or cared about the comeback of the Chemical Corps. Nerve gas was an easy issue to repress—it was dwarfed by new fears of nuclear war, and it had to compete with a barrage of other barely comprehensible high-tech horrors. "Most members," said Senator Pryor, "make a point of not learning about it." There also are many other more politically profitable defense issues to worry about. The multibillion-dollar B-1 bomber program, for instance, has subcontractors in hundreds of congressional districts. By supporting such a weapon, a lawmaker can appear resolute against the Soviets while shipping home some pork. But a pip-squeak defense item like nerve gas offers awful visions and almost no pork-barrel benefits.

The constituency on Capitol Hill for nerve gas is, as ever, the membership of the House and Senate armed-services committees, which have consistently approved the Pentagon's requests for chemical weapons.

Then there are the boys from Arkansas. Nerve gas is a major local issue in that state. If nerve-gas weapons are made again, it will happen in Pine Bluff, a city of 58,000. (In a recent Rand McNally survey on the quality of life in American cities, Pine Bluff ranked 275th out of 277.) Representative Beryl F. Anthony Jr., a Democrat who represents the impoverished Pine Bluff area, supports nerve-gas production for the jobs it will bring home. But Anthony's understandable support has not been nearly as important to the fate of the nerve-gas issue in Washington as the dogged opposition of two other Arkansas lawmakers, Senator Pryor and Representative Ed Bethune.

It is uncommon for members of Congress to turn up their noses at a defense program that will, given time, bring home billions. Last year, Senator John Tower, a Texas Republican, wrote a "Dear Colleague" letter that said, "In my 22 years in the Senate, I do not recall any senator ever volunteering such a budget reduction in his state." While the nerve-gas opposition of Pryor, a moderate Democrat who supports most defense spending, is odd, that of Ed Bethune, a conservative Republican, is downright surprising.

When Bethune came to Congress in 1979, he did not know what binary weapons were. Furthermore, the handsome, sandy-haired former FBI agent and former prosecuting attorney had never expected that he would turn out to be the key House opponent of the only weapons system denied to President Reagan.

"I had just gotten here in 1979. What do I know from binary gas?" says Bethune. "I had been minding my own business, practicing law out in Searcy, Arkansas. So I got to Washington and I had a reporter come up to me one day and ask me about the binary munitions issue. . . . Well, I was a little embarrassed personally that I had not heard this esoteric term. Being caught short on that provoked my interest. You know how new members are around here—you want to learn. You don't want to look stupid."

Over the next three years, Bethune, whose district is next door to the Pine Bluff Arsenal, learned about nerve gas. In the process, he has made a name for himself. Bethune has met with President Reagan in the White House, as well as with Secretary of Defense Weinberger, Vice President Bush, and James Baker, the President's chief of staff. He has examined nerve-gas installations around the US and traveled to Geneva to look in on chemical-arms-control talks. He has led House debates against nerve gas and has asked the General Accounting Office to conduct an investigation of why the Department of Defense "withheld critical information" on a nerve-gas bomb. He has been quoted in national newspapers and magazines and has been interviewed by CBS News. Most newspapers back home have praised Bethune's work against nerve gas. In one editorial cartoon, he is pictured as an angel.

While no one questions the sincerity of Bethune's anti-nerve-gas crusade, it has afforded him a high profile in Washington and has helped solve his political problems at home. As a narrowly elected conservative Republican (nerve gas is the only defense issue on which Bethune disagrees with Reagan) in Arkansas' most liberal Democratic congressional district, Bethune must never seem too much of a Reaganite. "It serves him well to get out front on issues that make him look like an iconoclastic Republican," says Tom Hamburger, former Washington correspondent for the Arkansas Gazette.

Bethune embraced an issue that not only pleases the home folks but also is a safe bet in the Democratic House. Given the opportunity to vote yes or no on nerve-gas production, the House in the past two years has said no by overwhelming margins. But in the Republican Senate, where the past four nerve-gas votes have been decided by a total of eight votes, leading the opposition has been neither as easy nor as politically expedient. While Senator Pryor has lobbied and debated skillfully against nerve gas, he does not have the seniority or committee position to scuttle the majority's will. That job has fallen to the more strategically positioned senior senator from Oregon, Republican Mark O. Hatfield.

Hatfield, a religious man who, as a young soldier, was one of the first Americans to see Hiroshima after it was bombed, is a long-time adversary of the Chemical Corps. He opposes nerve gas for the same reason he opposes the neutron bomb. "The target is the civilian population," Hatfield says. His antipathy toward nerve gas dates back to the 1960s, when, as governor of Oregon, he opposed an Army attempt to store the gas in his state. Hatfield also is chairman of the Senate Appropriations Committee, and it is the power of his chairmanship that in the final days of last year's session just barely kept the US from producing the gas.

Before senator Hatfield flexed his muscles last fall, the Chemical Corps appeared to have victory in hand. Again, the Russians had done their part. When the Soviets shot down Korean Air Lines Flight 007 on September 1, the House was considering the defense-authorization bill. That bill included Senate-approved nerve-gas money that the House had soundly rejected. (The money had been put back into the defense bill by a conference committee made up of progas members of the House and Senate armed-services committees.)

The Russians, by shooting down an unarmed airliner, had set sabers rattling on Capitol Hill. It became both procedurally and politically impossible for nerve-gas opponents to hold up the entire defense package over a $124 million item. So the House approved the conference report, and for the first time in fourteen years, Congress authorized the production of chemical weapons. Then, however, came the second hurdle for any spending bill: the appropriations process, which meant the Senate Appropriations Committee—which meant Mark Hatfield.

Hatfield fixed his committee's vote against nerve gas. In October he walked into the defense-appropriations mark-up session with eleven anti-gas proxies in hand. He won on a 16-14 vote. Funding for nerve-gas production was struck from the defense-appropriations bill. That did not end it. At the Reagan administration's urging, an amendment was introduced in the full Senate to restore the money Hatfield had cut. The vote on that amendment occasioned last-minute soul-searching, bullying, and broken promises.

Between the committee mark-up and the floor vote, Hatfield counted up likely progas votes and determined he was out-numbered. He appealed personally to three senators for help. "I had three of my colleagues pledge me their votes," he recalls. They were Senators Paula Hawkins of Florida, Alfonse M. D'Amato of New York, and Jesse Helms of North Carolina.

In the well of the Senate on November 8, Hawkins chose not to vote. For this, Hatfield kissed her on the cheek. D'Amato, although he said he was "still torn," reneged on his pledge and voted for nerve-gas production. Just as he had promised, Helms, the archconservative, voted against nerve-gas production. Supporters of nerve-gas, stunned by this un-Helms-like vote, watched in amazement as the stone-faced Helms quickly turned and rushed off the Senate floor.

The swinging doors of the Senate chamber were closing behind him when the voices of two pro-gas Republican senators, Ted Stevens and John Tower, joined in yelling, "Jesse! Jesse!" They ran after Helms and buttonholed him in a cloak room, impressing upon him the importance of his vote to the defense program and to the President. Looking sheepish, the senior senator from North Carolina returned to the Senate floor and whispered an apology to Hatfield: "I just can't do it; I'm sorry." He then changed his vote.

Helm's change resulted in a 46-46 tie and forced the Vice President into the tie-breaking vote that occasioned the apologetic presidential phone call to Bush's mother.

Because the House had not appropriated similar money, another conference on nerve gas was necessary. Hatfield, furious over his loss on the Senate floor, was a conferee.

On the day before Congress was scheduled to go home for the year, Hatfield told the conferees that he was prepared to stall the entire $258 billion defense bill.

"I've been in this business a long time, and I can play a hardball game when it is required. I told them, 'If you bring back that bill in any form that permits production of chemical weapons, then as far as I am concerned you don't have a bill.' I would have filibustered the conference report until the end of the session, if necessary," Hatfield says.

The conferees killed the nerve-gas-production program for another year.

So the Chemical Corps lost another round. But it is used to losing. Its officers, those committed men who have mustard-gas scars on their arms, take the long view. General Robinson says the Soviet threat is still there and the US stockpile of nerve gas is getting older every year. "We will be back this year with the same need," says Gold, the nation's top chemical bureaucrat. "The need is there."

Arms talks aimed at a ban on chemical weapons, which made progress in the 1970s, have floundered as U.S.-Soviet relations have deteriorated. Anger at the Soviets, along with increased fear of military confrontation, has raised the emotional pitch of congressional debate. Just as it was last year, nerve gas is likely to be a lightning rod for that anger and fear. Haters of the Soviet Union, fuming over the latest Russian outrage, can support production of nerve gas with enthusiasm and a clear conscience. Guilt-ridden lawmakers, worried about an arms buildup that forces cuts in domestic spending while causing record deficits, can find absolution, however meager, in voting against nerve gas.

Both Hatfield and Bethune expect another long, angry fight in Congress. Even if they stop nerve-gas production again, as may be likely in an election year, there is always next year for the Chemical Corps. As long as there is a chemical-warfare bureaucracy, there is a mechanism for learning from defeat and refining another request. As long as the Soviets are seen as an evil enemy willing to wage war with lethal chemicals, there will be votes for a deterrent.

"The nerve-gas issue reminds me of this movie about a monster from outer space," said Bethune last year. "The monster continues to grow arms and legs. You kill it off, and it comes back. Even though you are winning, you are losing."●

JUSTIN DART

● Mr. LAXALT. Mr. President, today I rise to express my sympathy at the passing of my friend Justin Dart. He, as much as anyone I have known, embodied the principles and qualities that make this Nation great. Indeed, Justin was a sterling example of the citizen-statesman that our Founding Fathers saw as essential to the health of our democracy.

Justin was a public servant in every sense. While never seeking election to high office, Justin advised great public leaders from Thomas Dewey to Ronald Reagan. Better and more responsible government was his singular goal in these relationships.

As a businessman and spokesman for free enterprise, Justin was unrivaled. He was a leader in the fields of aviation and medicine and developed one of the most successful businesses in the country.

As a philanthropist, Justin's generosity equalled his entrepreneurial genius. His contributions to education, the arts, and democracy have had and will continue to have a positive effect on the lives of countless Americans.

Yes, Justin loved his country and pursued his goals with unparallelled humility and devotion. With his passing, we will all have to work harder to preserve the principles he so richly believed in and dedicated his life to.

Although his death was a great loss for this country, his innumerable contributions will live on in an America made better by his work. Justin's family and friends can find solace in knowing that his unwavering love for this country played a significant role in making all of our lives better.●

PROMPT PAYMENTS ACT PROVING ITSELF

● Mr. SASSER. Mr. President, nearly $2.9 million in interest penalties were paid to businesses in fiscal year 1983 by the Federal Government as a result of the Prompt Payment Act of 1982. This fact provides sufficient proof for those of us who worked hard for passage of prompt payments legislation that the record of the Federal Government in making its payments to businesses on time—that is, within 30 days—left room for improvement.

When I introduced S. 30, which led to 1982's Prompt Payments Act, on January 5, 1981, I said then that "adoption of a 30-day time period in which the Federal Government must pay its bills or face interest charges makes good business sense."

There were those who resisted this initiative, claiming that it would hamstring Federal finance managers. Those of us who supported this initiative pointed to a 1978 General Accounting Office study which indicated that nearly 40 percent of the bills paid by the Federal Government were late payments.

Now, with implementation of the Prompt Payments Act, David Stockman, Director of the Office of Management and Budget (OMB), reports that "over 99 percent of payments for goods and services are now being made on time."

The correlation is obvious. The prospect of interest penalties that would have to come from already pinched agency budgets encouraged more efficient payment policies by Federal finance managers—policies which ultimately benefit everyone.

There is still much work to be done, however, in effecting an even better record of prompt payment of bills by Federal agencies. While 99 percent of bills owed by the Federal Government were paid on time in fiscal year 1983, there were an estimated 180,000 bills that were not paid on time. These bills constitute the 1 percent.

If the breakdown of these particular bills reflects the data contained in the 1978 GAO study, it means that the overwhelming number of the 180,000 bills involved small businesses. Small businesses just do not have the cash-flow capability nor administrative resources to pursue overdue accounts the way large corporations do.

In his report to the Congress on the first year of the law, OMB Director Stockman suggests that most problems with the implementation of the Prompt Payments Act came with the Department of Defense (DOD), and he says that OMB has been assured that DOD's payment problems will be overcome in 1984.

The Senate Governmental Affairs Committee, on which I serve, is continuing its series of hearings into DOD management and spending policies. And the Small Business Committee, on which I also serve, is also considering the role of small businesses in DOD procurement policies.

So, the opportunity will exist for the Senate to encourage even greater compliance with the spirit and the text of the Prompt Payments Act—as it involves small businesses and as it involves DOD, two parties most affected by its implementation—and in doing so, showing that good business practices in Government benefit everyone.

Mr. President, I ask that the OMB report on the Prompt Payments Act be printed in the RECORD.

The report follows:

REPORT ON INTEREST PENALTY PAYMENTS UNDER THE PROMPT PAYMENT ACT, FISCAL YEAR 1983

BACKGROUND

In 1978 the General Accounting Office reported that over 30 percent of the invoices paid by Federal departments and agencies were paid late. GAO estimated that late payments cost contractors between $150 million and $375 million a year in interest. In 1981 GAO did a followup study that showed little improvement since 1978.

The GAO reports indicated that late payments by the agencies were due to two major causes, (1) slow and inefficient processing of payments and (2) lack of Federal standards for insuring payment by specific due dates.

In September 1981 the Director of OMB wrote the heads of the departments and agencies calling for special efforts to improve the Government's bill paying practices. He instructed them to streamline administrative practices and to better adhere to guidance provided by OMB and the Treasury Department that required clear payment terms in contracts and effective cash management procedures to control the timeliness of disbursements.

LEGISLATION

Because of continued problems of late payment by Federal agencies, Congress enacted Public Law 97-177, the Prompt Payment Act, in May 1982. The Act requires agencies to pay their bills on time, pay interest penalties when payments are late, and take discounts only when payments are made within the discount period. The Act established early payment provisions for contractors providing meat and meat food products and perishable agricultural commodities. Recently, the Supplemental Appropriations Act of 1984 extended the early payment provisions to poultry, fresh eggs, and perishable egg products.

Section 2(a) of the Act required the Director of OMB to issue implementing regulations and to report to the Congress on agency implementation.

IMPLEMENTATION

OMB Circular A-125, "Prompt Payment," was issued in August 1982, to implement the Prompt Payment Act. In announcing the Circular, the Director said "These rules made good on President Reagan's pledge that the government will not be a 'deadbeat'. . . the President is committed to bringing good business like practices to gov-

ernment, and to seeing to it that the government pays its bills just like any other business—on time."

In accordance with the Act, Circular A-125 requires Federal agencies to pay their bills on time—not early and not late, and requires that they pay an interest penalty if payment is late. To help insure that payment is made on time, the Circular requires that agency procurement officials include in all Federal contracts specific information to facilitate payment and to document and support the payment of any required interest penalties. In addition, it requires that contractors submit proper invoices to the Federal agencies, including specific information to assure payment of the invoice by the due date. Where no due date is established in the contract, the Circular provides that payment will be made 30 days after receipt of an invoice or acceptance of the goods. Federal agencies have issued their own directives implementing the OMB Circular.

OMB is currently reviewing the applicability of Circular A-125 to progress payments. These are payments made to contractors before receipt of goods or services. Comments in response to a September 1983 proposed revision of the Circular have been received and are being analyzed. OMB will publish a final revision as soon as that analysis is complete.

As part of the Administration's Reform '88 program, agencies reported quarterly the amount of interest penalties paid. Based on the quarterly reports, OMB followed up with agencies that were having implementation problems and assisted them in resolving the problems.

CONCLUSION

In accordance with the requirements of the Prompt Payment Act and OMB Circular A-125, 38 departments and agencies reported to OMB on interest penalty payments made during fiscal year 1983. The reports indicate that the late payment problem has been all but eliminated. They show 99 percent of the Government's bills being paid on time. The major agencies reported paying approximately $2.9 million in interest penalties (see Attachment A). Seventy-one percent of the interest penalties paid were made by the Department of Defense, mostly by the Navy.

Total interest penalties resulted from making about 180,000 payments late out of a total of more than 23 million payments. About 60 percent of all payments were made by the Department of Defense. The primary reasons for late payment were delays in receipt of receiving reports and proper invoices.

Despite the fine record agencies have achieved in the first year of implementation, further improvement in bill payment practices is needed. OMB continues to receive inquiries from individual firms that have not been paid on time. As Mr. Kenton Pattie, Vice President, International Communications Industries Association, said in a recent statement to a House Small Business Subcommittee, "all has not been perfect. Each week I receive phone calls and letters from vendors who are not getting paid promptly." He added, however, that "Company executives usually tell me they have seen a major improvement since the Act went into effect October 1, 1982."

ATTACHMENT A.—SUMMARY OF MAJOR DEPARTMENT AND AGENCY FISCAL YEAR 1983 REPORTS UNDER THE PROMPT PAYMENT ACT

Department agency	Interest penalties paid	Number of interest penalties paid	Percent frequency	Major reasons for interest penalties
Agriculture	$111,171	10,009	0.72	(1)
Commerce	4,736	502	.24	(2)
Defense	2,051,121	120,782	.88	(3)
Education	1,349	123	1.09	(1)
Energy	63,723	2,354	2.08	(3)
EPA	29	6	0	(1)
GSA	56,927	2,374	.10	(3)
HHS	89,220	6,276	.46	(2)
HUD	422	39	.06	(2)
Interior	119,396	3,082	.37	(2)
Justice	52,672	3,706	.59	(1)
Labor	5,641	455	.93	(1)
NASA	4,389	233	.16	(2)
NSF	37	1	.02	(3)
OPM	338	30	.09	(3)
SBA	4,786	203	.54	(1)
State	4,180	160	.06	(2)
DOT	178,923	15,761	1.75	(2)
Treasury	16,111	1,073	.18	(2)
VA	119,861	12,245	.25	(2)
Summary	2,885,032	179,414	.65	

(1) Delay in receipt of proper invoice by paying office.
(2) Delay in receipt of receiving report by paying office.
(3) Other.●

THE FAIR TRADE IN STEEL ACT OF 1984

● Mr. HEINZ. Mr. President, I would like to inform my colleagues of my intention to soon introduce the Fair Trade in Steel Act of 1984, more commonly known as the steel quota bill. I have been considering this action for some time and have delayed for a number of reasons, among them my hope that the administration would develop an overall steel policy that would make the bill less necessary.

Unfortunately, the recent narrow and shortsighted decision by the Justice Department to block the proposed merger between LTV and Republic Steel shows we have no such policy, effectively preempts the development of any such policy and makes import restraints the only available avenue for industry relief. Accordingly, I will introduce the bill and make every effort to secure this enactment.

The Justice Department decision that has brought us to this point is disastrous for two reasons: It is wrong on the merits, and it prevents some badly needed policy coordination on steel in the White House.

On the merits, it is simply unrealistic and inaccurate to view the industry as anything but part of a global market. Imports constitute over 22 percent of our market, and in fact increased in the disastrous year of 1983 compared to 1982, even though the industry has made clear that import penetration over 15 percent causes serious injury. To argue, as Assistant Attorney General McGrath apparently did, that the EC steel agreement and Japanese self-restraint removes the foreign market as an element in the proposed merger is to see the industry with blinders on and to ignore other producers and their overall effect on the domestic industry.

Equally important, the Justice Department view penalizes the industry for winning its unfair trade practice cases pursuant to U.S. law. The steel industry has proved time and time again, in 1982, 1983, and now in 1984, that it is the victim of dumped and subsidized imports from countries determined to maintain their employment at any cost and export their economic and social problems to the United States. Despite those victories, imports were and have been increasing and, until recently, in many product lines, prices were still falling, insuring huge domestic industry losses even on what they were able to sell.

At this point, to take those industry victories, victories consistent with our law and with internationally agreed-upon standards of fair trade practices, and to use them against the industry by penalizing them for winning is to make a mockery of our trade laws and of GATT rules. It reflects a view of the world in which nothing matters but a few antitrust attorneys' theoretical view of the world, a view which itself has little to do with the reality of modern steelmaking.

The second reason this decision is a disaster is that it demonstrates a lack of an administration steel policy, and it preempts any attempts to develop one. From all I have been able to determine this decision was made unilaterally by Mr. McGrath and his staff without consultation with other agencies or the White House. The result is a decision taken without regard to any of the other relevant issues in the steel industry—imports, tax problems, regulatory matters, to mention a few. It may well have been that restructuring was a useful tool for helping the steel industry confront its modernization and investment problems.

Those opposed to quotas no doubt hoped to use such an argument against any steel trade legislation. Mr. McGrath's decision tosses that argument into the ashcan and instead forces the industry to restructure and modernize in the most painful and inefficent ways possible; yet no one else in the administration appears to have had any policy input into that decision despite its obvious implications for the Commerce Department, the Treasury Department, the Labor Department, the U.S. Trade Representative, the Environmental Protection Agency, and many others.

Worse than that, the decision may well mean the die has been cast, that it is too late for such input and that this administration is not going to have a steel policy. I hope that is not the case, and I will shortly be writing the President suggesting that that is not the wisest way to do business and urging him to sit down with all rele-

vant agencies and appropriate Members of Congress and discuss what a steel policy for this country ought to include. I think the President wants such a policy, and I am confident that all of us working together can develop it, either on ad hoc basis or working within the kind of institutional framework for adjustment I proposed in S. 849, the Industrial Revitalization Act.

The alternative, Mr. President, is the quota bill, which has already been given a significant boost by the Justice Department's action. The many of us in Congress who are concerned about this industry that is fundamental to our economic health are simply not going to stand by and watch it suffer irreparable damage because the bureaucracy cannot get its act together. There will be a steel policy in this country, and if Congress has to write it, I suspect it will begin with the quota bill.●

NUCLEAR WEAPONS DEVELOPMENT

● Mr. HUMPHREY. Mr. President, once again I would like to shift the attention of my colleagues to a great concern of the American public—nuclear weapons development. I wish to share with you this morning two articles critical of present U.S. nuclear export policy.

These articles, in a nutshell, describe the purpose and sensibility of the Humphrey-Roth amendment, which we will offer as an amendment to the Export-Administration Act. It is with the long-term interest of this Nation in mind that we must restructure our nuclear export criteria.

I ask that the texts of these two articles appear in the RECORD.

The material follows:

[From the New York Times]

TELL INDIA NO ON ATOMS

(By Jed C. Sndyer)

WASHINGTON.—This month, the Senate will consider legislation prohibiting the Nuclear Regulatory Commission from approving the export of sensitive nuclear materials to countries that do not have nuclear weapons and that have refused to open their nuclear facilities to international inspection. This legislation would directly affect the question of whether the United States should accede to India's urgent request for spare parts for two American-built nuclear power reactors at the Tarapur Atomic Power Station, near Bombay.

Washington is being asked to permit the supply of these parts on the ground that radiation leaks resulting from worn reactor parts at Tarapur may threaten public health. The President should use this opportunity to send Prime Minister Indira Gandhi a clear message: We will not ignore what may be a clandestine nuclear weapons program.

The Senate will consider whether to amend the Nuclear Non-Proliferation Act. Passed by Congress in 1978, it requires, as a condition of United States assistance, all countries that do not possess nuclear weapons to agree to place their nuclear activities under auspices of the International Atomic Energy Agency, whose inspection program is designed to detect the diversion of fissionable materials for explosive or military purposes. India has refused to consent to such international safeguards.

India has a consistent record of noncooperation in the international control of atomic energy, including a refusal to sign the 1968 Nuclear Non-Proliferation Treaty. New Delhi has also sought nuclear self-sufficiency in ways that have alarmed nuclear-security analysts. Its choice of nuclear reactors provides an example. India uses nonconventional power reactors but precisely those reactors that facilitate the manufacture of weapons-grade plutonium.

Although India's desire for nuclear self-sufficiency would not by itself be reason for great concern, this quest for independence has been linked with attempts to evade imposition of comprehensive international safeguards, deepening the suspicions that already surround India's nuclear program. In 1974, India exploded a nuclear device in the Rajasthan Desert. The intelligence community has confirmed the accuracy of recent press accounts reporting preparations for a second nuclear test.

Of even greater concern are reports that India is stockpiling plutonium obtained from reprocessing. This reprocessing is done at several facilities (including Tarapur) under only partial safeguards. As a result, India is stockpiling plutonium that may be used either in a nuclear weapon or to fuel other unsafeguarded reactors that could yield weapons-grade material. Such reprocessing activities are even more suspicious since there is no apparent civilian use for such large amounts of plutonium. For these reasons, the United States should refuse India's request for spare parts and it should press other nations to deny aid to India's nuclear program until reliable assurances are given to alleviate concern about proliferation.

The implications of a clandestine nuclear weapons program have not escaped the notice of India's neighbor, Pakistan. Pakistan's President, Muhammad Zia ul-Haq, is alarmed about the direction of India's nuclear program and has stated that concern to American officials on many occasions. The Indian reprocessing effort (which is years ahead of a similar Pakistani program) may already have accelerated Pakistan's efforts to obtain nuclear weapons.

While the Reagan Administration has expressed concern over the direction of Mrs. Gandhi's nuclear program, Washington has been reluctant to confront New Delhi directly. In 1981, the Administration began quiet discussions to alter its fuel supply relationship with India. Expediency triumphed over principle and in July 1982 the United States arranged for the French Government to replace America as the sole supplier of enriched uranium fuel for Tarapur. A commercial supply agreement between France and India was signed in March 1983. The French (who earlier helped Iraq in its efforts to acquire nuclear weapons) are evidently unconcerned about the direction of India's nuclear activities.

Unless our Government receives ironclad assurances that India will cease unsafeguarded production and use of plutonium, it would be foolish to approve shipment of spare parts for the Tarapur reactor. If the public health is really endangered by radiation leakage from Tarapur, one would hope that Mrs. Gandhi would order the reactor shut down. Indeed, Congress understands this and is willing to stand firm against the spare-parts sale. The question now is whether the Reagan Administration has the courage to say no.

[From the Washington Times, Feb. 7, 1984]

SENATORS WANT TO LOCK DOOR TO NUCLEAR CLUB

(By Dave Doubrava)

A bipartisan group of senators, concerned over the potential spread of nuclear weapons material to Third World countries, will try to tighten export restrictions when the Export Administration Act comes up for consideration, possibly later this week.

Sen. Gordon J. Humphrey, R-N.H., said yesterday the group will offer an amendment which would prohibit the Nuclear Regulatory Agency and the Department of Energy from licensing the export or transfer of materials listed by the NRC as "significant for nuclear explosive purposes."

The restrictions would apply to nations that are not party to the Nuclear Non-Proliferation Act of 1978—among them Israel, Pakistan, Argentina, Brazil, South Africa, Libya and Iraq.

Mr. Humphrey said the amendment would apply the same restrictions now imposed on the export of complete reactors, enriched uranium, plutonium and nuclear by-products to material such as heavy water and graphite.

Under the amendment, the president could approve export or transfer if he decided it was in the national interest.

"If more and more Libyas get a nuclear capacity, we have a dangerous situation on our hands," Mr. Humphrey told an editorial board meeting of The Washington Times. "That is a very scary prospect with a greater potential for a nuclear catastrophy than in a superpower confrontation."

Mr. Humphrey said, in the long term, it will be extremely difficult to limit nuclear proliferation but said the amendment was "a good first step."

"It's possible some of the horses have gotten out of the barn, but we still have to do what we can to close that door tightly."

Sen. William V. Roth, R-Del., is co-sponsoring the measure, along with Sens. Mark O. Hatfield, R-Ore., Nancy Kassebaum, R-Kan., and Democratic presidential candidates Sen. John Glenn of Ohio and Sen. Gary Hart of Colorado.

"We believe sound nuclear export control requires that this loophole be closed, if only to alert the pertinent agencies of Congress' desire to tighten . . . controls over nonweapons nations that have refused to accede to full-scope safeguards," Mr. Humphrey and Mr. Roth wrote their colleagues.

Mr. Humphrey also said the United States should put additional pressure on nations with nuclear capability such as France to stop trading with non-nuclear states, "to help us to close the door to the nuclear club."

"If we don't limit our exports, we can't morally persuade our allies to limit theirs," he said.

The administration opposes the amendment, Mr. Humphrey said, "because they'll have less latitude."

He said he did not know if supporters have the votes to pass the amendment but said he and others would be lobbying their colleagues this week.

"We have largely failed to prevent the spread of nuclear weapons," Mr. Humphrey added. "I can't understand why we aren't

that serious about closing the nuclear door tightly."●

UNEMPLOYMENT COMPENSATION

● Mr. HEINZ. Mr. President, I am pleased to be joining Senator ROTH as an original cosponsor to this legislation which affects approximately 1,700 employees in Pennsylvania and Delaware.

This bill will correct an anomaly in the Internal Revenue Code that has caused 1,700 Sun Oil Co. workers in Pennsylvania and Delaware to pay Federal income tax on unemployment benefits received in 1979, but which should have been received by them in 1973, long before Congress changed the tax laws making unemployment benefits partially taxable. As a result of the Revenue Act of 1978, these workers were subjected to what amounted to a retroactive levy on their unemployment benefits.

Though unemployment compensation is typically paid to workers while their claims are under appeal by their employers, this was not the case for the Sun employees. Benefits were withheld by the State while the employer appealed administrative and court determinations favorable to the workers. Ultimately the case reached the U.S. Supreme Court which dismissed the appeal, thereby confirming the decisions in favor of the workers.

In the meantime, 6 years had elapsed. The workers received their benefit payments, and then found themselves subject to tax. This result was clearly contrary to the intent of Congress which made benefits taxable prospectively. Congress never considered reaching back to tax benefits accrued 6 years before they were received.

The tax compounded the injury to the Sun workers who had already suffered an erosion of the value of the benefits through the impact of inflation. The Internal Revenue Service has been powerless to take remedial action because of the wording of the statute, and accordingly, this legislation will remedy the situation. This bill while it provides relief for the Sun Oil employees, will also provide relief for all employees who were entitled to unemployment compensation prior to 1978, but received the compensation after 1978.●

Mr. BAKER. 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. Without objection, it is so ordered.

Mr. BAKER. Mr. President, we are still working on the clearance of a unanimous-consent agreement that would provide time for the consideration of the Kennedy amendment and then for final passage of the career criminal bill tomorrow. I think there is a good chance we can get that agreement, which is not yet complete. But in order to provide additional time and to provide time for Senators to speak on other matters if they wish to do so, I ask unanimous consent that the time for morning business be extended until 4 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 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.

Mr. BAKER. Mr. President, I am advised now that negotiations looking to a time agreement by unanimous consent for the final consideration of the career criminal bill are making headway. There is still a chance we can get that agreement this afternoon, but we do not have it yet.

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time for morning business be extended until not past 5 p.m., under the same terms and conditions.

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

Mr. BAKER. Mr. President, 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 bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. HAWKINS). Without objection, it is so ordered.

Mr. CHILES. Madam President, I ask unanimous consent that the Senate proceed as if in morning business so I may introduce a resolution.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. CHILES. It is in morning business.

Madam President, I send to the desk a Senate concurrent resolution and ask for its introduction.

The PRESIDING OFFICER. The resolution will be received and appropriately referred.

Mr. CHILES. Madam President, I ask unanimous consent that other Members have until 6 p.m. today to sign as original cosponsors of the Senate resolution that I just introduced; that the resolution be held at the desk.

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

(The text of the concurrent resolution is printed earlier in today's RECORD.)

Mr. CHILES. 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.

EXECUTIVE SESSION

Mr. BAKER. Madam President, I say to the minority leader that I have one more item on today's Executive Calendar, under Department of the Interior, and I wonder if he is in a position to consider that today or to do it tomorrow—or at all.

On my Executive Calendar today, I have cleared for action by unanimous consent on this side the nomination, under Department of the Interior, of Ann Dore McLaughlin, of the District of Columbia, to be Under Secretary of the Interior, as well as nominations placed on the Secretary's desk in the Foreign Service.

I inquire if the minority leader is in a position to clear all or any portion of those nominations for action by unanimous consent at this time.

Mr. BYRD. Madam President, in response to the distinguished majority leader, the minority is ready to proceed on the two nominations on page 1 of the Executive Calendar but is not ready to proceed to the nominations placed on the Secretary's desk in the Foreign Service.

Mr. BAKER. I thank the minority leader.

From that, it appears that one nomination is cleared on both sides for action by unanimous consent—that is, Calendar No. 462. Therefore, I ask unanimous consent that the Senate now go into executive session for the purpose of considering Calendar No. 462 on the Executive Calendar.

The PRESIDING OFFICER. The nomination will be stated.

DEPARTMENT OF THE INTERIOR

The assistant legislative clerk read the nomination of Ann Dore McLaughlin, of the District of Columbia, to be Under Secretary of the Interior.

Mr. McCLURE. Madam President, I rise in strong support of the nomination of Ann Dore McLaughlin, of the District of Columbia, to be Under Secretary of the Interior. On February 9, the Committee on Energy and Natural Resources endorsed Mrs. McLaughlin's nomination by a vote of 17 to 0. The committee's vote followed a nomination hearing on Monday, February 6.

Mrs. McLaughlin comes before the Senate with a record of distinguished service in both the public and private sectors. She possesses fine credentials to assume the role of the second highest ranking official within the Department of the Interior. I have confidence that this background and experience will serve her well in carrying out the duties of Under Secretary.

On behalf of the Committee on Energy and Natural Resources, I am pleased to recommend Senate approval of the nomination of Ann Dore McLaughlin for the position of Under Secretary of the Interior.

Mr. BOREN. Madam President, the Senate is about to vote on the nomination of Ann Dore McLaughlin to be Under Secretary of Interior. I hope that she will be confirmed. Her background in both the public and private sector, including operating her own business, will enable her to discharge her duties well and to the benefit of the country.

While we are confirming this nominee, I would also like to acknowledge the contributions made by the previous Under Secretary of Interior. J. Jake Simmons has served the country well and his counsel at the Department of the Interior will be missed. A former vice president of the Amerada-Hess Corp., Mr. Simmons has served ably. He left a secure position with the Interstate Commerce Commission (ICC) to take on the responsibilities at the Interior Department. His performance there amply justifies the high regard in which he is held by his fellow Oklahomans.

I am very pleased to note that the President of the United States also recognizes Mr. Simmons' continued and enduring value to his country. He is being asked to return to his previous position as a member of the ICC and I hope the Senate will speedily confirm his nomination.

So as we confirm one nominee, Let us also pay tribute to another. The United States will prosper by the service of these two outstanding individuals.

Mr. NICKLES. Madam President, I rise today to also echo my support for the nomination of Ann Dore McLaughlin as Under Secretary of the Department of the Interior. Mrs. McLaughlin's qualifications blend years of experience in public policy management with a continuing involvement in environment and natural resource conservation. Her time spent in Government service, in industry, and in running a private business has exposed her to a host of management challenges and provides her with a background well suited for the demands ahead at the Interior Department. Mrs. McLaughlin has my strong support for the position of Under Secretary.

I would also take a moment to congratulate Jake Simmons for the very fine job he has done as he leaves the position of Under Secretary. Jake has been nominated to serve as a Commissioner on the Interstate Commerce Commission, where he served before leaving to go to Interior. It is my hope that the Senate will also confirm Jake Simmons as Commissioner of the ICC in the very near future.

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

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

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

The motion to lay on the table was agreed to.

Mr. BAKER. Madam President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

LEGISLATIVE SESSION

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

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

UNANIMOUS-CONSENT AGREEMENT—ARMED CAREER CRIMINAL ACT OF 1983

Mr. BAKER. Madam President, I have consulted with the minority leader on the possibility of a unanimous-consent agreement that would establish the arrangement for the debate and disposition of the career bill on tomorrow and a time for its final passage.

I believe the request has been cleared on both sides through our regular processes, and I will now put the request for the consideration of the minority leader and other Members.

I ask unanimous consent that on tomorrow when the Senate returns to the consideration of Calendar No. 310, S. 52, the career criminal bill, it do so under the following agreement:

That there be 1 hour allocated for debate on the bill, to be equally divided between the chairman of the Judiciary Committee and the ranking minority member thereof or their designees.

That the following amendments be the only amendments in order, with the exception of the committee reported substitute, and that the time for debate on the amendments be limited as follows:

One hour of debate on an amendment to be offered by the Senator from Massachusetts (Mr. KENNEDY) dealing with Federal prosecution of robbery. One hour on an amendment to be offered by the Senator from South Carolina (Mr. THURMOND) dealing with deferral of Federal prosecutions. The time on both amendments to be equally divided.

That the Senate then proceed to vote on or in relation to the Kennedy amendment at 2:30 p.m., to be followed, without any further intervening debate, motion, appeal, or point of order, by a vote in relation to the Thurmond amendment, to be followed by adoption of the committee substitute and final passage of S. 52 as amended, if amended.

That the agreement be in the usual form; that paragraph 4 of rule XII be waived; and that if there are to be motions, appeals, or points of order that may be submitted to the Senate, other than as herein provided for, there be 10 minutes for debate, equally divided.

That is the request, Madam President.

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

The text of the agreement follows:

Ordered, That when the Senate resumes consideration of S. 52 (Order No. 310), a bill to combat violent and major crime by establishing a Federal offense for continuing a career of robberies or burglaries while armed and providing a mandatory sentence of life imprisonment, no amendments shall be in order except the Committee reported substitute, an amendment by the Senator from Massachusetts (Mr. KENNEDY) dealing with Federal prosecution of robbery, on which there shall be 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill, and an amendment by the Senator from South Carolina (Mr. THURMOND) dealing with deferral of Federal prosecution, on which there shall be 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill, and that debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 10 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee.

Ordered further, That on the question of final passage of the bill, debate shall be limited to 1 hour, to be equally divided and controlled by the Senator from South Carolina (Mr. THURMOND) and the Senator from Delaware (Mr. BIDEN), or their designees: *Provided*, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot

additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

Ordered further, That at 2:30 p.m. on Thursday, February 23, 1984, the Senate proceed to vote in relation to the Kennedy amendment, to be followed without any intervening debate, motion, appeal, or point of order by a vote in relation to the Thurmond amendment, to be followed by adoption of the Committee substitute and final passage of S. 52, as amended, if amended. (Feb. 22, 1984.)

Mr. BAKER. I thank the Chair, and I thank the minority leader.

Madam President, I fully expect that there will be a rollcall vote on final passage of this measure. I do not now know whether there will be other votes, but Senators should anticipate at least one rollcall vote on the measure during the day tomorrow.

SCHEDULE FOR FRIDAY AND MONDAY

Mr. BYRD. Madam President, I inquire of the majority leader what the schedule is for Friday and Monday and whether there will be any votes expected on Friday or Monday. He may not be specific on that point, but it would help our membership to have as much information as possible, so that they can schedule their days accordingly.

Mr. BAKER. I thank the minority leader.

Madam President, after we finish the career criminal bill, I hope we may be able to proceed to a bill dealing with robbery of pharmacies. I do not expect that to take very long, but I hope to do that immediately after we finish the career bill.

Tomorrow is Thursday, and it would be my expectation that we would lay down but not deal with the Export Administration Act at that time. I anticipate that we will be in on Friday and that we will have debate on the Export Administration bill. I must say, in all candor, however, that I do not expect us to be able to dispose of that measure on Friday.

There may be votes on Friday, but I think it is more likely that it will be Monday before we have votes on that measure and before we can complete it. I would like to be mistaken about that, but I expect that it will take us Friday and Monday to take up and dispose of the Export Administration bill.

After that, we may be able to deal with a couple of other measures. There is a reciprocity bill and a Federal Trade Commission authorization bill that may be available to be taken up.

I also say, in further response to the minority leader, that some time next week—and it appears that it may be late next week—I hope to ask the Senate to proceed to the consideration of an amendment to the Constitution dealing with prayer in schools. But that will not be the first part of the week and it may not be next week at all, but I hope it will occur in the next few days.

Mr. BYRD. Madam President, I thank the majority leader.

I wonder if the majority leader would agree with me that it would be highly unlikely that there would be a vote on final passage of the Export Administration bill on Friday, if for no other reason than that some Members, naturally, will not be here on Friday, for one reason or another. I am pretty sure that most of them would probably want to be here on the final passage of that bill.

Mr. BAKER. I think it is very unlikely that we could finish that bill on Friday. I think it is virtually certain that we cannot. That is not to say that there might not be a vote, but I think final passage will almost surely come no earlier than Monday.

Mr. BYRD. I thank the majority leader.

ORDERS FOR TOMORROW

ORDER FOR RECESS UNTIL 10:30 A.M. TOMORROW

Mr. BAKER. Madam President, I ask unanimous consent that after the Senate completes its business today, it stand in recess until 10:30 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATOR SYMMS AND SENATOR PROXMIRE TOMORROW

Mr. BAKER. Madam President, I ask unanimous consent that after the recognition of the two leaders under the standing order on tomorrow, two Senators be recognized on special orders of not to exceed 15 minutes each, as follows, in this order: Senator SYMMS and Senator PROXMIRE.

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

ORDER FOR ROUTINE MORNING BUSINESS TOMORROW

Mr. BAKER. Madam President, I ask unanimous consent that after the execution of the special orders tomorrow, there be a period for the transaction of routine morning business, not to extend beyond 11:30 a.m., with statements therein limited to 5 minutes each.

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

ORDER FOR CONSIDERATION TOMORROW OF ARMED CAREER CRIMINAL ACT

Mr. BAKER. Madam President, I ask unanimous consent that at the close of business tomorrow, at 11:30 a.m., the Senate return to the consideration of Calendar No. 310, S. 52, the Armed Career Criminal Act, which is the unfinished business.

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

PROGRAM

Mr. BAKER. Madam President, on tomorrow, when the Senate convenes, it will do so at 10:30 a.m.

After the recognition of the two leaders under the standing order, two Senators will be recognized on special orders of not to exceed 15 minutes each.

After the execution of the special orders, there will be a period for the transaction of routine morning business, extending until 11:30 a.m.

At 11:30 a.m., the Senate will resume consideration of the unfinished business, which is the career criminal bill, S. 52. A time agreement has been entered into concerning the consideration and disposition and the limitation of amendments that are available to that measure and the final consideration of the measure itself as amended, if amended.

It is anticipated that after the disposition of the career criminal bill, the Senate will turn to the consideration of the bill dealing with the robbery of pharmacies, which is Calendar Order No. 648, S. 422.

Thereafter, Madam President, there may be other matters dealt with.

It is the hope of the leadership on this side, that during the day tomorrow, before the Senate concludes its activities, we may lay before the Senate for consideration, but not for further action, the Export Administration bill.

The Senate will be in session on Friday. It is not anticipated that the Export Administration bill can be completed on that day and it is expected that we will resume consideration of that measure and perhaps be prepared for its final disposition on Monday next.

RECESS UNTIL 10:30 A.M. TOMORROW

Mr. BAKER. Madam President, I have nothing further to address to the Senate. If the minority leader has nothing further, and I gather he does not from his indication to me just now, then I move in accordance with the order just entered that the Senate now stand in recess until 10:30 a.m. on tomorrow.

The motion was agreed to; and at 4:52 p.m. the Senate recessed until Thursday, February 23, 1984, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 22, 1984:

DEPARTMENT OF THE TREASURY

Alfred Hugh Kingon, of New York, to be an Assistant Secretary of the Treasury, vice Ann Dore McLaughlin, resigned.

David Campbell Mulford, of Illinois, to be a Deputy Under Secretary of the Treasury, vice Marc E. Leland, resigned.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Fred William Alvarez, of New Mexico, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1988, vice Armando M. Rodriguez, term expired.

IN THE COAST GUARD

The following cadets of the U.S. Coast Guard Academy for appointment to the grade of ensign:

Carl T. Adam
Daniel P. Allan
Michael H. Anderson
Michael J. Andres
Henry W. Ayers
Bruce D. Baffer
William G. Balsinger III
Luann Barndt
Thomas Barone
Matthew R. Barre
Jeffrey H. Bartlett
Cari K. Batson
Jeffrey S. Bauer
Robert C. Baxter, Jr.
Dennis M. Becker
Kurt J. Beier
David A. Bell
Tami D. Belville
Joseph W. Billy II
John R. Bingaman
William F. Blough
Daniel S. Bobalek
Michael M. Bradley
Patrick W. Brennan
Jay J. Briggs
Eric P. Brown
Timothy R. Brown
Richard R. Bruce II
Donald G. Bruzdzinski, Jr.
Scott A. Buschman
George E. Butler
Richard A. Button, Jr.
John E. Cameron
Mark S. Carmel
Armin D. Cate
Michael B. Cerne
Eric A. Chamberlin
Corey D. Chamness, Jr.
Timothy A. Cherry
Peter D. Chittenden
Joseph H. Chu Choi
David A. Cinalli
Michael T. Close
William J. Coffey
Russell D. Conatser
David A. Coolidge
Craig A. Corl
Mark E. Crater
John M. Cushing, Jr.
Donald W. Cutrell
Aaron C. Davenport
Joseph A. DeSalvio
Borton L. DeShayes
Gerald D. Dean
Robert M. Dean IV
Robert L. DeYoung
Joel L. Dodds
Brian L. Dolph
William T. Douglas
Michael D. Drieu
Patrick J. Dwyer
Michael D. Emerson
Stephen J. Engel
Suzanne E. Englebert
Brad W. Fabling
Dale V. Ferriere
Paul P. Fierszt
Anne T. Fleck
Brian Flory
Alfred C. Folsom
Monique L. Foster
David M. Fuka
David J. Gardiner
Michael P. Germinario
Michael A. Giglio
Craig A. Gilbert
Pauline K. Goetze
Bradford B. Groves
Christopher J. Hall
Luke B. Harden
John T. Hardin II
Kevin D. Harkins
Theodore F. Harrop
Cheryl L. Harvey
Michael G. Haydin
Bruce E. Herring
Charles C. Hoffman III
Michael H. Homick
Christopher G. Honse
David A. Hoover
William L. Hucke IV
William K. Hunt
Michael C. Husak
Jeffrey D. Irino
Colleen M. Johnson
Matthew F. Johnson
Brian M. Judge
Mark V. Kasper
Michael S. Kazek
Richard M. Kenin
Clement D. Ketchum III
Sharon A. Kiel
Glenn R. Kleint
Chris G. Kmieck
John F. Koeppen
Eric B. Kretz
Kevin B. Kring
Willem M. Lange IV
James C. Larkin
Kenneth M. Lawrenson
Jacques G. Leonardi
Kevin M. Lyon
Thomas P. Marian
Raymond W. Martin, Jr.
James G. Mazzonna
David A. McBride
James E. McCaffrey
John B. McDermott
Douglas L. McKinnis
Scott T. McNutt
Douglas R. Menders
Gary W. Merrick
Brian J. Merrill
James T. Moore
Patricia L. Mountcastle
Philip E. Muir
Theodore V. Murray
Brain J. Musselman
Kevin M. Nedd
Samuel M. Neill
Jonathan H. Nickerson
Thomas M. Noonan
Stephen G. Nurre
Martin C. Oard
Scott F. Ogan
Jeffrey E. Ogden
Edward W. Parsons III
Thomas C. Pedagno
Jeffery V. Plourde
Steven D. Poulin
Scott A. Poyer
William J. Quigley
William J. Rall
Garly C. Rasicot
Paul S. Ratte
Stephen P. Rausch
Robert D. Rayhill
Matthew P. Reid
David C. Ressel
Daniel A. Ronan
Donald J. Rose
Steven A. Rowland
Kevin J. Russell
Michael D. Sakahara
John J. Santucci, Jr.
Steven G. Sawhill
Jeffrey S. Schneider
Roy J. Scott
Roger D. Scow, Jr.
Gregory W. Shaffer
Timothy J. Shamrell
James D. Singleton
Peter M. Skillings
Robert E. Smith, Jr.
Michael A. Spotto
Steven M. Stancliff
George J. Stephanos
Christopher J. Stickney
Daniel V. Svensson
Mark A. Swanson
John F. Sykstus
John E. Tomko
Michael D. Tosatto
Donald R. Triner, Jr.
Paula J. Tutein
Carl J. Uchytil, Jr.
Elizabeth K. Uhrig
Dawn K. Warden
James H. Weakley
Mark C. Weber
Peter B. Weddington
Gordon K. Weeks, Jr.
Robert G. Wheeler
Andrew P. White
Bret L. White
Anthony D. Wiest
Thomas C. Wiggans
Scott E. Williams
Steven G. Wood
Gustav R. Wulfkuhle
Vann J. Young

IN THE NAVY

The following-named Naval Reserve Officers Training Corps candidates to be appointed permanent ensign in the line or staff corps of the U.S. Navy, pursuant to title 10, United States Code, section 2107:

Consunji, Ray S.
Coughlin, Joseph C.
Fry, Kathleen M.
Hoopes, Karen D.
Jennings, Michael W.
Romine, William F.
Whidden, Kenneth D.

The following-named Naval Reserve officers to be appointed permanent ensign in the line or staff corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Abe, Richard G.
Allen, Thomas P.
Amala, Paul A.
Anderson, Michael
Beck, Gregory A.
Beckmann, Richard
Berendt, Mark J.
Bernard, Michael G.
Bittner, Lawrence
Brothers, Kelly R.
Brown, Geoffrey S.
Brown, Michael P.
Cary, Thomas R.
Casteel, Andrew B.
Cecchetti, Jon M.
Conlee, Don T.
Crater, Jon R.
Crouser, Paul D.
Cunnings, John B.
Davidson, Stuart W.
Davis, Michael H.
Dorman, Daniel H.
Edson, Robert W.
Finup, Timothy G.
Frank, Michael A.
Frost, Cheryl L.
Galer, Norman W.
Gerdes, Erick W.
Greenlee, Scot A.
Hawks, Scott A.
Headrick, Robert
Hurni, Phillip R.
Karlson, William
Karvois, Albert P.
Knollmeyer, Pete
Kuks, Raymond H.
Lavalley, Christop
Mackay, Eric H.
Marrs, Brian A.
Mason, Daniel W.
McAllister, Allen
Mills, Leslie D.
Neeley, Brian L.
Nelson, Bradley
Pearce, Bradley E.
Phillips, John
Raabe, Carl A.
Ramey, Brian D.
Reynolds, James
Richardson, Tommy
Rupp, Douglas E.
Ryczek, Edward J.
Sanford, Charles E.
Shackelford, Jeff
Sist, Arno J.
Staak, John N.
Stascavage, James
Stewart, Robert B.
Thurman, Deera K.
Travers, Robert G.
Wallace, James M.
Wiseman, Alan L.

The following-named Naval Reserve officer to be appointed permanent captain in the Medical Corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Harper, David G.

The following-named Naval Reserve Officers to be appointed permanent lieutenant commander in the Medical Corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Clapper, Mark F.
Deafenbaugh, Marti
Walker, James H.

The following-named Naval Reserve officers to be appointed permanent lieutenant in the Medical Corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Anderson, Deryk L.
Eailey, Steven L.
Eeardsley, David J.
Cassano, Victoria
Collins, John J.
Conaty, Kelly R.
Dixon, Sally L.
Ebersole, Russell
Faison, Clinton F.
Fischer, Robert J.
Gilbert, Russell C.
Holmes, Michael L.
Hotel, Michael R.
Jorgensen, Nathan
Lundy, Diane C.
Maxwell, James M.
McQueston, John A.
Nugent, Sharon K.
Osgood, John C.
Pickett, Mark
Prager, Laura A.
Rascona, Dominick
Roush, Timothy S.
Russo, Deborah
Schraml, Frank V.
Sheraden, Jennifer
Thom, Franklin T.
Tomasic, Paul V.
Wallace, Douglas C.

The following-named medical college graduate to be appointed permanent captain in the Medical Corps in the Reserve of the U.S. Navy, pursuant to title 10, United States Code, section 593:

Seljeskog, Edward

The following-named medical college graduate to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, pursuant to title 10, United States Code, section 593:

Carwell, Glenn R.

The following-named U.S. Navy officers to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, pursuant to title 10, United States Code, section 593:

Chambers, Donald S.
McIntosh, Bruce J.
Golden, Stephen M.
Pentizien, Roger J.

The following-named ex-Navy officer to be appointed permanent captain in the Medical Corps in the Reserve of the U.S. Navy, pursuant to title 10, United States Code, section 593:

Budd, Frank W.

The following-named U.S. Navy officer to be reappointed permanent captain from the temporary disability retired list, pursuant to title 10, United States Code, section 1211:

Hodder, Edwin J.

The following-named Navy enlisted candidate to be appointed permanent chief warrant officer, W-2 in the U.S. Navy, pursuant to title 10, United States Code, section 555:

Grobe, James L.

The following-named U.S. Navy officer to be appointed permanent commander in the line in the Reserve of the U.S. Navy, pursuant to title 10, United States Code, section 593:

Schneider, Edward

The following-named U.S. Navy officers to be appointed permanent lieutenant in the Judge Advocate General's Corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Clausen, Roger R.
Nable, Timothy J.

The following-named U.S. Navy officer to be appointed permanent lieutenant (junior grade) in the Judge Advocate General's Corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Clement, David E.

The following-named Naval Reserve officers to be appointed permanent lieutenant (junior grade) in the Judge Advocate General's Corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Jenkins, Max B. Scott, Roger D.

The following-named Naval Reserve chief warrant officers to be appointed permanent chief warrant officer, W-2, in the U.S. Navy, pursuant to title 10, United States Code, section 555:

Collins, Kenneth L. Wilde, Vincent L.

U.S. INTERNATIONAL TRADE COMMISSION

David B. Rohr, of Maryland, to be a member of the U.S. International Trade Commission for the remainder of the term expiring December 16, 1985, vice William R. Alberger, resigned.

Susan Wittenberg Liebeler, of California, to be a member of the U.S. International Trade Commission for the remainder of the term expiring December 16, 1988, vice Michael J. Calhoun, resigned.

IN THE ARMY

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Ernest D. Peixotto, [redacted] (age 54), U.S. Army.

The following-named officer under the provision of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Max W. Noah, [redacted], U.S. Army.

CONFIRMATION

Executive nomination confirmed by the Senate February 22, 1984:

DEPARTMENT OF THE INTERIOR

Ann Dore McLaughlin, of the District of Columbia, to be Under Secretary of the Interior.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.