SENATE—*Friday, July 25, 1986*

(Legislative day of Monday, July 21, 1986)

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

PRAYER

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

Let us pray.

Merciful God, Creator, Sustainer, Consummator of history, with heavy hearts we intercede for the many who are being devastated by drought. We pray for the farmers and their families who are experiencing great hardship. We pray for the merchants and retailers in those areas who are hurting because of the hardship of the farmers. We call upon Thee for gracious intervention in those large areas in Virginia, Maryland, the Southeast and Midwest which have been identified as disaster areas. In grace and mercy, we ask Thee, Lord, to send rain to end the drought. We pray that Thou wilt move with compassion those who are not suffering to respond in whatever way they are able. Gracious God, manifest Your creative power and providence and bring relief to those so desperately in need at this time. In the name of Jesus Christ the Lord, we pray. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, is recognized.

Mr. DOLE. I thank the Presiding Officer, Senator THURMOND.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each.

Then we have special orders, not to exceed 5 minutes each, for Senator PROXMIRE and Senator KASTEN.

Then there will be routine morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

Following morning business, the Senate will resume consideration of the debt limit extension, or we may go into executive session, because if we are going to have a vote, we should have it as early as we can, so that we can accommodate many of our colleagues who have obligations outside the city later today.

I am advised that Senator HELMS will be here by 10 o'clock, so we should know about the vote shortly thereafter.

After the vote on the motion to go into executive session, there will be no other votes today. I do not see any possibility of more votes because of the tangle the debt ceiling matter is in right now.

So I say to my colleagues that we should know at 10 o'clock whether there will be a vote. We indicated last evening that there would be a vote. Senator HELMS indicates that may not be the case. In any event, we will know by 10 o'clock.

Also, we are going to try to work with the minority leader, sometime this morning or at noon, to see if there is a way to move some of the debate on TV in the Senate to next Monday. That will give us something to do on Monday; and we will probably do most of that, if not all of it, without rollcall. Then we could finish it on Tuesday, as the previous order indicates, because we will run out of time.

I appreciate the complexity of Gramm-Rudman-Hollings II. I hope that those who are negotiating would complete negotiations today, in whatever time it takes, so that we can be ready no later than Tuesday, and so that we can complete action on the debt ceiling. Staff are still trying to work out some agreement. It is still being done at a staff level.

I have been kept apprised—I believe the distinguished minority leader has been as well—as to whether we can reach an agreement on three critical matters that we would like to dispose of before the recess. They are aid to the freedom fighters, which has already passed the Senate on time and has now passed the House; the SALT resolution, which is in the DOD authorization bill; and the South African proposal, which would be coming out of the Foreign Relations Committee.

I know that there are others who would like to bring up the DOD authorization bill. Senator NUNN has an interest in that, as well as Senator GOLDWATER. I understand that Senator GOLDWATER is due back in his office today, so perhaps we can make some judgment on that.

Mr. President, with reference to South Africa, I still hope that the administration will fully comprehend the concern that is being expressed in Congress on both sides. It seems to me that one way to provide firsthand information to all of us, objective information—because I must say, as with reference to some of the information we receive on nearly every subject, we never know whether it is totally objective. One way I think to persuade Congress, in whatever direction we may be headed, would be to send a special envoy—or more than one, possibly two, three, four, or five distinguished Americans—to South Africa to represent the President and to bring back a report soon. I am not certain whether the administration has that under consideration, but it seems to me to be a logical option at this time.

Mr. President, I reserve the remainder of my time.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The able and distinguished Democratic leader, Senator ROBERT BYRD, is recognized.

SCHEDULE

Mr. BYRD. Mr. President, with reference to the distinguished majority leader's comments concerning the schedule and some of the basic issues that need to be resolved between now and the Labor Day recess, it is my understanding that the Committee on Foreign Relations is acting expeditiously on the South African matter, and I take it that the distinguished majority leader will be prepared to have that matter on the floor soon.

Mr. DOLE. I think following Contra aid.

Mr. BYRD. On the matter of Contra aid, when does the distinguished majority leader intend to have the military construction appropriation bill before the Senate?

Mr. DOLE. I believe there are negotiations; I have to double check to be certain. I can supply that information later.

Senator MATTINGLY indicated yesterday that there has been some discussion in the Military Construction Subcommittee. But there is also concern about bringing up the appropriation bill without first having an authorization bill. Military construction authorization, as I understand it, is wrapped into the DOD authorization bill. I am told by many people that the bill will take us 2 weeks on the floor. So we are trying to find some form that will satisfy the concerns of those who are interested.

Mr. BYRD. Why should we not, then, have the DOD authorization bill up? I understand that it is ready. I talked yesterday with Senator NUNN, who is the ranking member, and he indicated that he would be prepared next week to go to that bill.

Mr. DOLE. If we could finish the debt ceiling and even get some loose agreement on the DOD authorization, I would be amenable to that.

One reason has been that Senator GOLDWATER has been hospitalized. They have not yet totally completed action, I do not believe. I understand that it should be ready next week.

We are getting into the logjam period here—or we will. If we could resolve the question on these three issues that could find themselves attached to the DOD bill, I think the other parts would be taken care of very fast.

Mr. BYRD. Mr. President, the distinguished majority leader, of course, bears great responsibilities and heavy burdens in scheduling the activities of the Senate.

□ 0940

I would hope that the Senate could proceed on the DOD authorization bill next week, and if some of the other issues are resolved in connection with that bill, it seems to me that that would hasten the day when such issues would be out of the way. I would want to express the hope that the distinguished majority leader would consider going forward with the DOD bill just as soon as Mr. GOLDWATER is able to manage it on the floor.

If that is where SALT II undercut, and Contra aid, and some of the other issues are resolved, I think they are going to have to be resolved one way or another and at one time or another. So I leave that thought with the distinguished majority leader hoping that it might be helpful.

THE EXCHANGE BETWEEN SECRETARY SHULTZ AND SENATOR BIDEN

Mr. BYRD. Mr. President, there was a heated exchange between the Secretary of State, Mr. Shultz, and the Senator from Delaware, Senator BIDEN, on Wednesday.

We encourage vigorous and open debate in the Senate, in the committees as well as on the floor. Emotions run especially high on the important issue of South Africa, and that is understandable. But I believe that Secretary of State Shultz exceeded the reasonable bounds of propriety and debate on Wednesday when he accused Senator BIDEN of "calling for violence."

That statement was wrong, and it was unfair to the Senator from Delaware.

It is somewhat ludicrous to suggest that any U.S. Senator would "call for violence" in South Africa. Every one of us has been struggling with the complex problem of how to encourage peaceful change in that sad country.

This Nation cannot stand by while South Africa hemorrages from self-inflicted wounds.

Senator BIDEN has made a reputation for himself in this body as a Senator who brings a disciplined scholarship to the issues he confronts. As the ranking member of the Judiciary Committee, he demonstrated that powerful and disciplined approach in the recent debate over the Manion nomination, and he has done so on other occasions.

I am disappointed by the charge that a U.S. Senator is inciting violence in South Africa. It was an irresponsible thing to say. I would hope that, upon reflection, the Secretary would regret such an outlandish accusation. I cannot believe that, as spokesman for the Nation's foreign policy, he would wish to allow that statement to stand for interpretation by foreign governments and foreign news media.

It is difficult enough to forge a national consensus on the troubling issue of South Africa policy. I would hope that the effort would not be further compounded by sensational personal charges. If the Secretary of State is going to take on all the critics of the administration's South Africa policy—on both sides of the Hill and from both parties—he is going to find himself running out of charges long before he runs out of Members of Congress.

ESTABLISHMENT OF A DEMOCRATIC WORKING GROUP ON DRUG AND SUBSTANCE ABUSE

Mr. BYRD. Mr. President, the United States of America is at war. We are battling one of the deadliest foes we have ever encountered—an enemy that is taking the lives of thousands of Americans and corrupting the very fabric of our country.

I am speaking of this Nation's war against illegal drugs. And, as movies, television programs, news programs, and the morning newspapers unfortunately and painfully tell us, in many parts of our Nation, and in many tragic ways, we are losing that war.

Among the casualties of this war are easily recognizable names, such as bigname athletes and entertainers. But the casualty list also includes multitudes of less famous Americans who die from overdoses and from the violent struggles inside the nightmare world of the drug kingdom.

Drug abuse in the United States has become a national tragedy, as well as a national disgrace. It is a national tragedy and disgrace that we must use every power at our disposal to bring it to an end.

The President's Commission on Organized Crime has estimated that within the borders of the United States, there are 4 million cocaine users, half a million heroin addicts, and 20 million regular users of marijuana. And it is estimated that more than $100 billion of revenue is taken in by the sellers of this poison every year.

Drug abuse affects thousands of innocent Americans. This administration has acknowledged that as much as 50 to 60 percent of street crime in the United States could be drug related.

Efforts at tackling this problem have been made by this administration, and many imaginative and innovative proposals have been put forward by our colleagues on both sides of the aisle.

Mrs. Reagan has been a leader in recognizing and addressing this national problem.

But I think we must do even more—because the drug trade, and drug use, continue to soar at a deadly pace.

The newest scourge on the streets is a frightening low-cost substance called crack, which is drawing more and more attention due to its superpotency. This form of cocaine which users freebase, has been proved lethal time and again, and is responsible for an alarming number of episodes of death and injury in recent weeks.

Perhaps equally destructive is the fact that addiction, whether physiological or psychological, or both, may be established after as few as two or three use episodes. Users experience a dramatic euphoria upon inhalation of crack followed quickly by a profound depression.

Law enforcement authorities indicate that those experiencing this possible crack depression may be dangerous to anyone in their vicinity.

We simply must find ways to stop the use of this substance and to find and stop those who are making it available on the streets of our cities.

I am therefore, today, establishing a democratic working group on drug and substance abuse, to be cochaired by Senator LAWTON CHILES, a senior member of the Budget, Appropriations, and Governmental Affairs Committees, and Senator JOE BIDEN, the ranking minority member of the Judiciary Committee, and cochairman of the International Caucus on Drugs.

This working group will concentrate, on several areas: First, eradication of the drug crops; second, interdiction of drug shipments and of drug traffickers; third, domestic enforcement of substance abuse laws; fourth, public education about the dangers of drug abuse; and fifth, treatment and rehabilitation of drug abusers; and sixth, very stiff penalties, very tough laws, and aggressive enforcement. With this multifaceted focus, the group will ad-

dress both the supply side and the demand side of the drug problem. As long as either exists, regardless of our progress in eliminating the other, this Nation will continue to have a drug problem. It also will offer help to the people who are the human flotsam left in the wake of this killing and crippling social plague.

We need this task force because it is obvious we are losing the drug war, and more and more concentrated efforts to fight it are desperately needed.

I have no illusions that this working group alone will win the war against drugs. This is a battle that requires cooperation and effort of nearly every American and a major commitment of national will. But it can collect, assemble, and push ideas and prepare legislation so that effective legislative action will be obtained on this subject before October when Congress is expected to adjourn sine die. We must dedicate ourselves to stemming the tide now; we must not wait until the tide becomes a tidal wave that crushes everything in its path.

I am fully confident that this effort will receive the benefit of the tremendous energy, superior intellect, and outstanding capability that the Members I am appointing can bring to bear on this matter.

I hope that the establishment of this group will contribute major progress in combining the scourge of substance abuse effectively and soon.

The names of those in addition to Senators CHILES and BIDEN are Senators DECONCINI, DODD, LEAHY, NUNN SASSER, and CRANSTON. I will be a member ex officio.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDENT pro tempore. Under the previous order, the Senator from from Wisconsin [Mr. PROXMIRE] is now recognized for not to exceed 5 minutes.

THE UNITED STATES NEGOTIATES WITH U.S.S.R. FROM OVERWHELMING STRENGTH

Mr. PROXMIRE. Mr. President, let's face it—this administration is turning its back on arms control. The President of the United States today, at this very moment, has the best opportunity since the dawn of the nuclear age to stop the nuclear arms race to negotiate an agreement with the Soviet Union from a position of overwhelming strength. But the President is choosing instead an all-out nuclear arms race.

This country leads the free world. The Soviet Union leads the Communist world. What is the fundamental basis of any nation's military strength? It is the economic and technological strength of that nation and its allies. It is also the translation of that economic and technological strength into military weapons.

So consider how the two great superpowers and their allies line up. First, compare the two economies. The United States gross national product is about twice the size of the Soviet GNP. How about the two adversary alliances. The North Atlantic Treaty [NATO] Alliance has more than three times the economic productivity of the Warsaw Pact. In economic muscle it is strictly no contest. The free world, lead by the United States is far, far ahead.

How about the technology of the two superpowers? A few months ago the United States Under Secretary of Defense for Research and Development compared the United States and the U.S.S.R. in the 20 most important military technology areas. I repeat, the most important military technology areas. How do we stack up? Of these 20 vital military areas, the United States leads in 14. The two superpowers were tied in six. So in how many of these 20 critical military areas did the U.S.S.R. lead? Exactly none. Zero—zip—not in a single area.

How about actual military power in this nuclear age? Both the United States and the Soviets have about 10,000 strategic nuclear warheads. Those are the massive hydrogen bombs—each one—each and every one of which can blow a great city to smithereans. Both superpowers also have 15,000 tactical nuclear bombs, each of which can utterly destroy an entire city block. What does all this mean? It means that if a war between the two superpowers should ever take place, it would utterly—totally, absolutely, finally eliminate both the Soviet Union and the United States from the face of the Earth.

And what does this mean? It means that both nations have the same common self, I repeat, self-interest in preventing nuclear war. Why do they have the same interest? Because a nuclear war would utterly destroy both nations as organized societies. Such a war might very possibly end the life of mankind on Earth. So you ask: Can our President reach an agreement with Secretary Gorbachev to stop the arms race? Can we rely on the Russians to keep such an agreement? The answer is yes. It is yes for a simple and certain reason. The Soviet Union like the United States has a self-interest in stopping the arms race. Both countries can only survive if a nuclear war is never fought. In view of the crushing, immense arsenals on both sides, a nuclear war means the end of both nations. The nuclear arms race—like every arms race—creates instability. It surely and steadily pushes the superpowers closer to war. It also constitutes a cruel and colossal economic burden on both nations.

Finally, the Soviet Union faces another nightmare. Consider this. The United States is protected by the Atlantic Ocean to the east, the mighty Pacific Ocean to the west. Both oceans are patrolled and dominated by the greatest Navy on Earth, the U.S. Navy. We have a friendly Canada to the north and a friendly Mexico to the south. We in the United States have three times the economic strength and literally 10 times the military strength of all the rest of the Western Hemisphere combined.

But how about the Soviet Union. It faces an economically and technologically strong NATO alliance on its west with not just United States nuclear power but rapidly growing United Kingdom and French nuclear arsenals. Within a few years both of those Russian adversaries will have nuclear arsenals of 2,000 strategic warheads each. Either one will be able to devastate the U.S.S.R. And on the Soviet's eastern front, it faces still another nuclear power in China. China has four times as many people as the Soviets. It is the most rapidly growing economy in the world. It is a full-fledged nuclear power and it is hostile to the Soviets.

So, I conclude, Mr. President, that when we negotiate into the U.S.S.R. today, we negotiate from overwhelming economic, technological, and military strength.

MYTH OF THE DAY: CASEIN IMPORTS ARE NOT HURTING U.S. DAIRY FARMERS

Mr. PROXMIRE. Mr. President, the myth of the day is that milk protein imports, primarily casein, are not hurting U.S. dairy farmers. This is a myth, pure and simple, as the facts plainly reveal.

Casein and other milk protein imports have been—and continue to be—the cause of much economic hardship for America's dairy farmers and their families. In 1985, these imports totaled a record 231.4 million pounds, an increase of 52 percent since 1980. Last year's casein imports were the equivalent of 8.3 billion pounds of skim milk. This equals 6 percent of the skim milk equivalent of 1985 milk production and 78 percent of the nonfat dry milk purchases made by the Commodity Credit Corporation.

Changes in food technology now allow the use of casein as an ingredient in a wide variety of food products as a substitute for milk solids not fat. Only about 5 percent of casein use was for food and feed 25 years ago. But today, over 87 percent is used for these purposes.

New Zealand has been shifting its exports to the United States since it lost most of its primary market when

England entered the Common Market in 1973. Casein imports from New Zealand have increased from 31.4 million to 102 million pounds a year during that period. Through the use of variable levies to limit, if not totally exclude, imports, as well as export or production subsidies to assist in moving surplus products into world markets, the European Community [EC] has greatly expanded its share of exports to the United States. In 1978, seven EC countries supplied 10 percent of total U.S. imports. By 1980, this had jumped to 30 percent. In 1985, the EC accounted for 44 percent of U.S. casein imports. Ireland has led this expansion, increasing from 9.2 million pounds in 1978 to 64.9 million pounds last year.

The fact that U.S. dairy farmers are now making great sacrifices to help bring milk production back into line with consumption makes the increasing expansion of milk protein products even more inexcusable. America's dairy farmers are being forced to take lower farm milk prices, on top of self-assessments amounting to 67 cents per hundredweight to help pay for the Dairy Termination Program, to help reduce the Federal deficit under Gramm-Rudman-Hollings, and to fund national dairy promotion activities.

About 14,000 dairy farm families will leave the dairy business under the Dairy Termination Program. This is the greatest single milk production reduction in history.

Does it make any sense for national dairy policy to give two different signals at the same time? Absolutely not. Mr. President, the use of the American market as a dumping ground for world surpluses is bad for dairy farmers and taxpayers alike. It must be stopped.

PENTAGON AUDITORS UNCOVER LITTON FRAUD

Mr. PROXMIRE. Mr. President, the successful prosecution of Litton Industries' military contracting subsidiary was a direct result of routine audits by auditors of the Defense Contract Auditing Agency.

According to press accounts, the Pentagon auditors noted discrepancies in Litton's books in April 1982. This touched off a criminal investigation which has culminated, so far, in guilty pleas by the corporation to 321 counts of fraud for overbilling the Defense Department. The facts made available indicate that prosecutions of Litton officials may be forthcoming.

Government auditing, especially in the area of defense procurement, has come under criticism lately, especially by defense contractors. They complain about excessive Government auditing and urge that the number of auditors and the frequency of auditing be curtailed. From time to time, there have been calls to reduce the role of the Defense Contract Auditing Agency. The President's Blue Ribbon Commission on Defense Management—known as the Packard Commission—complains in its final report about duplication of the defense auditing and oversight effort.

It is understandable that defense contractors are opposed to Government auditing and oversight, whether it comes from the Pentagon or Congress. I find that such critics do not understand or do not want to understand the different purposes served by groups such as the Defense Contract Auditing Agency, the General Accounting Office, and various congressional committees. They see duplication rather than differentiation. The Packard Commission report suffers from this kind of oversimplification.

The successful prosecution of Litton exemplifies the value of Government auditing; in particular, the work of the Defense Contract Auditing Agency. It is too easy to dismiss the unglamorous efforts of Government auditors as green eyeshade types who bury themselves in minutiae with little effect. In this one case, Litton is expected to pay up to $16 million in criminal and civil penalties.

The Defense Contract Auditing Agency should be congratulated for a job well done.

I ask unanimous consent to have printed in the RECORD at the close of my remarks an article from the New York Times, July 23, 1986, "Litton Unit Guilty Plea on Fraud"; and an article from the Bureau of National Affairs Daily Report for Executives, July 18, 1986, "Litton Division Indicted for Fraud; Navy Imposes Suspension on Company."

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

[From the New York Times, July 23, 1986]

LITTON UNIT GUILTY PLEA ON FRAUD

(By Lindsey Gruson)

Special to The New York Times

PHILADELPHIA, July 22.—A military-contracting subsidiary of Litton Industries pleaded guilty today in Federal District Court to 321 counts of fraud for overbilling the Defense Department by $6.3 million.

The guilty plea by the subsidiary, Litton Systems Inc., which does business as Clifton Precision, Special Devices division, had been expected. After being indicted last week, Litton agreed to pay up to $16 million in criminal and civil penalties, the largest settlement ever by a military contractor. Litton Industries, the nation's 19th-largest military contractor, has also been suspended from bidding on Government contracts.

After questioning Alan J. Hoffman, Litton's attorney, Judge Charles R. Weiner delayed the company's sentencing until Thursday. Litton has already agreed to pay the maximum fines that Judge Weiner could impose.

TWO FORMER EXECUTIVES CITED

Hours after Litton pleaded guilty, Clifton's former vice president for finance and administration, Michael J. Millspagh, 34 years old, was arraigned on charges of fraud and racketeering and pleaded not guilty. He was released on a $50,000 bond.

A second former Clifton executive, Joseph DiLiberto, 68, who had been the division's purchasing manager, is scheduled for arraignment on Aug. 4.

Interviews with Federal auditors and prosecutors indicate that the investigation that led to Litton's indictment was touched off by a routine review in April 1982 by auditors from the Defense Contract Auditing Agency. While auditing Clifton's contract to supply the Navy with radar devices, examiners were struck by a pattern: The company frequently quoted one vendor's prices in estimating its costs but never bought anything from that company.

Today, in reviewing the prosecutors' plea and sentencing memorandum, an Assistant United States Attorney, Nicholas C. Harbist, told the court that Litton's fraud was more extensive than previously disclosed.

Through a variety of schemes, he said, the company, the military's sole source for some advanced electronic equipment, inflated the price of some common parts, such as screws, by up to 10 times.

For a decade starting in the mid-1970's, he said, Clifton began asking vendors to quote prices much higher than the actual sales price. These quotes were then used to justify the prices Litton charged the Pentagon.

In addition, Clifton solicited and received rebates and kickbacks from vendors, Mr. Harbist said.

The company also obtained blank forms, filled in inflated prices and forged the vendors' signature, he said, and sometimes sought and received quotes for the price of one item, then bought the items in bulk, receiving discounts. But it billed the Pentagon at the single-unit price.

When auditors stumbled on the suspicious pattern in 1982, Litton employees for three years tried to "cover up" the scheme, Mr. Harbist said. During audits, he said, they "routinely" lied to examiners, contending the company did not have records of its purchase orders.

Mr. Harbist said that an attorney for Litton, who was not named, had been told of the scheme in May 1983, conducted an internal investigation and "wrote a memorandum detailing the nature and extent of certain fraudulent practices."

In an interview after the court proceedings today, Mr. Harbist said the lawyer apparently sent his report to senior corporate executives at the company's Beverly Hills, Calif., headquarters. He declined to provide any other details but said the investigation into the apparent cover-up was continuing.

CONTRACT POLICY: LITTON DIVISION INDICTED FOR FRAUD; NAVY IMPOSES SUSPENSION ON COMPANY

A federal grand jury in Philadelphia July 15 indicted Littons Systems' Clifton Precision Division and two former employees for defrauding the government on more than 45 defense contracts between 1975 and 1984.

Subsequently, the Navy July 16 suspended Litton Industries, Inc.—the nation's tenth-largest defense contractor—and its affiliates from receiving new Defense Department contracts, based on the indictment and the company's announced intention to enter a guilty plea.

The 325-count indictment, which is the result of a joint investigation by the Defense Criminal Investigative Service, the

DOD Inspector General, and the Defense Contract Audit Agency, charges Litton Systems with presenting false claims to the government, mail fraud, and making false statements to the government.

Litton's Clifton Precision Division produces aircraft instrumentation, radar equipment, and other military hardware under fixed-price defense contracts. According to the indictment, Litton and its former Vice President of Finance Michael Millspaugh engaged in a scheme to submit false cost and pricing data to the Defense Department. "As part of the scheme, defendants caused substantially inflated cost and pricing data for materials to be submitted to [DOD] in order to conceal the actual cost of materials."

The indictment alleges that Litton employees obtained inflated cost and pricing data, using blank quotation forms received from suppliers to submit fraudulent price quotations. In addition, Litton and Millspaugh allegedly failed to disclose to the government that Clifton was receiving rebates from vendors and suppliers.

Furthermore, Millspaugh attempted to conceal the scheme by lying to a Defense Contract Audit Agency [DCAA] auditor who was investigating the overcharges, the indictment says. Moreover, Litton Systems is charged with concealing material facts from DOD by making false statements to DCAA auditors, denying the auditors access to cost and pricing data, and removing or destroying documents sought by the auditors.

U.S. attorney for the eastern district of Pennsylvania Edward Dennis announced July 15, that Litton had agreed to plead guilty to all counts, and would pay $15 million in criminal penalties, civil penalties, and restitution. Millspaugh faces up to 125 years in prison, plus $55,000 in fines and forfeiture of assets, Dennis said. Former Clifton materials manager Joseph DiLiberto, who is charged on one count of conspiring to make false statements, could receive 10 years in jail and up to $15,000 in fines.

In a related development, the Navy July 16 suspended Litton Industries, Inc., the nation's tenth-largest defense contractor, from receiving new DOD contracts.

"The suspension is for a temporary period pending completion of a thorough review of the underlying facts, "the Navy said in a statement. "The notice of suspension provides Litton the opportunity to submit and present information in opposition to the suspension within 30 days." The Navy added that it would consider the extent to which the illegal conduct "occurred within the corporate structure," and the contractor's efforts to prevent its recurrence.

The Navy also released a fact sheet explaining that the suspension does not affect Litton's current contracts, including a $221 million award relating to the reactivation of the battleship "Wisconsin." The option on that contract was exercised July 14, just one day before the indictment. The Navy conceded that it was aware of an ongoing criminal investigation involving Litton's Clifton Precision Division. However, no attempt was made to accelerate the award because of the investigation, the agency stressed.

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. D'AMATO. Mr. President, I yield myself 3 minutes pursuant to the majority leader.

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

(The remarks of Mr. D'AMATO are printed in the RECORD under "amendments submitted".)

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Mr. KASTEN addressed the Chair.

RECOGNITION OF SENATOR KASTEN

The PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin [Mr. KASTEN] is recognized for a period not to exceed 5 minutes.

THE WISCONSIN HAY AIRLIFT

Mr. KASTEN. Mr. President, I rise today to pay tribute to the many individuals in my home State of Wisconsin who gave of their time, their energy, and their resources this past week to organize yesterday's hay airlift to drought-stricken Southern States.

The hay went to Georgia, North Carolina, South Carolina, and although it is unusual to stand before my colleagues to say this, I think what we saw was simply extraordinary in terms of people working together.

While this effort was organized on relatively short notice, the outpouring of support from farmers, businesses, and individuals across Wisconsin was phenomenal.

More than 1,500 bales of hay were donated by farmers and transported by plane, truck, and rail to farmers in the Southeastern United States whose livestock are starving.

All of us who have seen the pictures on television have seen the devastation, all of us have seen the animals in stress, and we understand how important this action has been.

Mr. President, this selfless expression by Wisconsin farmers—many in financial hardship themselves—is a demonstration I believe of an inherent characteristic of the American people to help those less fortunate than ourselves, regardless of the self-sacrifice involved.

I want to thank and bring to the attention of my Senate colleagues just a few of the many Wisconsinites who worked so hard to bring this haylift to fruition: David Retzlaff, manager of the Bernien Implement Co. in Reedsburg, the location of the initial haydrop in Wisconsin; William Schorer, president of the Reedsburg Foods, who donated trucks and time to help truck some of the hay south; and, of course, many, many farmers whose generosity inspired the activities of all others.

Mr. President, this kind of effort by our State's farmers, many of whom are facing difficult economic times themselves, should inspire all of us. And I certainly feel proud. It makes me proud to represent such a caring group of individuals, and to represent such a caring State.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. D'AMATO). Under the previous order, there will now be a period for the transaction of routine morning business with statements therein limited to 5 minutes.

Mr. DOLE. Mr. President, I ask unanimous consent that routine morning business be extended until 10:20.

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

Mr. THURMOND. Mr. President, will the distinguished Senator from Wisconsin yield?

Mr. KASTEN. I am pleased to yield.

THE HAY AIRLIFT TO SOUTHEAST FARMERS

Mr. THURMOND. Mr. President, I just want to take this opportunity to pay a special tribute both to the good people of Wisconsin and to their able and fine Senator, ROBERT KASTEN, for their unselfish efforts in airlifting hay to farmers in the Southeast.

I would like to say to the Senator from Wisconsin, and to the people of his State, that their generosity in this critical time of need for the Southeast is much appreciated. Because of their determined efforts, livestock that might have perished will live, and a number of farmers who might not have survived this crisis have been given new hope of weathering this drought.

I know that the Senator from Wisconsin was instrumental in organizing the airlift from his State to the South, and I want to commend and thank him on behalf of our people for his concern and his determined effort to make this operation a success.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, as the distinguished Senator from South Carolina knows so well the South continues to reel from the effects of prolonged and devastating drought. In fact, Senator THURMOND was there with the President of the United States. We have seen the grim reports on television—the once fertile farm fields that are blowing away; the ponds and streams that are now baked dry; the starving livestock; and the frustration and anxiety of our southern neigh-

bors, and all the others who are trying to cope with this disaster in Pennsylvania and Delaware.

This is a problem that knows no regional or political boundries: when there is trouble, whether we are from Kansas, or California, or New York, we must all pitch in. I am pleased that the administration is doing all it can to bring as much relief as possible to drought-stricken areas. Yesterday, the President saw firsthand the scorched earth of South Carolina; and the Secretary of Agriculture, Dick Lyng, was there as well, reviewing a report from a task force he created to deal with the crisis. Hopefully, we can cut through the redtape even more rapidly than Mr. Lyng would like.

Mr. President, what is especially pleasing is the manner in which officials from other parts of the country have responded. I would like to applaud the efforts of those Members in this body who have not only demonstrated concern, but also demonstrated real leadership by bringing some tangible relief to the drought-ravaged South.

In particular, the majority leader would like to salute Senator BOB KASTEN of Wisconsin who personally went to bat for southern farmers to see to it that Wisconsin hay was delivered to the people who needed it the most.

By cutting through redtape—and never taking no for an answer—the junior Senator from Wisconsin has set a real example for all of us to follow. On Wednesday past, President Reagan heard Senator KASTEN loud and clear and gave his OK to the use of C-130 aircraft for delivering desperately needed hay to the South. As a result, cargo planes from Milwaukee's 440th Tactical Airlift Wing at Mitchell Airport were soon bringing hay from many Wisconsin communities to their southern neighbors.

Now, Kansas and Missouri hay is also heading to South Carolina. And some good citizens are even sending ice. It is truly a national concern.

Mr. President, there have been some critics who say politics is playing a role in this relief effort. All I can say is that farmers could not care less about party politics—what they are more interested in is survival from one day to the next. The relief effort is, and will continue to be, a bipartisan concern. In my view, we should follow Senator KASTEN's leadership and get on with the challenge of dealing with merciless heatwave and its devastating aftermath.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Mr. President, I simply want to thank the majority leader but also thank the Senator from South Carolina. It is not me that deserves the credit frankly. It is the farmers of Wisconsin, the people of Wisconsin, and members of the 440th Air Force Reserve Wing all working together. We are proud to be helpful, and I am pleased to be able to bring this whole experience to the attention of our Senate colleagues.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. DOLE. I am happy to yield.

Mr. THURMOND. Mr. President, I want to express my appreciation to the able majority leader for his fine interest in this matter, and to express to him and through him to the farmers in Kansas who also are sending some feed for cattle to South Carolina and other Southeastern States. We deeply appreciate the leadership and interest of the majority leader. I want to thank him.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank my distinguished senior colleague, and our distinguished majority leader, and express our gratitude for the wonderful help we have received from all parts.

I am not making a Federal case. I was injected into it in that the distinguished Senator from Massachusetts had 30 tons of hay available. I heard they had called the White House, and that they were orchestrating and organizing the deliveries. There was an airplane delivery yesterday in South Carolina. It was obvious to all of us. We saw it on the morning news with our distinguished President down there. We are grateful for it.

Similarly, it was delivered in North Carolina and other States.

When I called over and spoke to the coordinator, Mr. Andrew Card, he said, "Get a truck."

I said, "Come on, man. Let's go."

It is the proposition of getting it down there. Later, he explained 30 tons was not enough or sufficient load for a plane. The fact of the matter is, a C-130 holds right at 22,000 or 23,000 pounds at the most, around 15 to 16 tons. So we actually had two planeloads. I explained that we did not have Democratic cows or Republican cows. We only had hungry cows looking for hay—and not political hay. That is that.

Since that time, we have had other offers, and we are now coordinating some deliveries from Ohio. Mr. Harry Winch, of Minster, OH, has a plant in our State of South Carolina, and he has a tremendous sum of hay. He is orchestrating with truck deliveries to Wright Patterson. We hope with the Ohio National Guard to bring some down.

□ 1010

Mr. President, we have these weekend warriors who fly and in most instances they fly aircraft which are empty. We have C-130's at Westover, MA, that fly and fly empty. I will land on a field later today in my home town of Charleston, SC, where they have weekend flights. We require these training flights. They fly, and they fly empty.

There is nothing wrong with the emergency here, with this amount of hay available to be orchestrated with the Air Guard who fly on weekends, and with the regular Military Airlift Command to coordinate it.

Yes, it is a large sum, but let us get the trucks and let us get the trains.

On Conrail, we have had an offer out of Michigan, with Senator RIEGLE coordinating it, and then we hope to make a linkup with Norfolk Southern and bring that hay and some other hay in by train. It is an effort where everyone is trying to move.

One other thing we should emphasize in addition to our gratitude concerns the efforts of the senior Senator from South Carolina, with his bill, which will help those who are helping us. We have a big tax reform bill and in all events with this kind of assistance there are writeoffs allowed in the tax reform.

I would hope they would give expedited consideration to the bill of the senior Senator from South Carolina and, if need be, consider it in conference. Maybe if we could have some action on this side in the Senate in the next week on this score, we could then proceed with legitimate concern and consideration by the conferees themselves.

The main point is to thank everyone who has been of tremendous assistance, with wonderful outpourings from all sections to help us in our critical time.

BOWSHER VERSUS SYNAR—DISSENTING OPINIONS

Mr. RUDMAN. Mr. President, I ask unanimous consent to have printed in the RECORD the following opinions in the case of Bowsher versus Synar.

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

[Supreme Court of the United States]

NOS. 85-1377, 85-1378 AND 85-1379

CHARLES A. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES, APPELLANT *v.* MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

UNITED STATES SENATE, APPELLANT, MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

THOMAS P. O'NEILL, JR., SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, ET AL., APPELLANTS *v.* MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[July 7, 1986]

JUSTICE WHITE, dissenting.

The Court, acting in the name of separation of powers, takes upon itself to strike down the Gramm-Rudman-Hollings Act, one of the most novel and far-reaching legislative responses to a national crisis since the New Deal. The basis of the Court's action is a solitary provision of another statute that was passed over sixty years ago and has lain dormant since that time. I cannot concur in the Court's action. Like the Court, I will not purport to speak to the wisdom of the policies incorporated in the legislation the Court invalidates; that is a matter for the Congress and the Executive, *both* of which expressed their assent to the statute barely half a year ago. I will, however, address the wisdom of the Court's willingness to interpose its distressingly formalistic view of separation of powers as a bar to the attainment of governmental objectives through the means chosen by the Congress and the President in the legislative process established by the Constitution. Twice in the past four years I have expressed my view that the Court's recent efforts to police the separation of powers have rested on untenable constitutional propositions leading to regrettable results. See *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 92-118 (1982) (White, J., dissenting); *INS* v. *Chadha*, 426 U.S. 919, 967-1003 (White, J., dissenting). Today's result is even more misguided. As I will explain, the Court's decision rests on a feature of the legislative scheme that is of minimal practical significance and that presents no substantial threat to the basic scheme of separation of powers. In attaching dispositive significance to what should be regarded as a triviality, the Court neglects what has in the past been recognized as a fundamental prinicple governing consideration of disputes over separation of powers:

"The actual art of governing under our Constitution does not and cannot conform to judicial definitions of the power of any of its branches based on isolated clauses or even single Articles torn from context. While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J. concurring).

I

The Court's argument is straightforward: the Act vests the Comptroller General with "executive" powers, that is, powers to "[i]nterpre[t] a law enacted by Congress [in order] to implement the legislative mandate," *ante*, at 17; such powers may not be vested by Congress in itself or its agents, see *Buckley* v. *Valeo*, 424 U.S. 1, 120-141 (1976), for the system of government established by the Constitution for the most part limits Congress to a legislative rather than an executive or judicial role, see *INS* v. *Chadha*, *supra;* the Comptroller General is an agent of Congress by virtue of a provision in the Budget and Accounting Act of 1921, 43 Stat. 23, 31 U.S.C. § 703(e)(1), granting Congress the power to remove the Comptroller for cause through joint resolution; therefore the Comptroller General may not constitutionally exercise the executive powers granted him in the Gramm-Rudman Act, and the Act's automatic budget-reduction mechanism, which is premised on the Comptroller's exercise of those powers, must be struck down.

Before examining the merits of the Court's argument, I wish to emphasize what it is that the Court quite pointedly and correctly does *not* hold: namely, that "executive" powers of the sort granted by the Comptroller by the Act may only be exercised by officers removable at will by the President. The Court's apparent unwillingness to accept this argument,[1] which has been tendered in this Court by the Solicitor General,[2] is fully consistent with the Court's longstanding recognition that it is within the power of Congress under the "Necessary and Proper" Clause, Art. I, § 8, to vest authority that falls within the Court's definition of executive power in officers who are not subject to removal at will by the President and are therefore not under the President's direct control. See, *e.g., Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935); *Wiener* v. *United States*, 357 U.S. 349 (1958).[3] In an earlier day, in which simpler notions of the role of government in society prevailed, it was perhaps plausible to insist that all "executive" officers be subject to an unqualified presidential removal power, see *Myers* v. *United States*, 272 U.S. 52 (1926); but with the advent and triumph of the administrative state and the accompanying multiplication of the tasks undertaken by the Federal Government, the Court has been virtually compelled to recognize that Congress may reasonably deem it "necessary and proper" to vest some among the broad new array of governmental functions in officers who are free from the partisanship that may be expected of agents wholly dependent upon the President.

The Court's recognition of the legitimacy of legislation vesting "executive" authority in officers independent of the President does not imply derogation of the President's own constitutional authority—indeed, duty—to "take Care that the Laws be faithfully executed," Art. II, § 3, for any such duty is necessarily limited to a great extent by the content of the laws enacted by the Congress. As Justice Holmes put it, "The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power." *Myers* v. *United States*, 272 U.S., at 177 (Holmes, J., dissenting).[4] Justice Holmes perhaps overstated his case, for there are undoubtedly executive functions that, regardless of the enactments of Congress, must be performed by officers subject to removal at will by the President. Whether a particular function falls within this class or within the far larger class that may be relegated to independent officers "will depend upon the character of the office." *Humphrey's Executor*, 295 U.S., at 631. In determining whether a limitation on the President's power to remove an officer performing executive functions constitutes a violation of the constitutional scheme of separation of powers, a court must "focu[s] on the extent to which [such a limitation] prevents the Executive Branch from accomplishing its constitutionally assigned functions." *Nixon* v. *Administrator of General Services*, 433 U.S. 425, 443 (1977). "Only where the potential for disruption is present must we then determine whether that impact is satisfied by an overriding need to promote objectives within the constitutional authority of Congress." *Ibid.* This inquiry is, to be sure, not one that will beget easy answers; it provides nothing approaching a bright-line rule or set of rules. Such an inquiry, however, is necessitated by the recognition that "formalistic and unbending rules" in the area of separation of powers may "unduly constrict Congress' ability to take needed and innovative action pursuant to its Article I powers." *Commodity Futures Trading Commission* v. *Schor*, ——, —— (1986).

It is evident (and nothing in the Court's opinion is to the contrary) that the powers exercised by the Comptroller General under the Gramm-Rudman Act are not such that vesting them in an officer not subject to removal at will by the President would in itself improperly interfere with Presidential powers. Determining the level of spending by the Federal Government is not by nature a function central either to the exercise of the President's enumerated powers or to his general duty to ensure execution of the laws; rather, appropriating funds is a peculiarly legislative function, and one expressly committed to Congress by Art. I, § 9, which provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." In enacting Gramm-Rudman, Congress has chosen to exercise this legislative power to establish the level of federal spending by providing a detailed set of criteria for reducing expenditures below the level of appropriations in the event that certain conditions are met. Delegating the execution of this legislation—that is, the power to apply the Act's criteria and make the required calculations—to an officer independent of the President's will does not deprive the President of any power that he would otherwise have or that is essential to the performance of the duties of his office. Rather, the result of such a delegation, from the standpoint of the President, is no different from the result of more traditional forms of appropriation: under either system, the level of funds available to the Executive branch to carry out its duties is not within the President's discretionary control. To be sure, if the budget-cutting mechanism required the responsible officer to exercise a great deal of policymaking discretion, one might argue that having created such broad discretion Congress had some obligation based upon Art. II to vest it in the Chief Executive or his agents. In Gramm-Rudman, however, Congress has done no such thing; instead, it has created a precise and articulated set of criteria designed to minimize the degree of

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[1] See *ante*, at 9-10, and n. 4.

[2] The Solicitor General appeared on behalf of the "United States," or, more properly, the Executive departments, which intervened to attack the constitutionality of the statute that the Chief Executive had earlier endorsed and signed into law.

[3] Although the Court in *Humphrey's Executor* characterized the powers of the Federal Trade Commissioner whose tenure was at issue as "quasi-legislative" and "quasi-judicial," it is clear that the FTC's power to enforce and give content to the Federal Trade Commission Act's proscription of "unfair" acts and practices and methods of competition is in fact "executive" in the same sense as is the Comptroller's authority under Gramm-Rudman—that is, it involves the implementation, (or the interpretation and application) of an act of Congress. Thus, although the Court in *Humphrey's Executor* found the use of the labels "quasi-legislative" and "quasi-judicial" helpful in "distinguishing" its then-recent decision in *Myers* v. *United States*, 272 U.S. 52 (1926), these terms are hardly of any use in limiting the holding of the case; as Justice Jackson pointed out, "[t]he mere retreat to the qualifying 'quasi' is implicit with confession that all recognized classifications have broken down, and 'quasi' is a smooth cover which we draw over our confusion as we might use a counterpane to conceal a disordered bed." *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 487-488 (Jackson, J., dissenting).

[4] Cf. *ante*, at 18 ("undoubtedly the content of the Act determines the nature of the executive duty").

policy choice exercised by the officer executing the statute and to ensure that the relative spending priorities established by Congress in the appropriations it passes into law remain unaltered.[5] Given that the exercise of policy choice by the officer executing the statute would be inimical to Congress' goal in enacting "automatic" budget-cutting measures, it is eminently reasonable and proper for Congress to vest the budget-cutting authority in an officer who is to the greatest degree possible nonpartisan and independent of the President and his political agenda and who therefore may be relied upon not to allow his calculations to be colored by political considerations. Such a delegation deprives the President of no authority that is rightfully his.

II

If, as the Court seems to agree, the assignment of "executive" powers under Gramm-Rudman to an officer not removable at will by the President would not in itself represent a violation of the constitutional scheme of separated powers, the question remains whether, as the Court concludes, the fact that the officer to whom Congress has delegated the authority to implement the Act is removable by a joint resolution of Congress should require invalidation of the Act. The Court's decision, as I have stated above, is based on a syllogism: the Act vests the Comptroller with "executive power"; such power may not be exercised by Congress or its agents; the Comptroller is an agent of Congress because he is removable by Congress; therefore the Act is invalid. I have no quarrel with the proposition that the powers exercised by the Comptroller under the Act may be characterized as "executive" in that they involve the interpretation and carrying out of the Act's mandate. I can also accept the general proposition that although Congress has considerable authority in designating the officers who are to execute legislation, see *supra*, at 3-7, the constitutional scheme of separated powers does prevent Congress from reserving an executive role for itself or for its "agents." *Buckley* v. *Valeo*, 424 U.S., at 120-141; *id.*, at 267-282 (WHITE, J., concurring in part and dissenting in part). I cannot accept, however, that the exercise of authority by an officer removable for cause by a joint resolution of Congress is analogous to the impermissible execution of the law by Congress itself, nor would I hold that the Congressional role in the removal process renders the Comptroller an "agent" of the Congress, incapable of receiving "executive" power.

In *Buckley* v. *Valeo*, *supra*, the Court held that Congress could not reserve to itself the power to appoint members of the Federal Election Commission, a body exercising "executive" power. *Buckley*, however, was grounded on a textually based separation of powers argument whose central premise was that the Constitution requires that all "Officers of the United States" (defined as "all persons who can be said to hold an office under the government," 424 U.S., at 126) whose appointment is not otherwise specifically provided for elsewhere in its text be appointed through the means specified by the Appointments Clause, Art. II, § 2, cl.2—that is, either by the President with the advice and consent of the Senate or, if Congress so specifies, by the President alone, by the courts, or by the head of a department. The *Buckley* Court treated the Appointments Clause as reflecting the principle that "the Legislative Branch may not exercise executive authority," 424 U.S., at 119 (citing *Springer* v. *Philippine Islands*, 277 U.S. 189 (1928)), but the Court's holding was merely that Congress may not direct that its laws be implemented through persons who are its agents in the sense that it chose them; the Court did not on the legitimacy of other means by which Congress might exercise authority over those who execute its laws. Because the Comptroller is not an appointee of Congress but an officer of the United States appointed by the President with the advice and consent of the Senate, *Buckley* neither requires that he be characterized as an agent of the Congress nor in any other way calls into question his capacity to exercise "executive" authority. See 424 U.S., at 128, n. 165.

As the majority points out, however, the Court's decision in *INS* v. *Chadha*, 462 U.S. 919 (1983), recognizes additional limits on the ability of Congress to participate in or influence the execution of the laws. As interpreted in *Chadha*, the Constitution prevents Congress from interfering with the actions of officers of the United States through means short of legislation satisfying the demands of bicameral passage and presentment to the President for approval or disapproval. *id*, at 954-955. Today's majority concludes that the same concerns that underlay *Chadha* indicate the invalidity of a statutory provision allowing the removal by joint resolution for specified cause of any officer performing executive functions. Such removal power, the Court contends, constitutes a "congressional veto" analogous to that struck down in *Chadha*, for it permits Congress to "remove, or threaten to remove, an officer for executing the laws in any fashion found to be unsatisfactory." *Ante*, at 11. The Court concludes that it is "[t]his kind of congressional control over the execution of the laws" that *Chadha* condemns. *Ibid.*

The deficiencies in the Court's reasoning are apparent. First, the Court badly mischaracterizes the removal provision when it suggests that it allows Congress to remove the Comptroller for "executing the laws in any fashion found to be unsatisfactory"; in fact, Congress may remove the Comptroller only for one or more of five specified reasons, which "although not so narrow as to deny Congress any leeway, circumscribe Congress' power to some extent by providing a basis for judical review of congressional removal." *Ameron, Inc.* v. *United States Army Corps of Engineers*, 787 F. 2d 875, 895 (CA3 1986) (Becker, J., concurring in part). Second, and more to the point, the Court overlooks or deliberately ignores the decisive difference between the congressional removal provision and the legislative veto struck down in *Chadha:* under the Budget and Accounting Act, Congress may remove the Comptroller only through a joint resolution, which by definition must be passed by both Houses and signed by the President, See *United States* v. *California*, 332 U.S. 19, 28 (1947).[6] In other words, a removal of the Comptroller under the statute *satisfies the requirements of bicameralism and presentment laid down in Chadha.* The majority's citation of *Chadha* for the proposition that Congress may only control the acts of officers of the United States "by passing new legislation," *ante*, at 18, in no sense casts doubt on the legitimacy of the removal provision, for that provision allows Congress to effect removal only through action that constitutes legislation as defined in *Chadha.*

To the extent that it has any bearing on the problem now before us, *Chadha* would seem to suggest the legitimacy of the statutory provision making the Comptroller removable through joint resolution, for the Court's opinion in *Chadha* reflects the view that the bicameralism and presentment requirements of Art. I represent the principal assurances that Congress will remain within its legislative role in the constitutionally prescribed scheme of separated powers. Action taken in accordance with the "single, finely wrought, and exhaustively considered, procedure" established by Art. I, *Chadha*, 462 U.S., at 951, should be presumptively viewed as a legitimate exercise of legislative power. That such action may represent a more or less successful attempt by Congress to "control" the actions of an officer of the United States surely does not in itself indicate that it is unconstitutional, for no one would dispute that Congress has the power to "control" administration through legislation imposing duties or substantive restraints on executive officers, through legislation increasing or decreasing the funds made available to such officers, or through legislation actually abolishing a particular office. Indeed, *Chadha* expressly recognizes that while congressional meddling with administration of the laws outside of the legislative process is impermissible, congressional control over executive officers exercised through the legislative process is valid. 462 U.S., at 955, n. 19. Thus, if the existence of a statute permitting removal of the Comptroller through joint resolution (that is, through the legislative process) renders his exercise of executive powers unconstitutional it is for reasons having virtually nothing to do with *Chadha.*[7]

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[5] That the statute provides, to the greatest extent possible, precise guidelines for the officer assigned to carry out the required budget cuts not only indicates that vesting budget-cutting authority in an officer independent of the President does not in any sense deprive the President of a significant amount of discretionary authority that should rightfully be vested in him or an officer accountable to him, but also answers the claim that the Act represents an excessive and hence unlawful delegation of legislative authority. Because the majority does not address the delegation argument, I shall not discuss it at any length, other than to refer the reader to the District Court's persuasive demonstration that the statute is not void under the nondelegation doctrine.

[6] The legislative history indicates that the inclusion of the President in the removal process was a deliberate choice on the part of the Congress that enacted the Budget and Accounting Act. The previous year, legislation establishing the position of Comptroller General and providing for removal by *concurrent* resolution—that is, by a resolution not presented to the President—had been vetoed by President Wilson on the ground that granting the sole power of removal to the Congress would be unconstitutional. See 59 Cong. Rec. 8609-8610 (1920). That Congress responded by providing for removal through joint resolution clearly evinces congressional intent that removal take place only through the legislative process, with Presidential participation.

[7] Because a joint resolution passed by both Houses of Congress and signed by the President (or repressed over the President's veto) is legislation having the same force as any other Act of Congress, it is somewhat mysterious why the Court focuses on the Budget and Accounting Act's authorization of removal of the Comptroller through such a resolution as an indicator that the Comptroller may not be vested with executive powers. After all, even without such prior statutory authorization, Congress could pass, and the President sign, a joint resolution purporting to remove the Comptroller, and the validity of such legislation would seem in no way dependent on previous legislation contemplating it. Surely the fact that Congress might at any time pass and the President sign legislation purporting to remove some officer of the United

That a joint resolution removing the Comptroller General would satisfy the requirements for legitimate legislative action laid down in *Chadha* does not fully answer the separation of powers argument, for it is apparent that even the results of the constitutional legislative process may be unconstitutional if those results are in fact destructive of the scheme of separation of powers. *Nixon* v. *Administrator of General Services*, 433 U.S. 425 (1977). The question to be answered is whether the threat of removal of the Comptroller General for cause through joint resolution as authorized by the Budget and Accounting Act renders the Comptroller sufficiently subservient to Congress that investing him with "executive" power can be realistically equated with the unlawful retention of such power by Congress itself; more generally, the question is whether there is a genuine threat of "encroachment or aggrandizement of one branch at the expense of the other," *Buckley* v. *Valeo*, 424 U.S., at 122. Common sense indicates that the existence of the removal provision poses no such threat to the principle of separation of powers.

The statute does not permit anyone to remove the Comptroller at will; removal is permitted only for specified cause, with the existence of cause to be determined by Congress following a hearing. Any removal under the statute would presumably be subject to post-termination judicial review to ensure that a hearing had in fact been held and that the finding of cause for removal was not arbitrary. See *Ameron, Inc.* v. *United States Army Corps of Engineers*, 787 F. 2d, at 895 (Becker, J., concurring in part).[8] These procedural and substantive limitations on the removal power militate strongly against the characterization of the Comptroller as a mere agent of Congress by virtue of the removal authority. Indeed, similarly qualified grants of removal power are generally deemed to protect the officers to whom they apply and to establish their independence from the domination of the possessor of the removal power. See *Humphrey's Executor* v. *United States*, 295 U.S., at 625–626, 629–630. Removal authority limited in such a manner is more properly viewed as motivating adherence to a substantive standard established by law than as inducing subservience to the particular institution that enforces that standard. That the agent enforcing the standard is Congress may be of some significance to the Comptroller, but Congress' substantively limited removal power will undoubtedly be less of a spur to subservience than Congress' unquestionable and unqualified power to enact legislation reducing the Comptroller's salary, cutting the funds available to his department, reducing his personnel, limiting or expanding his duties, or even abolishing his position altogether.

More importantly, the substantial role played by the President in the process of removal through joint resolution reduces to utter insignificance the possibility that the threat of removal will induce subservience to the Congress. As I have pointed out above, a joint resolution must be presented to the President and is ineffective if it is vetoed by him, unless the veto is overridden by the constitutionally prescribed two-thirds majority of both Houses of Congress. The requirement of presidential approval obviates the possibility that the Comptroller will perceive himself as so completely at the mercy of Congress that he will function as its tool.[9] If the Comptroller's conduct in office is not so unsatisfactory to the President as to convince the latter that removal is required under the statutory standard, Congress will have no independent power to coerce the Comptroller unless it can muster a two-thirds majority in both Houses—a feat of bipartisanship more difficult than that required to impeach and convict. The incremental *in terrorem* effect of the possibility of congressional removal in the face of a presidential veto is therefore exceedingly unlikely to have any discernible impact on the the extent of congressional influence over the Comptroller.[10]

The practical result of the removal provision is not to render the Comptroller unduly dependent upon or subservient to Congress, but to render him one of the most independent officers in the entire federal establishment. Those who have studied the office agree that the procedural and substantive limits on the power of Congress and the President to remove the Comptroller make dislodging him against his will practically impossible. As one scholar put it nearly fifty years ago, "Under the statute the Comptroller General, once confirmed, is safe so long as he avoids a public exhibition of personal immorality, dishonesty, or failing mentality." H. Mansfield, The Comptroller General 75–76 (1939).[11] The passage of time has done little to cast doubt on this view: of the six Comptrollers who have served since 1921, none has been threatened with, much less subjected to removal. Recent students of the office concur that "[b]arring resignation, death, physical or mental incapacity, or extremely bad behavior, the Comptroller General is assured his tenure if he wants it, and not a day more." F. Mosher, The GAO 242 (1979).[12] The threat of "here-and-now subservience," *ante*, at 5, is obviously remote indeed.[13]

States does not make the exercise of executive power by all such officers unconstitutional. Since the effect of the Budget and Accounting Act is merely to recognize the possibility of legislation that Congress might at any time attempt to enact with respect to any executive officer, it should not make the exercise of "executive" power by the Comptroller any more problematic than the exercise of such power by any other officer. A joint resolution purporting to remove the Comptroller, or any other executive officer, might be constitutionally infirm, but Congress' advance assertion of the power to enact such legislation seems irrelevant to the question whether exercise of authority by an officer who might in the future be subject to such a possibly valid and possibly invalid resolution is permissible, since the provision contemplating a resolution of removal obviously cannot in any way add to Congress' power to enact such a resolution.

Of course, the foregoing analysis does not imply that the removal provision of the Budget and Accounting Act is meaningless; for although that provision cannot *add* to any power Congress might have to pass legislation (that is, a joint resolution) removing the Comptroller, it can *limit* its power to do so to the circumstances specified. The reason for this is that any joint resolution purporting to remove the Comptroller in the absence of a hearing or one of the specified grounds for removal would not be deemed an implied repeal of the limits on removal in the 1921 Act (for such implied repeals are disfavored), and thus the joint resolution would only be given effect to the extent consistent with the preexisting law (that is, to the extent that there was actually cause for removal).

[8] *Cf. Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), in which the court entertained a challenge to Presidential removal under a statute that similarly limited removals to specified cause.

[9] The Court cites statements made by supporters of the Budget and Accounting Act indicating their belief that the Act's removal provisions would render the Comptroller subservient to Congress by giving Congress "absolute control of the man's destiny in office." *Ante*, at 13. The Court's scholarship, however, is faulty: at the time all of these statements were made—including Representative Sisson's statement of May 3, 1921—the proposed legislation provided for removal by concurrent resolution, with no Presidential role. See 61 Cong. Rec. 983, 989–992, 1079–1085 (1921).

[10] Concededly, the substantive grounds for removal under the statute are broader than the grounds for impeachment specified by the Constitution, see *ante*, at 13–14, although given that it is unclear whether the limits on the impeachment power may be policed by any body other than Congress itself, the practical significance of the difference is hard to gauge. It seems to me most likely that the difficulty of obtaining a two-thirds vote for removal in both Houses would more than offset any increased likelihood of removal that might result from the greater liberality of the substantive grounds for removal under the statute. And even if removal by Congress alone through joint resolution passed over presidential veto is marginally more likely than impeachment, whatever additional influence over the Comptroller Congress may thereby possess seems likely to be minimal in relation to that which Congress already possesses by virtue of its general legislative powers and its power to impeach. Of course, if it were demonstrable that the Constitution specifically limited Congress' role in removal to the impeachment process, the insignificance of the marginal increase in congressional influence resulting from the provision authorizing removal through joint resolution would be no answer to a claim of unconstitutionality. But no such limit appears in the Constitution: the Constitution merely provides that all officers of the United States may be impeached for high crimes and misdemeanors, and nowhere suggests that impeachment is the sole means of removing such officers.

As for the Court's observation that "no one would seriously suggest that judicial independence would be strengthened by allowing removal of federal judges only by a joint resolution finding 'inefficiency,' 'neglect of duty,' or 'malfeasance,' " *ante*, at 14, it can only be described as a *non sequitur*. The issue is not whether the removal provision makes the Comptroller *more* independent than he would be if he were removable only through impeachment, but whether the provision so weakens the Comptroller that he may not exercise executive authority. Moreover, the Court's reference to standards applicable to removal of Art. III judges is a red herring, for Art. III judges—unlike other officers of the United States—are specifically protected against removal for other than constitutionally specified cause. Thus, the infirmity of a statute purporting to allow removal of judges for some other reason would be that it violated the specific command of Art. III. In the absence of a similar textual limit on the removal of nonjudicial officers, the test for a violation of separation of powers should be whether an asserted congressional power to remove would constitute a real and substantial aggrandizement of congressional authority at the expense of executive power, not whether a similar removal provision would appear problematic if applied to federal judges.

[11] The author of this statement was no apologist for the Comptroller; rather, his study of the office is premised on the desirability of presidential control over many of the Comptroller's functions. Nonetheless, he apparently found no reason to accuse the Comptroller of subservience to Congress, and he conceded that "[t]he political independence of the office has in fact been one of its outstanding characteristics." H. Mansfield, The Comptroller General 75 (1939).

[12] Professor Mosher's reference to the fact that the Comptroller is limited to a single term highlights an additional source of independence: unlike an officer with a fixed term who may be reappointed to office, the Comptroller need not concern himself with currying favor with the Senate in order to secure its consent to his reappointment.

[13] The majority responds to the facts indicating the practical independence of the Comptroller from congressional control by cataloguing a series of statements and materials categorizing the Comptroller as part of the "Legislative Branch." *Ante*, at 14–16. Such meaningless labels are quite obviously irrelevent to the question whether in actuality the Comptroller is so subject to congressional domination that he may not participate in the execution of the laws.

Realistic consideration of the nature of the Comptroller General's relation to Congress thus reveals that the threat to separation of powers conjured up by the majority is wholly chimerical. The power over removal retained by the Congress is not a power that is exercised outside the legislative process as established by the Constitution, nor does it appear likely that it is a power that adds significantly to the influence Congress may exert over executive officers through other, undoubtedly constitutional exercises of legislative power and through the constitutionally guaranteed impeachment power. Indeed, the removal power is so constrained by its own substantive limits and by the requirement of presidential approval "that, as a practical matter, Congress has not exercised, and probably will never exercise, such control over the Comptroller General that his non-legislative powers will threaten the goal of dispersion of power, and hence the goal of individual liberty, that separation of powers serves." *Ameron, Inc.* v. *United States Army Corps of Engineers*, 787 F. 2d, at 895 (Becker, J., concurring in part).[14]

The majority's contrary conclusion rests on the rigid dogma that, outside of the impeachment process, any "direct congressional role in the removal of officers charged with the execution of the laws . . . is inconsistent with separation of powers." *Ante*, at 7. Reliance on such an unyielding principle to strike down a statute posing no real danger of aggrandizement of congressional power is extremely misguided and insensitive to our constitutional role. The wisdom of vesting "executive" powers in an officer removable by joint resolution may indeed be debatable—as may be the wisdom of the entire scheme of permitting an unelected official to revise the budget enacted by Congress—but such matters are for the most part to be worked out between the Congress and the President through the legislative process, which affords each branch ample opportunity to defend its interests. The Act vesting budget-cutting authority in the Comptroller General represents Congress' judgment that the delegation of such authority to counteract ever-mounting deficits is "necessary and proper" to the exercise of the powers granted the Federal Government by the Constitution; and the President's approval of the statute signifies his unwillingness to reject the choice made by Congress. Cf. *Nixon* v. *Administrator of General Services*, 433 U.S., at 441. Under such circumstances, the role of this Court should be limited to determining whether the Act so alters the balance of authority among the branches of government as to pose a genuine threat to the basic division between the lawmaking power and the power to execute the law. Because I see no such threat, I cannot join the Court in striking down the Act.

I dissent.

[Supreme Court of the United States]

NOS. 85-1377, 85-1378 AND 85-1379

CHARLES A. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES, APPELLANT *v.* MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

UNITED STATES SENATE, APPELLANT *v.* MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

THOMAS P. O'NEILL, JR., SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, ET AL., APPELLANTS *v.* MIKE SYNAR, MEMBER OF CONGRESS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[July 7, 1986]

JUSTICE BLACKMUN, dissenting.

The Court may be correct when it says that Congress cannot constitutionally exercise removal authority over an official vested with the budget-reduction powers that § 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 gives to the Comptroller General. This, however, is not because "[t]he removal powers over the Comptroller General's office dictate that he will be subservient to Congress," *ante*, at 14; I agree with JUSTICE WHITE that any such claim is unrealistic. Furthermore, I think it is clear under *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), that "executive" powers of the kind delegated to the Comptroller General under the Dificit Congrol Act need not be exercised by an officer who serves at the President's pleasure; Congress certainly could prescribe the standards and procedures for removing the Comptroller General. But it seems to me that an attempt by Congress to participate *directly* in the removal of an executive officer—other than through the constitutionally prescribed procedure of impeachment—might well violate the principle of separation of powers by assuming for Congress part of the President's constitutional responsibility to carry out the laws.

In my view, however, that important and difficult question need not be decided in this case, because no matter how it is resolved the plaintiffs, now appellees, are not entitled to the relief they have requested. Appellees have not sought invalidation of the 1921 provision that authorizes Congress to remove the Comptroller General by joint resolution; indeed, it is far from clear they would have standing to request such a judgment. The only relief sought in this case is nullification of the automatic budget-reduction provisions of the Deficit Control Act, and that relief should not be awarded even if the Court is correct that those provisions are constitutionally incompatible with Congress' authority to remove the Comptroller General by joint resolution. Any incompatibility, I feel, should be cured by refusing to allow congressional removal—if it ever is attempted—and not by striking down the central provisions of the Deficit Control Act. However wise or foolish it may be, that statute unquestionably ranks among the most imporant federal enactments of the past several decades. I cannot see the sense of invalidating legislation of this magnitude in order to preserve a cumbersome, 65-year-old removal power that has never been exercised and appears to have been all but forgotten until this litigation.[1]

JUSTICE STEVENS, for his part, finds that the Comptroller is an "agent" of Congress, and thus incapable of wielding the authority granted him by the Act, because his responsibilities under a variety of statutes include making reports to the Congress. JUSTICE STEVENS' position is puzzling, to say the least. It seems to rest on the view that an officer required to perform certain duties for the benefit of Congress somehow becomes a part of Congress for all purposes. But it is by no means true that an officer who must perform specified duties for some other body is under that body's control or acts as its agent when carrying out other, unrelated duties. As JUSTICE BLACKMUN points out, see *post*, at 4, n. 1, duties toward Congress are imposed on a variety of agencies, including the Federal Trade Commission; and certainly it cannot credibly be maintained that by virtue of those duties the agencies become branches of Congress, incapable of wielding governmental power except through the legislative process. Indeed, the President himself is under numerous obligations, both statutory and constitutional, to provide information to Congress, see, *e.g.*, Art. II, § 3, cl. 1; surely the President is not thereby transformed into an arm or agency of the Congress. If, therefore, as JUSTICE STEVENS' concedes, see *ante*, at 2-5, the provision authorizing removal of the Comptroller by joint resolution does not suffice to establish that he may not exercise the authority granted him under Gramm-Rudman, I see no substantial basis for concurring that his various duties toward Congress render him incapable of receiving such power.

[14] Even if I were to concede that the exercise of executive authority by the Comptroller is inconsistent with the removal provision, I would agree with JUSTICE BLACKMUN that striking down the provisions of the Gramm-Rudman Act vesting the Comptroller with such duties is a grossly inappropriate remedy for the supposed constitutional infirmity, and that if one of the features of the statutory scheme must go, it sould be the removal provision. As JUSTICE BLACKMUN points out, the mere fact that the parties before the Court have standing only to seek invalidation of the Gramm-Rudman spending limits cannot dictate that the Court resolve any constitutional incompatibility by striking down Gramm-Rudman. Nor does the existence of the fallback provisions in Gramm-Rudman indicate the appropriateness of the Court's choice, for those provisions, by their terms, go into effect only if the Court finds that the primary budget-cutting mechanism established by the Act must be invalidated; they by no means answer the antecedent question whether the Court should take that step.

Given the majority's constitutional premises, it is clear to me that the decision whether to strike down Gramm-Rudman must depend on whether such a choice would be more or less disruptive of congressional objectives than declaring the removal provision invalid (with the result that the Comptroller would still be protected against removal at will by the President, but could also not be removed through joint resolution). When the choice is put in these terms, it is evident that it is the never-used removal provision that is far less central to the overall statutory scheme. That this is so is underscored by the fact that under the majority's theory, the removal provision was *never* constitutional, as the Comptroller's primary duties under the 1921 Act were clearly executive under the Court's definition: the Comptroller's most important tasks under that legislation were to dictate accounting techniques for all executive agencies, to audit all federal expenditures, and to approve or disapprove disbursement of funds. See F. Mosher, The GAO (1979). Surely the Congress in 1921 would have sacrificed its own role in removal rather than allow such duties to go unfulfilled by a Comptroller independent of the President. See 59 Cong. Rec. 8611 (1920).

[1] For the reasons identified by the District Court, I agree that the Deficit Control Act does not violate the nondelegation doctrine. See 626 F. Supp. 1374, 1382-1391 (DC 1986).

JUSTICE STEVENS concludes that the delegation effected under § 251 contravenes the holding of *INS* v. *Chadha*, 462 U.S. 919 (1983), that Congress may make law only "in conformity with the express procedures of the Constitution's prescription for legislative action: passage by a majority of both Houses and presentment to the President." *Id.*, at 958. I do not agree. We made clear in *Chadha* that the bicameralism and presentation requirements prevented Congress from *itself* exercising legislative power through some kind of procedural shortcut, such as the one-House veto challenged in that case. But we also made clear that our holding in no way questioned "Congress' authority to delegate portions of its power to administrative agencies." *Id.*, at 953-954, n. 16. We explained: "Executive action under legislatively delegated authority that might resemble 'legislative' action in some respects is not subject to the approval of both Houses of Congress and the President for the reason that the Constitution does not so require. That kind of Executive action is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review as well as the power of Congress to modify or revoke the authority entirely." *Ibid.*

Although JUSTICE STEVENS seems to agree that the duties delegated to the Comptroller General under § 251 could be assigned constitutionally to an independent administrative agency, he argues that

The District Court believed it had no choice in this matter. Once it concluded that the Comptroller General's functions under the Deficit Control Act were constitutionally incompatible with the 1921 removal provision, the District Court considered itself bound as a matter of orderly judicial procedure to set aside the statute challenged by the plaintiffs. See 626 F. Supp. 1374, 1393 (DC 1986). The majority today does not take this view, and I believe it is untenable.

Under the District Court's approach, everything depends on who first files suit. Because Representative Synar and the plaintiffs who later joined him in this case objected to budget cuts made pursuant to the Deficit Control Act, the District Court struck down that statute, while retaining the 1921 removal provision. But if the Comptroller General had filed suit 15 minutes before the Congressman did, seeking a declaratory judgment that the 1921 removal power could not constitutionally be exercised in light of the duties delegated to the Comptroller General in 1985, the removal provision presumably would have been invalidated, and the Deficit Control Act would have survived intact. Momentous issues of public law should not be decided in so arbitrary a fashion. In my view, the only sensible way to choose between two conjunctively unconstitutional statutory provisions is to determine which provision can be invalidated with the least disruption of congressional objectives.

The District Court apparently thought differently in large part because it believed this Court had never undertaken such analysis in the past; instead, according to the District Court, this Court "has set aside that statute which either allegedly prohibits or allegedly authorizes the injury-in-fact that confers standing upon the plaintiffs." 626 F. Supp., at 1393. But none of the four cases the District Court cited for this proposition discussed the problem of choice of remedy, and in none of them could a strong argument have been made that invalidating the other of the inconsistent statutory provisions would have interfered less substantially with legislative goals or have been less disruptive of governmental operations.[2]

More importantly, the District Court ignored what appears to be the only separation-of-powers case in which this Court *did* expressly consider the question as to which of two incompatible statutes to invalidate: *Glidden Co.* v. *Zdanok*, 370 U.S. 530 (1962). The petitioners in that case had received unfavorable rulings from judges assigned to temporary duty in the District Court or Court of Appeals from the Court of Claims or the Court of Customs and Patent Appeals; they argued that those rulings should be set aside because the judges from the specialized courts did not enjoy the tenure and compensation guaranteed by Article III of the Constitution. Before the assignments, Congress had pronounced the Court of Claims and the Court of Customs and Patent Appeals to be Article III courts, implying that judges on those courts were entitled to Article III benefits. Older statutes, however, gave both courts authority to issue advisory opinions, an authority incompatible with Article III status. *Glidden* held that the Court of Claims and the Court of Customs and Patent Appeals were indeed Article III tribunals. With respect to the advisory opinion jurisdiction, Justice Harlan's opinion for the plurality noted: "The overwhelming majority of the Court of Claims' business is composed of cases and controversies." 370 U.S., at 583. Since "it would be . . . perverse to make the status of these courts turn upon so minuscule a portion of their purported functions." Justice Harlan reasoned that, "if necessary, the particular offensive jurisdiction, and not the courts, would fall." *Ibid.* Justice Clark's concurring opinion for himself and the Chief Justice similarly concluded that the "minuscule" advisory-opinion jurisdiction of the courts in question would have to bow to the Article III status clearly proclaimed by Congress, and not vice versa. *Id.*, at 587–589.

The Court thus recognized in *Glidden* that it makes no sense to resolve the constitutional incompatibility between two statutory provisions simply by striking down whichever provision happens to be challenged first. A similar recognition has underlain the Court's approach in equal protection cases conerning statutes that create unconstitutionally circumscribed groups of beneficiaries. The Court has noted repeatedly that such a defect may be remedied in either of two ways: the statute may be nullified, or its benefits may be extended to the excluded class. See, *e.g.*, *Heckler* v. *Mathews*, 465 U.S. 728, 738 (1984); *Califano* v. *Westcott*, 443 U.S. 76, 89 (1979). Although extension is generally the preferred alternative, we have instructed lower courts choosing between the two remedies to " 'measure the intensity of [legislative] commitment to the residual policy and consider the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation.' " *Heckler* v. *Mathews*, *supra*, at 739, n. 5, quoting *Welsh* v. *United States*, 398 U.S. 333, 365 (1970) (Harlan, J., concurring in result). Calculations of this kind are obviously more complicated when a court is faced with two different statutes, enacted decades apart, but *Glidden* indicates that even then the task is judicially manageable. No matter how difficult it is to determine which remedy would less obstruct congressional objectives, surely we should make that determination as best we can instead of leaving the selection to the litigants.

II

Assuming that the Comptroller General's functions under § 251 of the Deficit Control Act cannot be exercised by an official removable by joint resolution of Congress, we must determine whether legislative goals would be frustrated more by striking down § 251 or by invalidating the 1921 removal provision. That question is not answered by the "fallback" provisions of the 1985 Act, which take effect "[i]n the event that any of the reporting procedures described in section 251 [of the Act] are invalidated." § 274(f)(1), 99 Stat. 1100. The question is whether the reporting procedures should be invalidated in the first place. The fallback provisions simply make clear that Congress would prefer a watered-down version of the Deficit Control Act to none at all; they provide no evidence that Congress would rather settle for the watered-down version than surrender its statutory authority to remove the Comptroller General. The legislative history of the Deficit Control Act contains no mention of the 1921 statute, and both Houses of Congress have argued in this Court that, if necessary, the removal provision should be invalidated rather than § 251. See Brief for Appellant United State Senate 31–43; Brief for Appellants Speaker and Bipartisan Leadership Group of the United States House of Representatives 49; accord, Brief for Appellant Comptroller General 33–47. To the extent that the absence of ex-

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Congress may not give these duties "to one of its own agents." *Ante*, at 17–18. He explains that the Comptroller General fits this description because "most" of his statutory responsibilities require him to provide services to Congress, and because Congress has repeatedly referred to the Comptroller General as part of the Legislative Branch. See *ante*, at 6–11. "If Congress were free to delegate its policymaking authority" to such an officer, JUSTICE STEVENS contends that "it would be able to evade 'the carefully crafted restraints spelled out in the Constitution.'" *Ante*, at 20, quoting *Chadha*, 462 U.S., at 959. In his view, "[t]hat danger—congressional action that evades constitutional restraints—is not present when Congress delegates lawmaking power to the executive or to an independent agency." *Ante*, at 20.

I do not think that danger is present here, either. The Comptroller General is not Congress, nor is he a part of Congress; "irrespective of Congress' designation," he is an officer of the United States, appointed by the President. *Buckley* v. *Valeo*, 424 U.S. 1, 128, n. 165 (1976). In this respect the Comptroller General differs critically from, for example, the Director of the Congressional Budget Office, who is appointed by Congress, see 2 U.S.C. § 601(a)(2), and hence may not "exercis[e] significant authority pursuant to the laws of the United States," *Buckley* v. *Valeo*, *supra*, at 126; see U.S. Const., Art. II, § 2, cl. 2. The exercise of rulemaking authority by an independent agency such as the Federal Trade Commission does not offend *Chadha*, even though the Commission could be described as an "agent" of Congress because it "carr[ies] into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed." *Humphrey's Executor* v. *United States*, 295 U.S. 602, 628 (1935). I do not see why the danger of "congressional action that evades constitutional restraints" becomes any more pronounced when a statute delegates power to a presidentially appointed agent whose primary duties require him to provide services to Congress. The impermissibility of such a delegation surely is not rendered "obvious" by the fact that some officers who perform services for Congress have titles such as "librarian," "architect," or "printer." See *ante*, at 23, n. 25 (STEVENS, J., concurring in judgment). Furthermore, in sustaining the constitutionality of the Federal Trade Commission's independent status, this Court noted specifically that the Commission "acts as a legislative agency" in "making investigations and reports thereon for the information of Congress . . . in aid of the legislative power." *Ibid.* JUSTICE STEVENS' approach might make some sense if Congress had delegated legislative responsibility to an officer over whom Congress could hope to exercise tight control, but even JUSTICE STEVENS does not claim that the Comptroller General is such an officer.

[2] In *Myers* v. *United States*, 272 U.S. 52 (1926), the Court refused to enforce a statute requiring congressional approval for removal of postmasters. The Court's analysis suggested that there was no practical way the duties of the office could have been reformulated to render congressional participation in the removal process permissible. In *Springer* v. *Philippine Islands*, 277 U.S. 189 (1928), the Court removed from office several Philippine officials exercising executive powers but appointed by officers of the Philippine Legislature. As in *Myers*, the Court concluded that the offices by their very nature were executive, so the appointments could not have been rendered legal simply by trimming the delegated duties. In *Buckley* v. *Valeo*, 424 U.S. 1 (1976), the Court set aside Federal Election Campaign Act provisions granting certain powers to officials appointed by Congress, but it structured its remedy so as to interfere as little as possible with the orderly conduct of business by the Federal Election Commission. Past acts of the improperly constituted Commission were deemed valid, and the Court's mandate was stayed for 30 days to allow time for the Commission to be reconstituted through presidential appointment. See *id.*, at 142–143. Finally, in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982), the Court set aside an exercise of judicial power by a bankruptcy judge, because his tenure was not protected in the manner required by Article III of the Constitution. To give Article III protections to bankruptcy judges, the federal bankruptcy statute would have had to be rewritten completely.

press fallback provisions in the 1921 statute signifies anything, it appear to signify only that, if the removal provision were invalidated, Congress preferred simply that the remainder of the statute should remain in effect without alteration.[3]

In the absence of express statutory direction, I think it is plain that, as both Houses urge, invalidating the Comptroller General's functions under the Deficit Control Act would frustrate congressional objectives far more seriously than would refusing to allow Congress to exercise its removal authority under the 1921 law. The majority suggests that the removal authority plays an important role in furthering Congress' desire to keep the Comptroller General under its control. But as JUSTICE WHITE demonstrates, see *ante*, at 13-16, the removal provision serves freebly for such pruposes, especially in comparision to other, more effective means of supervision at Congress' disposal. Unless Congress institutes impeachment proceedings—a course all agree the Constitution would permit—the 1921 law authorizes Congress to remove the Comptroller General only for specified cause, only after a hearing, and only by passing the procedural equivalent of a new public law. Congress has never attempted to use this cumbersome procedure, and the Comptroller General has shown few signs of subservience.[4] If Congress in 1921 wished to make the Comptroller General its lackey, it did a remarkably poor job.

Indeed, there is little evidence that Congress as a whole was very concerned in 1921—much less in 1985 or during the intervening decades—with its own ability to control the Comptroller General. The committee reports on the 1921 Act and its predecessor bills strongly suggest that what was critical to the legislators was not the Comptroller General's subservience to Congress, but rather his independence from the President. See, *e.g.*, H.R. Rep. No. 14, 67th Cong., 1st Sess., 7-8 (1921); H.R. Rep. No. 1044 66th Cong., 2d Sess., 13 (1920); S. Rep. No. 524, 66th Cong., 2d Sess., 6-7 (1920); H.R. Rep. No. 362, 66th Cong., 1st Sess., 8-9 (1919). The debates over the Deficit Control Act contain no suggestion that the Comptroller General was chosen for the tasks outlined in § 251 because Congress thought it could count on him to do its will; instead, the Comptroller General appears to have been selected precisely because of his independence from both the Legislature and the Executive. By assigning the reporting functions to the Comptroller General, rather than to the Congressional Budget Office or to the Office of Management and Budget, Congress sought to create "a wall . . . that takes these decisions out of the hands of the President *and the Congress*." 131 Cong. Rec. H9846 (Nov. 6, 1985) (remarks of Rep. Gephardt) (emphasis added); see also, *e.g.*, *id.*, at H11894 (Dec. 11, 1985) (remarks of Rep. Weiss); *id.*, at E5622 (Dec. 12, 1985) (remarks of Rep. Bedell).

Of course, the Deficit Control Act was hardly the first statute to assign new functions to the Comptroller General; a good number of other duties have been delegated to the Comptroller General over the years. But there is no reason to believe that, in effecting these earlier delegations, Congress relied any more heavily on the availability of the removal provision than it did in passing the Deficit Control Act. In the past, as in 1985, it is far more likely that Congress was concerned mainly with the Comptroller General's demonstrated political independence, and perhaps to a lesser extent with his long tradition of service to the Legislative Branch; neither of these characteristics depends to any significant extent on the ability of Congress to remove the Comptroller General without instituting impeachment proceedings.

Striking down the congressional-removal provision might marginally frustrate the legislative expectations underlying some grants of authority to the Comptroller General, but surely to a lesser extent than would invalidation of § 251 of Gramm-Rudman—along with all other "executive" powers delegated to the Comptroller General over the years.[5]

I do not claim that the 1921 removal provision is a piece of statutory deadwood utterly without contemporary significance. But it comes close. Rarely if ever invoked even for symbolic purposes, the removal provision certainly pales in importance beside the legislative scheme the Court strikes down today—an extraordinarily far-reaching response to a deficit problem of unprecedented proportions. Because I believe that the constitutional defect found by the Court cannot justify the remedy it has imposed, I respectfully dissent.

ETHNIC AMERICAN DAY

Mr. PRESSLER. Mr. President, as chairman of the Honorary Committee of Ethnic American Day and the author of the law—Public Law 99-206—which establishes this day, I urge our colleagues and all Americans to join me in the observance of our Nation's first Ethnic American Day on September 21, 1986. This will be an occasion for all Americans to show their appreciation for the contributions made to our great Nation by Americans of all ethnic backgrounds.

It is extremely important for all Americans to know about their ethnic roots. Parents should be responsible for telling their children about their family ancestry and heritage. Schools should provide opportunities for students to learn more about the variety of ethnic elements which comprise the American culture. Our country and people are better off as a result of Americans understanding their ethnic roots.

Dr. Selven Feinschreiber, the chairman of Americans by Choice, Inc., is responsible for originating the idea of Ethnic American Day. He is now retired from the practice of law, but some of Dr. Feinschreiber's very impressive career responsibilities included the following: Adviser to the Republic of Ghana; counselor to the Government of Uganda; coauthor of Uganda's Constitution; adviser to the President of the Royal Imperial Council of Ethiopia and the Chief Executive of Kenya; political adviser to the archbishop of Haiti; adviser and consultant to NBC International, Inc., and NBC Enterprises, Inc.; and president of the Long Island University Alumni Association. He should be congratulated for his devotion to, and his very active leadership in, Americans by Choice and Ethnic American Day.

Americans by Choice, Inc., attempts to promote understanding between Americans of different ethnic backgrounds, to encourage an appreciation and acceptance of the diverse historical backgrounds of ethnic Americans, and to make Americans aware of the contributions that many different ethnic groups have made to the United States.

The members of the honorary committee of Ethnic American Day are Senators BRADLEY, DOLE, LAXALT,

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[3] Although the legislative history on this point is sparse, it seems reasonably clear that Congress intended the removal provision to be serverable from the remainder of the 1921 statute. An earlier bill, providing for removal of the Comptroller General only by impeachment or concurrent resolution of Congress, was vetoed by President Wilson on the grounds that Congress could not constitutionally limit the President's removal power or exercise such power on its own. See 59 Cong. Rec. 8609-8610 (1920). In the course of an unsuccessful attempt to override the veto, Representative Pell inquired: "If we pass this over the President's veto and then the Supreme Court should uphold the contention of the President, this bill would not fail, would it? The bill would continue." Representative Blanton answered, "Certainly." *Id.*, at 8611.

[4] "All of the comptrollers general have treasured and defended the independence of their office, not alone from the president but also from the Congress itself. . . . Like the other institutions in the government, GAO depends upon Congress for its powers, its resources, and it general oversight. But it also possesses continuing legal powers, of both long and recent standing, that Congress has granted it and that it can exercise in a quite independent fashion. And the comptroller general, realistically speaking, it immune from removal during his fifteen-year term for anything short of a capital crime, a crippling illness, or insnaity." F. Mosher, A Tale of Two Agencies 158 (1984). See also, *e. g.*, *Ameron, Inc.* v. *U.S. Army Corps of Engineers*, 787 F. 2d 875, 885-887 (CA3 1986); F. Mosher, The GAO 2, 240-244 (1979); H. Mansfield, The Comptroller General 75-76 (1939).

[5] Many of the Comptroller General's other duties, including those listed by the majority, see *ante*, at 19, n. 9, appear to meet the majority's test for plainly "executive" functions—*i.e.*, they require the Comptroller General to "[i]nterpre[t] a law enacted by Congress to implement the legislative mandate," and to "exercise judgment concerning facts that affect the application of the [law]." *Ante*, at 17. Indeed, the majority's approach would appear to classify as "executive" some of the traditional duties of the Comptroller General, such as approving expenditure warrants, rendering conclusive decisions on the legality of proposed agency disbursements, and settling financial claims by and against the Government. See 31 U.S.C. §§ 3323, 3526-3529, 3702; F. Mosher, A Tale of Two Agencies 159-160 (1984). All three of these functions were given to the Comptroller General when the position was created in 1921. See 42 Stat. 20, 24-25.

I do not understand the majority's assertion that invalidating the 1921 removal provision might make the Comptroller General "subservient to the Executive Branch." *Ante*, at 18. The majority does not suggest that an official who exercises the functions that the Deficit Control Act vests in the Comptroller General must be removable by the President at will. Perhaps the President possesses inherent constitutional authority to remove "executive" officials for such politically neutral grounds as inefficiency or neglect of duty, but if so—and I am not convinced of it—I do not see how that power would be enhanced by nullification of a statutory provision giving similar authority to Congress. In any event, I agree with JUSTICE WHITE and JUSTICE STEVENS that the power to remove an officer for reasons of this kind cannot realistically be expected to make an officer "subservient" in any meaningful sense to the removing authority. *Cf. Humphrey's Executor* v. *United States*, 295 U.S. 602, 629 (1985).

LUGAR, and NUNN; and Representatives FASCELL, GARCIA, HOYER, KEMP, PORTER, and RITTER.

The members of the national advisory board of Ethnic American Day include the following: Dr. Selven Feinschreiber, chairman of Americans by Choice, Inc.; Dr. Thomas Abraham, president of the National Federation of Asian Organizations in America; Andrew Athens, national chairman of the United Hellenic American Congress; Dimiter Baharoff, president of the Bulgarian National Front; Vi Baluyut, national coordinator of the Filipino American Women's Network; Dr. Graciela Beecher, chairman of the National Association of Cuban-American Women; Achamma Chandersekaran, national president of the Indian-American Forum for Political Education; Anna Chennault, chairman of the Asian-American Assembly; Dr. Joy Cherian, chairman-elect of the Asian-American Voters Coalition; Robert Clark, acting director for Governmental affairs of the National Association of Arab Americans; Bruno Giuffrida, national president of the Order of the Sons of Italy in America; Gintaras Grusas, president of the Lithuanian World Youth Association; Ronald Hsu, national president of the Asian Pacific American Chamber of Commerce; Robert Ibsen, national president of the Danish Brotherhood in America; Dr. Kyo Jhin, national president of the League of Korean-Americans; Dmytro Korbutiak, vice president of the Ukrainian Fraternal Association; James Krakora, president of the Czechoslovak Society of America Fraternal Life; Aristids Lambergs, president of the American Latvian Association in the U.S., Inc.; Eugene Lemieuz, president general of the Association Cando-Americaine; Irving Levine, director of the American Jewish Committee and director of the Institute For American Pluralism; Aloysius Mazewski, president of the Polish National Alliance; Joseph Roche, national president of the Ancient Order of Hibernians in America, Inc.; Nabi Salehi, president of the Islamic Unity of Afghanistan Mujuahideen; Yalcin Sarier, president of the Federation of Turkish-Amerian Societies, Inc.; Elsbeth Seewald, national president of the German-American National Congress; Joseph Stefka, supreme president of the National Slovak Society of the U.S.A.; Ron Wakabayashi, national director of the Japanese-American Citizens League; and Vahe Yacoubian, Esq., executive director of the Armenian National Committee of America.

Ethnic American Day will be commemorated by an ethnic American cultural festival at Constitution Hall here in the Nation's Capital. Through music and dance, 24 ethnic American groups will present performances typical of each group's heritage. In addition, an individual will be selected by each group for special recognition of his or her contributions to American life.

Ethnic American Day was established to celebrate the many contributions and accomplishments of all ethnic Americans in the United States. Their contributions to America are visible in all areas of our society—including the sciences, arts, government, business, medicine, education, labor, and agriculture.

Their unique cultures and heritages have created what we now know as the American society and way of life. This Nation would not be what it is today without the efforts of many different ethnic groups.

Throughout American history, millions of immigrants have entered our country seeking freedom, opportunity, and a new way of life. They chose to come to our country in order to attain their goals and to make their dreams become reality. These immigrants realized that this opportunity is greater in the United States of America than anywhere else in the world.

There are over 100 different ancestry groups in the United States today. According to the 1980 census, more than 188 million Americans claim foreign ancestry. This represents approximately 83 percent of our citizens. Our country is truly a united America composed of people from all over the world.

Americans have been able to live and work together in peace and harmony and this has shaped the history and character of the Nation more than any other factor. In our unity, we freely express great diversity. This, above all, is the incredible accomplishment of American liberty. The United States of America draws on the best of its many constituent cultures and derives many benefits from such diversity. Let us join together and honor the accomplishments of our ethnic Americans.

Mr. President, I ask unanimous consent that an excellent editorial on this topic from the July 4, 1986, Belle Fourche, SD, Daily Post be printed at this point in the RECORD.

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

[From the Belle Fourche (SD) Daily Post, July 4, 1986]

BACK TO INDEPENDENCE DAY

". . . under God, with liberty and justice for all."

You know the source of that phrase. When was the last time you said it aloud?

This is the Fourth of July, more accurately, this is Independence Day and for the first time in decades Americans are talking about the reason behind the celebration, thanks to the rededication of the Statue of Liberty and all the hoopla that goes with it.

It appears we have come full cycle, from patriotic fervor to near degradation of the American ideal, back to patriotic feeling, and the Lady in New York harbor has played a part.

Back near the turn of the century when immigrants were pouring into this country by the millions, those people came with two or three thoughts in mind. One was that the United States was truly a land of opportunity, that for the many who wanted to work there was a good life—especially compared to what they left behind.

Many came with the thought of picking up riches and returning. Many did, but for most of them a new dream developed . . . they wanted to become Americans. They wanted to be a part of this great country, and most of them did.

Those people knew first hand what the Lady in New York harbor symbolized. It's more difficult for the second and third generations to avoid taking for granted in the many things about life in this country that are unique to America. One really must leave and come back to fully appreciate the differences.

At a time like this one realized that what makes this country unique has been its ability to blend the many different people into one, into Americans. Had we failed in this we would be a chopped up nation of feuding nationalities. It has been the blending that has helped to make this nation what it is, and as we salute this Independence Day and wave from afar a greeting to the Lady in New York Harbor, we hope the continuing flow of new visitors to this country realizes that if this country is to remain what it has been, they too must blend and contribute their strengths.

Happy Independence Day!

100TH BIRTHDAY TRIBUTE TO DAVID DOGGETT SANFORD

Mr. WARNER. Mr. President, I rise today to pay tribute to David Doggett Sanford on the anniversary of his 100th birthday on Wednesday, July 23, 1986. Affectionately called "D.D." by his family and friends, he resided in Warrenton, VA, all his life and even at present continues to run the family clothing business in Stanley, VA. His young wife, the former Margaret Minter married D.D. in 1944 after working for him for 12 years at Sanford's 5 cent-$1 store in Old Town Warrenton. And, she says she's "been working for him even since."

I suppose no one has ever spoken to a 100-year-young person without asking them the secret to their good fortune and good luck. Well, the same is true of D.D. Sanford and he replied, "luck has absolutely nothing to do with it. If a person is determined and strong willed and follows the straight and narrow path, he'll be blessed."

And, Mr. Sanford has been blessed with good health, a loving wife and family, including great-great grandchildren, good fortune, and good friends who honored him on D.D. Sanford Day this past Sunday at Wesley Chapel United Methodist Church.

Mr. President, I ask my colleagues to join me in wishing D.D. Sanford a most happy 100th birthday and success in his future endeavors. And, this may be an appropriate time to remind all of us that, "Youth is a gift of

nature; age is a work of art." "To D.D., a work of art."

At this point, I would like to ask unanimous consent to include in the CONGRESSIONAL RECORD an interview with D.D. Sanford in the Fauquier Democrat, Warrenton, VA, Thursday, July 17, 1986.

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

100-YEAR-OLD SAYS DISCIPLINE LACKING

(By Cathy Dyson)

Asked to recall the most precious memories of the past 100 years, D.D. Sanford pauses for a moment before answering, "That's hard to say. I think you got me on that one."

But question the elderly Warrenton resident about the many changes in lifestyles he's seen in one century or how his business survived two depressions and Mr. Sanford suddenly has plenty to say.

"Today, as a rule, a child rears himself," Mr. Sanford says, between thoughtful and deliberate pauses. "Back in those days, your parents, particularly your father, were on you and you had to do this and that . . . and if you didn't do that, you got in trouble.

"There's no home life like it used to be. That's one of the great troubles of the world."

Between brief memory lapses, Mr. Sanford humbly states that he's been successful "in everything and anything" he's undertaken because he's always "conformed to the Scriptures."

He wholeheartedly believes a man will prosper if he adheres to Biblical passages that were handed down from his parents, the late Mr. and Mrs. Richard Sanford, to him. He later passed them on to his three children.

In David Doggett Sanford's book, luck has absolutely nothing to do with it. If a person is determined and strong-willed and follows the straight and narrow path, he'll be blessed.

He just might have a point. Even at age 100, he continues to keep busy and putter around the house.

His business savvy still flourishes. He and his son Theodore operate Sanford's Clothing Center in Stanley. The younger Sanford runs the business and his father keeps the books and pays the bills.

Mr. Sanford admits it's "right smart responsibility" to keep a company's financial records, but, even at 100, "I don't have any trouble with it." Actually, he's been involved in merchandising in Auburn, Midland and Warrenton for the past 67 years.

There is one portion of the job that irks him—the government's paperwork.

"Oh, my God, don't tell me about those tax forms. They're enough to make a man go mad," Mr. Sanford says. "They're so afraid you're gonna make a dollar and they won't get a penny out of it that they don't know what to do."

Mr. Sanford has other little stories and strong opinions that he often brings into the conversation. His favorite seems to be the one about his wife and daughter.

When visitors come, or during a recent trip to the barbershop, Mr. Sanford jokes about the age of his wife, the former Margaret Minter, and his only daughter Ruth S. Bowler.

"See her," he says, pointing to Mrs. Sanford. "She's my fourth wife."

Then he gestures towards his daughter and equally embarrasses her. "See, her, she's my daughter from my first wife and there's only two days between them."

Repeatedly, the women put their hands over their faces, shake their heads and cry out: "Seventeen days, there's 17 days between us."

Mr. Sanford's first two wives died, and he hates to admit it, but he divorced the third one because he "just couldn't tolerate her any more."

His current wife, who is just 17 days older than his daughter, worked for him for 12 years at Sanford's Five Cent-One Dollar Store on the corner of Main and Third Streets before their wedding in 1944.

"Then I married him and I've been working for him ever since," Mrs. Sanford says.

Until two years ago, Mr. Sanford maintained the garden and mowed the lawn at the couple's Route 691 home. He's a little weaker and more deaf, but Mrs. Sanford is still envious of his good health.

"He's really been a healthy specimen. He never has a pain or an ache and he never takes a Bufferin," she says. "It's disgusting. I sit across the table from him and cram down the pills."

Currently, Mr. Sanford is limited to a few tomato plants, which he religiously waters, and activities at the Wesley Chapel United Methodist Church near Orlean.

The church plans D.D. Sanford Day on Sunday, July 20, to honor its oldest member, who has been a lay speaker and Sunday School teacher. After the service, friends and relatives are invited to a covered-dish luncheon.

Mr. Sanford, who's not fond of surprise parties or big productions, doesn't want gifts, just the presence of his friends.

And, in the last few years, Mr. Sanford has been particularly generous to others. He spends between $200 and $300 monthly on charitable causes, such as famine-stricken families in Africa.

"One of my greatest ambitions of the last few years is to help those in need and I think the Lord has richly blessed me for it," Mr. Sanford says "I could save it up, that's true. But these people who just want to get, get, get and never give . . . I just can't go with that."

His daughter, Mrs. Bowler, shakes her head in apparent reverence for her father and adds: "I just hope it gets where it's supposed to."

Mrs. Sanford chimes in: "Well when you give in faith, it will."

CONCLUSION OF MORNING BUSINESS

Mr. DOLE. Mr. President, is there further morning business?

The PRESIDING OFFICER. If there be no further morning business, morning business is closed.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I suggest the absence of a quorum so that I can notify Senator BYRD that I intend to fill up the tree on behalf of the sponsors of the Gramm-Rudman-Hollings amendment. I do not know if Senator BYRD wants to be here or not.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

INCREASE IN STATUTORY LIMIT ON THE PUBLIC DEBT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the pending business, which the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 668) increasing the statutory limit on the public debt.

The Senate resumed consideration of the joint resolution.

Pending:

(1) Gramm-Hollings Amendment No. 2223, to add a new title for balanced budget and emergency deficit control reaffirmation.

(2) Rudman Amendment No. 2224 (to Amendment No. 2223), to provide for revision of provisions of reporting responsibilities in the balanced budget and emergency deficit control process.

(3) Exon Amendment No. 2225, to express the sense of the Senate that the Congress utilize the existing "fallback"; provisions of the Emergency Deficit Control Act, to require a congressional vote on specific measures to reduce the Federal budget deficit.

(4) Modified committee amendments, to provide a committee substitute on investment and restoration of Social Security funds during debt limit crises.

(5) Rudman modified Amendment No. 2226, to modify procedures under the Balanced Budget and Emergency Deficit Control Act of 1985.

(6) Exon motion to commit the joint resolution to the Committee on Governmental Affairs, with instructions.

AMENDMENT NO. 2231

(Purpose: To modify procedures under the Balanced Budget and Emergency Deficit Control Act of 1985)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senators GRAMM, RUDMAN, and HOLLINGS to the motion to commit.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GRAMM, Mr. RUDMAN, and Mr. HOLLINGS, proposes an amendment numbered 2231.

Strike all beginning with "SEC. (a)" and insert in lieu thereof the following:

"TITLE II—BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL

SEC. 201. SHORT TITLE.

This title may be cited as the "Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1986"."

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

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

The yeas and nays were ordered.

AMENDMENT NO. 2232 TO AMENDMENT NO. 2231

(Purpose: To modify procedures under the Balanced Budget and Emergency Deficit Control Act of 1985)

Mr. DOLE. Mr. President, I now send a second amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GRAMM, Mr. RUDMAN, and Mr. HOLLINGS, proposes an amendment numbered 2232 to Amendment No. 2231.

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

Mr. LONG. I object. I would like to hear the amendment read. If the Senator will explain it, I will withhold.

Mr. DOLE. Mr. President, I would prefer the Senator from South Carolina to explain the amendment.

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

The amendment is as follows:

Strike "of 1986"." where it appears at the end of the amendment and insert in lieu thereof the following: "of 1986".

SEC. 202. REVISIONS OF PROCEDURES.

(a) REFERENCE.—Except as otherwise specifically provided, whenever in this section an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered a reference to a section or other provision of the Balanced Budget and Emergency Deficit Control Act of 1985.

(A) by striking out "President" in paragraph (1) and inserting in lieu thereof "Director of the Office of Management and Budget";

(B) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively;

(C) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(D) by striking out "this subsection" in subparagraph (B) (as redesignated by subparagraph (C) of this paragraph) and inserting in lieu thereof "this paragraph";

(E) by striking out the subsection heading and inserting in lieu thereof the following:

"(b) REPORTS BY THE COMPTROLLER GENERAL AND DIRECTOR OF OMB.—

"(1) REPORT TO THE DIRECTOR OF OMB AND THE CONGRESS BY THE COMPTROLLER GENERAL.—"; and

(F) by adding at the end thereof the following:

"(2) REPORT TO PRESIDENT AND CONGRESS BY THE DIRECTOR OF OMB.—

"(A) REPORT TO BE BASED ON GAO REPORT.—The Director of the Office of Management and Budget shall review and consider the report issued by the Comptroller General under paragraph (1) of this subsection for the fiscal year and, with due regard for the data, assumptions, and methodologies used in reaching the conclusions set forth therein, shall issue a report to the President and the Congress on September 1 of the calendar year in which such fiscal year begins, estimating the budget base levels of total revenues and total budget outlays for such fiscal year, identifying the amount of any deficit excess for such fiscal year, stating whether such deficit excess will be greater than $10,000,000,000 (zero in the case of fiscal year 1991), specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative economic growth, and specifying (if the excess is greater than $10,000,000,000 or zero in the case of fiscal year 1991), by account, for non-defense programs, and by account and programs, projects, and activities within each account, for defense programs, the base from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year in order to eliminate such deficit excess. Such report shall be based on the estimates, determinations, and specifications of the Comptroller General under paragraph (1) and shall utilize the budget base, criteria, and guidelines set forth in subsection (a)(6) and in sections 255, 256, and 257.

"(B) CONTENTS OF REPORT.—The report of the Director of the Office of Management and Budget under this paragraph shall—

"(i) provide for the determination of reductions in the manner specified in subsection (a)(3); and

"(ii) contain estimates, determinations, and specifications for all of the items contained in the report submitted by the Comptroller General under paragraph (1).

The report of the Director of the Office of Management and Budget under this paragraph shall explain fully any differences between the contents of such report and the report of the Comptroller General under paragraph (1).".

(2) Section 251(c) is amended—

(A) by striking out "President" in subparagraph (A) of paragraph (2) and inserting in lieu thereof "Director of the Office of Management and Budget";

(B) by striking out "subsection (b)" each place it appears in such paragraph and inserting in lieu thereof "subsection (b)(1)";

(C) by striking out "subsection (b)(2)(B)" in subparagraph (B) of such paragraph and inserting in lieu thereof "subsection (b)(1)(B)(ii)"; and

(D) by adding at the end thereof the following new paragraph:

"(3) REPORT BY THE DIRECTOR OF OMB.—

"(A) On October 15 of the fiscal year, the Director of the Office of Management and Budget shall submit to the President and the Congress a report revising the report submitted by the Director of the Office of Management and Budget under subsection (b)(2), adjusting the estimates, determinations, and specifications contained in that report to the extent necessary in the light of the revised report submitted to the Director of the Office of Management and Budget by the Comptroller General under paragraph (2) of this subsection.

"(B) The revised report of the Director of the Office of Management and Budget under this paragraph shall provide for the determination of reductions as specified in subsection (a)(3) and shall contain all of the estimates, determinations, and specifications required (in the case of the report submitted under subsection (b)(2)) pursuant to subsection (b)(2)(B)(ii).".

(3)(A) Section 251(e) is amended by striking out "Directors or the Comptroller General" and inserting in lieu thereof "Directors, the Comptroller General, or the Director of the Office of Management and Budget".

(B) Section 251(f) is amended by striking out "subsections (b) and (c)(2)" and inserting in lieu thereof "subsections (b)(1) and (c)(2), and the reports of the Director of the Office of Management and Budget submitted to the Congress under subsections (b)(2) and (c)(3),".

(c) PRESIDENTIAL ORDERS.—(1) Section 252(a) is amended—

(A) by striking out "Comptroller General" the first place it appears in paragraph (1) and inserting in lieu thereof "Director of the Office of Management and Budget";

(B) by striking out "sections 251(b)" each place it appears in paragraphs (1) and (3) and inserting in lieu thereof "section 251(b)(2)";

(C) by striking out "September 1" in paragraph (1) and inserting in lieu thereof "September 3"; and

(D) by striking out "Comptroller General's" in the heading for paragraph (3) and inserting in lieu thereof Director's".

(2) Section 252(b) is amended—

(A) by striking out "Comptroller General" each place it appears and inserting in lieu thereof "Director of the Office of Management and Budget";

(B) by striking out "section 251(b)" each place it appears and inserting in lieu thereof "section 251(b)(2)";

(C) by striking out "section 251(c)(2)" each place it appears and inserting in lieu thereof "section 251(c)(3)"; and

(D) by striking out "October 15" in paragraph (1) and inserting in lieu thereof "October 17";

(d) TERMINATION OR MODIFICATION PROCEDURES.—(1) Section 251(d) is amended by striking out paragraph (3).

(2) The last sentence of section 251(c)(1) is amended by striking out "and authorized under subsection (d)(3)(D)(1)".

(3) Section 256(1)(2) is amended by striking out ", in accordance with section 251(c)(3),".

(e) TECHNICAL AMENDMENTS.—(1) Section 254(b)(1)(A) is amended by striking out "Comptroller General under section 251(c)(2)" and inserting in lieu thereof "Director of the Office of Management and Budget under section 251(c)(3)".

(2) Section 274(f)(5) is amended by striking out "section 251(b) or (c)(2)" and inserting in lieu thereof "section 251 (b)(2) or (c)(3)".

(3) Section 274(h) is amended—

(A) by striking out "Comptroller General" the first place it appears and inserting in lieu thereof "Director of the Office of Management and Budget"; and

(B) by striking out "Comptroller General under section 251(b) or (c)(2)" and inserting in lieu thereof "Director of the Office of Management and Budget under section 251 (b)(2) or (c)(3)".

(f) APPLICABILITY.—The amendments made by this section shall apply with respect to any report required to be submitted, and any order issued, after the date of enactment of this Act under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

Mr. HOLLINGS. The Office of Management and Budget, along with the Comptroller General, is included under Gramm-Rudman-Hollings. This language is to fix the constitutional problems with the bill.

Mr. LONG. This is being offered as a substitute for some other amendment?

Mr. HOLLINGS. Yes. What we did was to put in the amendment yesterday and the distinguished Senator

from Nebraska moved that the bill be committed to the Governmental Affairs Committee with instructions to report back his amendment.

Mr. LONG. I thank the Senator.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, the die is cast once again. We are back to square 1 where some Members of the body have wanted to place us now for a considerable number of days. What all should understand is that once again the managers of Gramm-Rudman-Hollings have successfully blocked any further consideration of any other measure on their bill until their way prevails for a vote up or down on their proposition to transfer authority to a faceless, nameless, nonelected bureaucrat in the executive branch of Government.

Mr. President, I notice there was an approval to have the yeas and nays on the first amendment. I now ask for the yeas and nays on the second-degree amendment, which is presently pending before the Senate.

□ 1020

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

The yeas and nays were ordered.

Mr. EXON. Mr. President, I sent all of my colleagues last night a sense-of-the-Senate resolution that explains in some detail what the Senator from Nebraska is simply trying to do. The facts of the matter are that, in my opinion, there has been much ado about nothing these last few days on the floor of the U.S. Senate in the attempt by some Members of this body to come forth with Gramm-Rudman-Hollings II, for want of a better name. This is necessary, in the concept of the original authors of Gramm-Rudman-Hollings, to repair the damage that supposedly had been done by the Supreme Court action, which knocks out the head of the General Accounting Office as the sequesterer, the executioner, if you will, in the original bill.

As I have said on this floor several times during the last several days, that simply is not necessary. It is window dressing. It is dressing up the doll when it does not have to be dressed up. In their wisdom, the authors of Gramm-Rudman-Hollings, in the initial instance, recognized that there was the possibility of serious constitutional flaws in at least that portion of their bill that had to do with the appointment of the head of the General Accounting Office as the one who would set forth the cuts that had to be made to meet the goals and targets of Gramm-Rudman-Hollings if Congress did not act.

I say once again that the delay in the U.S. Senate, the fact that no one else is able to offer any kind of amendment despite the fact that we have had people standing up on the floor of the Senate during the last 2 or 3 days saying, "Why isn't anybody over here to offer an amendment?"—the facts of the matter should stand and the press and the public should be so advised that the legislative business of the U.S. Senate with regard to Gramm-Rudman and the extension of the debt ceiling at the request of the President of the United States—which is the vehicle that carries this—is being held up.

We are being prevented from carrying out the duties of the Senate, which are pouring in on us from each side with regard to the schedule for the U.S. Senate and the House of Representatives for the rest of this year.

It seems to me that we never learn, Mr. President. We repeat our mistakes over and over again.

Mr. President, I simply do not understand why, if the Gramm-Rudman-Hollings people want their amendment to be effective, why do they not allow us to go ahead? There is written into the bill, I emphasize once again, the fallback provision that, simply stated, is that, if we are not going to meet the deficit targets set out in Gramm-Rudman by the projection by various officials of the Government, then we meet at a super Budget Committee. That is the House of Representatives Budget Committee and the U.S. Senate Budget Committee. I serve on the latter. If we are not going to meet those deficits on projection, then that supercommittee has the responsibility to make the cuts that are necessary to meet the targets in Gramm-Rudman-Hollings. Then both the House of Representatives and the U.S. Senate have the responsibility, which is theirs and no one else's at this juncture, either to approve the cuts made by the super Budget Committee or to reject those.

I suggest that that backup provision that is in the bill is fully workable. I think we are wasting our time needlessly at this particular juncture by tying up the Congress of the United States from doing any other business whatsover.

I think the action that has been taken this morning by the majority leader on behalf of the Gramm-Rudman-Hollings proponents indicates once again that they are more interested in going through their charade than in getting to the meat of the problem, which is to reduce the spending of the Federal Government to meet the dictates of that law that an overwhelming number of the Members of this body voted for.

I am very fearful that there remains a feeling that we should have a sequesterer, an executioner, if you will, outside of the elected officials in the U.S. Senate, outside of the elected Members of the House of Representatives, that we can blame for those cuts when they take place. That may be, Mr. President, a very salable point from the standpoint of evading responsibility, but it is not, in my opinion, good government and it should not proceed.

One other fact that I would mention. If you will look at or read the opinion of the Supreme Court, you will see a thread running through that opinion that simply says that we hereby rule as unconstitutional the appointment of an official under the authority of the Congress to carry out the sequester order. It has been assumed, and I am not a consitutional expert, but I assume that if we give this to someone in the executive branch of Government, by the implied wording in the Supreme Court decision, that would be constitutional. But now we hear, we know, we see, and we have reported on the floor of the U.S. Senate in the official RECORD that there are those would-be constitutional lawyers who have, in essence, made themselves experts on what the Supreme Court would do, kind of members of the Supreme Court ex officio. They are going to come forth with some kind of magical plan that says some executive officer or some executive official, not appointed in this case, would have the authority to make the sequester with certain limitations.

It seems to me that all these actions, granting that I am not setting myself up as a constitutional authority, but it seems to me as a layman and a nonlawyer that if we proceed along this route and come up with the appointment of some member of the executive branch and then put some restraints on what that official can or cannot do, what that official should or should not do as a proper guideline for making the sequester, I am very fearful that any of those games might find us right back in the Supreme Court again.

Why do we delay what we eventually have to do if we are going to live up to the constraints of the Gramm-Rudman-Hollings law? We can do that with the fallback provision that was written in. For the life of me, I just do not understand why we are going forth with this charade that we have been exercising for the last several days.

Why do we not move up or down? Why do we not get to work? Why do we not go ahead? And why are we inviting, with the action that is now being considered, getting Congress back into the position once again for whatever action we take to repair one part of the Gramm-Rudman law that was faulted by the Supreme Court?

□ 1030

Why are we risking getting back into the Court again when we have a mechanism that we can and should use? For

the life of me, I have never been able to understand why the supporters of Gramm-Rudman-Hollings do not believe enough in their own bill and in their own fallback provision to say let us go ahead with that and let nature take its course, work its will, as was expressed by the majority of the Members of the U.S. Senate and the House of Representatives at the time they passed the Gramm-Rudman-Hollings bill the last time that we had a further debt extension measure up before the Congress.

Mr. President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Just a word to clear some misapprehension extended by our distinguished colleague from Nebraska.

He complains of delay. He complains that nothing is being done. He complains of a charade. The truth of the matter is all of us, 100 Members of this august body, understand that 95 percent of the activity and action, consideration, debate, decisions, and the formulation of legislation is done off the floor of the U.S. Senate and not on it.

Some years ago, when several Puerto Rican nationalists shot up the hall of the House, at that particular time they landed at the Union Station just a couple blocks down the street from here. They came to the Senate gallery, sat in the gallery in the morning, and saw, as we often have, just a few Senators on the floor. After a couple hours they asked the guard at the door and the doorkeeper, where the Congress is. They replied, "Well, you must mean the House," because they did not see anything on the floor of the Senate. He directed them over onto the House side where they had numerous Members on the floor, and they commenced firing. That persists today, 30 to 35 years later.

The truth is we have many interested in this particular measure, interested in trying to fix that discipline, maintain that trigger. The difference between the Senator from Nebraska and the Senator from South Carolina is he does not want the trigger; he wants three readings in the House and three readings in the Senate, which is in essence the backup provision. We included that. We had hoped that it was constitutional, that we could use our Comptroller General. We had good constitutional authority that we could, and in fact the Court's decision was split. Be that as it may, it is the law of the land. We are not arguing that.

In the meantime, what is really going on now is many Senators who are interested, the Senator from Michigan [Mr. LEVIN], the Senator from Massachusetts [Mr. KERRY], the distinguished chairman of our Budget Committee, the Senator from New Mexico [Mr. DOMENICI], and the distinguished ranking member, the Senator from Florida [Mr. CHILES], are now negotiating with us about several very positive ideas. We are all talking back and forth, as to the various suggestions that they have. As these suggestions are made, necessarily we are checking them not only with our constitutional authorities but, of course, with the Director of the Office of Management and Budget and Justice Department and the leadership of the House, and this takes a little time. So there is no delay. On the contrary, we are diligently working to try to formulate a consensus whereby we can repair the trigger found unconstitutional by the Court. So I beg the indulgence of my distinguished colleague while that activity is going on. We are working hard and we hope we will have something just as shortly as we possibly can.

Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. Mr. President, let me briefly respond to a couple of the concerns expressed by my friend from Nebraska. Senator HOLLINGS, I think, has explained it in good detail, and I will not go over that ground. But the Senator from Nebraska has said repeatedly, yesterday and today, that he does not understand, to quote him, why we are so insistent that the first vote on the revision come on our amendment, which is now pending, rather than on his amendment, which would be a confirmation of the fallback procedure.

I think the reason for that, if not obvious, probably ought to be and, if it is not, I will explain it. The U.S. Senate being what it is, and this issue being as sensitive as it is politically, it is quite obvious to almost anyone that a vote on that fallback provision might well make it more difficult for the Gramm-Rudman-Hollings II, so-called, to be adopted on the floor on the basis that some might say we have already done what we had to do. We believed and continue to believe—and we have an honest disagreement with the Senator from Nebraska—that the fallback provision is not as effective as the provision that was in the original bill or that which is contained in Gramm-Rudman-Hollings II, which is clearly constitutional by any reading. Irrespective of what so-called experts might say, to the contrary, we find no authoritative disagreement with that statement. And we believe that the issue of the deficit, about which the Senator from Nebraska does share a concern—he has spoken on it many times on this floor—which is going to be $215 billion in this fiscal year, and we are trying to hold it to $144 billion for next year, is such that we ought to have the best mechanism possible. I want to remind the Senator from Nebraska that under the fallback provision or under this provision it is the Congress that will set the priorities and if the priorities are reduced they will be reduced by a percentage from the last passed appropriation bill.

So when we talk about cuts I think we ought to understand under Gramm-Rudman-Hollings we are probably talking about less of more, not more of less.

Finally, the Senator from Nebraska has made a statement three times on the floor this morning which I would like to correct him on. The Senator from Nebraska says that the sponsors of this legislation have by their actions prevented the Senate from acting. The sponsors have made it eminently clear to the managers of the bill that we are willing to have this laid aside under a unanimous-consent agreement, as was done yesterday, for any other business people wish to bring to the floor other than this issue. The Senator is absolutely correct. We want the first major vote on this issue to be on Gramm-Rudman-Hollings II. There is no secret about that. And the reason we do I have tried to explain. But if anybody else wants to come to the Senate floor with any other business to offer as an amendment to this, the cosponsors have notified the leadership on both sides that we are willing to lay this aside under a unanimous-consent agreement to take up other issues which may come up.

Now, I guess I have an honest disagreement with my friend from Nebraska. He believes that we ought to vote in simply reaffirming what we did last year under the fallback provision. We believe the fallback provision will work but we think it is less likely to work than the provision we now propose. I know the Senator from Nebraska voted against Gramm-Rudman last year for reasons which he strongly believes and which we respect, and we understand the Senator from Nebraska would rather now at least go to the fallback provision that we did in fact draft.

We believe, and most who we talk to believe, if we can through these negotiations now going on design the provision so that Congress retains all of the power over the appropriations process and allows OMB a minimum discretion, we will have the best of both worlds, and that is why we are being persistent. The Senator from Nebraska might strike that word and insert "stubborn." I will accept either. But we are going to make sure we have the first vote on this matter, which is a bill that we have labored long and hard on, up or down. If it fails, I am sure we will then vote on the measure introduced by my friend from Nebraska.

I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Listening with interest to my colleagues on this matter, at least it has been laid out very clear so that all can understand, and I hope some way, somehow, through national television or the news media, that so far having pointed this out it is true and it is their right under the rules of the Senate to thwart any other amendments to the bill before us until their matter is voted on.

I do not happen to agree with that because I think there are a lot of measures which are going to be offered as amendments to the main measure before us, the extension of the debt ceiling, that properly could be handled before we have this up-or-down vote on what they say is a key part of the Gramm-Rudman proposal. I emphasize once again, and I warn them—and someone has to warn them, even though I admit I do not claim to be a constitutional scholar—I want to quote one line from the recent Supreme Court decision which has been of paramount importance:

The Constitution does not contemplate an active role for Congress in supervising of officers charged with the execution of the laws that it enacts.

□ 1040

I charge once again that despite the good intentions of my friends and colleagues, they are walking and skating on that thin ice once again.

If you are really concerned about carrying out what your famed Gramm-Rudman-Hollings bill purports to do, then why not get on with it and why not eliminate the possibility that we would find ourselves back in the Court once again, with whatever latest concoction you come up with.

It seems to me that we should move speedily ahead under the fallback provision. For reasons that are still not clear to this Senator, those who framed that fallback provision and represented it to be sufficient protection if the Supreme Court declared it unconstitutional—and I take my friends and colleagues at their word when they brought forth Gramm-Rudman-Hollings—I would say why do we not go ahead?

Mr. President, I think the whole matter was summed up quite well by a recent editorial in the Lincoln Star, of Lincoln, NE, and it is entitled "Silly Season in the Capital."

The silly season has come early to Washington.

The stew is over the Supreme Court's blow to Gramm-Rudman, a nefarious buck-passing sham born of Congress members' reluctance to do their jobs.

Unfortunately the high court didn't deliver a knockout punch. It found the law's mechanics unconstitutional while ignoring its seemingly obvious flaw: that Congress is attempting to abdicate its fundamental responsibility for deciding how much the government spends and on what.

Now like a bad movie, we're threatened with a sequel—Gramm-Rudman II, same shameful plot, same bad actors, new, improved technical lighting.

The problem is simple. For all the talk about economic recovery and growth, the U.S. government during the Reagan years has increased the American mortgage faster then any time since World War II.

Treasury Secretary James Baker last weekend said our budget deficit is a cancer to this country's future. His words were, "Either we get it, or it will get us."

Well said. Get at it.

The three-part political ring-around-the-rosie is equally clear: the president wants to cut domestic spending and Congress does not, the Congress resists rapid defense growth which Reagan champions; and Reagan opposes new tax revenues that many in Congress consider essential.

The solution to this Gordian knot is for members of Congress and the president to do their jobs responsibly. Congress must produce a realistic budget reducing our borrowing that the president will buy, or it must override his veto.

Enough hand-wringing. Enough complaining about the "system." It's people who make decisions, not the system. It's people who succeed and who fail.

It's not too much to ask the privileged people in Washington to stop procrastinating and to do their jobs.

Mr. President, that is what this Senator has been trying to do for the last several days.

I would certainly think, though, that my colleagues would agree that, regardless of whose fault it is that amendments are prevented from being brought up on this measure—and I would hope that the record shows—it is only the Members of the Gramm-Rudman-Hollings proposal who are currently tying up the U.S. Senate with their admitted action, that they are not going to allow any votes on any amendments to Gramm-Rudman-Hollings until they get their vote first on what they want.

I recognize that that is their prerogative. They can do that. But I think it is very unfair for the repeated calls that we have had on the floor of this body, the repeated calls we have had for Members to come over and offer amendments, when the fact is that no amendments on this bill are going to be considered because of the parliamentary tactics of those who support the Gramm-Rudman-Hollings proposal. I have no quarrel with that. That is their right. I just would like to have the opportunity to set the record straight once again.

It is my understanding, Mr. President, that because of the travel plans of some of my colleagues, we want to move ahead with the vote that the majority leader indicated yesterday we would have, and after that vote everyone can go on their merry way. I do not wish to stand in the way of that. I may have something to say on this matter after the vote, because I think it is something that possibly needs further explanation.

I yield the floor.

Mr. RUDMAN. Mr. President, I will take 30 seconds.

I say again to the Senator from Nebraska, so that everybody understands what is going on here, because he has kind of restated history, that if any Senator wants to come to this floor and offer any amendment on any issue not related to Gramm-Rudman-Hollings, we have told the majority leader and the Democratic leader that we are willing to lay this aside.

So any accusation that we are holding up the business of the U.S. Senate is patently not the fact. It is true that the Senator from Nebraska is being prevented, under the rules, from having his amendment offered and voted on first, and we will persist in that for the reasons already stated.

I know that the majority leader is anxious to conduct the vote, so I will yield the floor.

Mr. EXON and Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, I will yield shortly to the Senator from Nebraska.

Mr. President, let me alert my colleagues that when this debate ends, there will be a vote on going into executive session. That could come very quickly. I know that a number of colleagues have made their plans based on the fact that this would be an early vote.

So if we could do that within the next 10 minutes and come back to legislative session, we could have further debate.

Mr. EXON. Mr. President, as always, I wish to be cooperative with respect to the problems and schedule plans that my colleagues have.

I agree with the statement that has just been made by my friend and colleague from New Hampshire. It is true that we could shift to some other matter. But it is also true that no amendments, including the amendment of this Senator from Nebraska, will be allowed to be voted upon in the U.S. Senate until you have your vote first on this matter. Those are the facts.

I think that is improper, but it is certainly within the rules of the U.S. Senate; and as long as we all live by the rules, this is all we can ask. But in living by those rules, I think it is not fair for those who are supporting this latest concoction on Gramm-Rudman-Hollings to say that they are not holding up the U.S. Senate. They certainly are, with regard to the whole host of amendments that all of us know are going to come up on this debt ceiling bill. That is something that they must

say, "We are guilty of," regardless of trying to soft-soap that with the fact that any other matter could come up.

Mr. President, I yield the floor.

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, as soon as the distinguished minority leader is able to come to the floor, I will attempt to move to the Abramowitz nomination. Mr. Abramowitz has been nominated to be an Assistant Secretary of State. The nomination has been on the calendar for some time.

It is my hope that we can resolve not only this nomination but also others that are on the calendar. I think the others have been on the calendar for some time as well.

I must say that we are in good shape. The calendar is almost clean. There are just two or three, so I do not anticipate any real problem. I know that a couple are under consideration. One or two of those have not yet met with the distinguished minority leader, and once that is completed, I think they will be cleared.

□ 1050

One sure nomination is George R. Salem of Virginia to be Solicitor for the Department of Labor. It has been on the calendar since June 18. We have contacted Mr. Salem to see if there is a problem with some Senator or more than one Senator and for him to address that.

M.D.B. Carlisle of the District of Columbia to be Assistant Secretary of Defense is another. She will be meeting with the distinguished minority leader.

Kathleen W. Lawrence to be the Under Secretary of Agriculture for Small Community and Rural Development and also to be a member of the Board of Directors of the Commodity Credit Corporation. On that nomination there are holds on both sides.

The only other matter that we would like to resolve is the nomination of Edwin G. Corr and that has been around since October 28, 1985.

So, we are in pretty good shape. I hope we can dispose of nearly all of those, and then several treaties involving Denmark. It could be that we could resolve those problems also.

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

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

CONFIRMATION OF MORTON ABRAMOWITZ

Mr. NUNN. Mr. President, I rise to speak in support of the nomination of Morton Abramowitz to be Assistant Secretary of State for Intelligence and Research. This nominee is no stranger to the Senate, having been confirmed by this body on at least two other occasions. Mort Abramowitz epitomizes the high standards of professionalism and competence we have come to expect of our senior diplomats. I have known Ambassador Abramowitz for many years beginning with his years of work in the Department of Defense in the 1970's, I might add a very, very difficult time. He worked on many important regional defense issues in DOD during both Republican and Democratic administrations. For this work, the Pentagon awarded him both the Distinguished Public Service Award and the Defense Distinguished Service Award. I think these Pentagon awards speak well for his abilities and the respect he has earned in the national security field as well as the diplomatic field.

He has served with great distinction as our Ambassador in Thailand, one of the most important posts in Southeast Asia. I had the privilege of visiting Ambassador Abramowitz in Bangkok in 1979. Ambassador Abramowitz was concerned about many important issues at that time in United States-Thai relations, including continued Vietnamese occupation of Cambodia and the threats that it produced for the entire region and also the great efforts we were making at that time to combat narcotics trafficking in the area. In these and in all other issues, Ambassador Abramowitz performed exceptionally well and was a superb representative of the United States in Thailand.

I also had the privilege both to visit and to work with Ambassador Abramowitz during his tenure as our chief negotiator to the mutual and balanced force reduction talks, or MBFR, in Vienna. Ambassador Abramowitz personally developed several very innovative approaches to these negotiations which I regret were not accepted by the Soviet Union. All of us should be proud that Ambassador Abramowitz served us so well as negotiator to these important talks, which have been going on a long time, including a great deal of frustration.

I have also had the privilege of working with Mort Abramowitz on many issues since he assumed his current responsibilities of the Director of Intelligence and Research in the Department of State. All of us on the Intelligence Committee have been fortunate to have him appear before us on many occasions to discuss intelligence and foreign policy issues of great importance. In all those instances, we have always found Ambassador Abramowitz to be open, candid, direct, and very knowledgeable. In my judgment, the success of the United States in respect to the Philippines was due in large measure to the advice of career professionals, including Mort Abramowitz.

All Americans are fortunate, Mr. President, to have such fine distinguished public servants as Mort Abramowitz. He is a credit to the foreign service and to his country and I am proud to support his confirmation, as I have on two other occasions.

Mr. President, I yield the floor.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I now ask unanimous consent that the Senate go into executive session to consider the nomination of Morton I. Abramowitz to be Assistant Secretary of State.

Mr. HELMS. Mr. President, reserving the right to object, did I understand the distinguished majority leader to say he wanted to go into executive session to proceed to the Abramowitz nomination?

Mr. DOLE. Yes, I asked unanimous consent. It is my understanding the Senator from North Carolina would object.

Mr. HELMS. Reserving the right to object, Mr. President.

Mr. President, Morton Abramowitz, I know, is a nice man. I am sure his wife loves him and probably his dog runs out and wags his tail when he comes home in the afternoon.

But this man is one of the architects of the sellout of Taiwan. For that reason, I must object.

Mr. DOLE. Mr. President, I then move that the Senate now proceed to executive session to consider the Abramowitz nomination.

The PRESIDING OFFICER. The motion is not debatable.

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

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

The yeas and nays were ordered.

Mr. BYRD. Mr. President, before the vote begins will the distinguished majority leader indicate what he expects for the remainder of the day, whether or not there will be a rollcall on this nomination or other rollcalls today?

□ 1100

Mr. DOLE. Mr. President, I have been advised by the distinguished Senator from North Carolina there would be no other votes today on the nominee, which satisfied me. Senator HELMS is prepared to discuss this at length. I think after some amount of time we will probably set it aside and bring it up again next week. But there will be no more votes today.

Mr. NUNN. Mr. President, may I ask the majority leader and my colleague from North Carolina whether there will be any time. I have some remarks I would like to make later on in the day. I will not hold the Senate up. I think they are important matters relating to the ABM Treaty and access. I would like to make a 20- or 30-minute presentation on that, if I could get some time in that regard. Perhaps the Senator from North Carolina would have a little time or a little rest period he would like to undergo during the course of the discussion.

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

Mr. DOLE. The minority leader has the floor.

Mr. HELMS. I wonder if he would yield to me.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from North Carolina for the purpose of his responding to the Senator from Georgia.

Mr. HELMS. I thank the Senator.

I will state to the Senator from Georgia I have a great deal of discussion, but, of course, I will be glad to yield to the Senator from Georgia or any other Senator, providing I do not lose my right to the floor. I will accommodate him in any way possible.

Mr. NUNN. I thank the Senator from North Carolina. If he would indicate a little later on when he might need a little rest, I will come over.

Mr. DOLE. Mr. President, if I could just repeat, there will be no more votes. This will be the only vote today.

Mr. BYRD. Mr. President, the distinguished majority leader has indicated there will be no more rollcall votes today following this one. Could he tell us whether or not there will be rollcall votes on Monday and, if so, about what time they would begin?

Mr. DOLE. I was hoping we might be able to discuss some of the TV in the Senate on Monday. I am advised now that Senator STEVENS will not be availabe on Monday, but I need to talk with him. I am going to say there will be no votes on Monday. We will work something out.

Mr. BYRD. Very well. I thank the distinguished majority leader.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas [Mr. DOLE]. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG], the Senator from North Carolina [Mr. BROYHILL], the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Iowa [Mr. GRASSLEY], the Senator from Florida [Mrs. HAWKINS], the Senator from Nevada [Mr. LAXALT], the Senator from Georgia [Mr. MATTINGLY], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Idaho [Mr. SYMMS], and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

Mr. BYRD. I announce that the Senator from Montana [Mr. BAUCUS], the Senator from Delaware [Mr. BIDEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from North Dakota [Mr. BURDICK], the Senator from California [Mr. CRANSTON], the Senator from Illinois [Mr. DIXON], the Senator from Hawaii [Mr. INOUYE], the Senator from Massachusetts [Mr. KERRY], the Senator from Vermont [Mr. LEAHY], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Arkansas [Mr. PRYOR], and the Senator from Maryland [Mr. SARBANES] are necessarily absent.

I further announce that, if present and voting, the Senator from Montana [Mr. BAUCUS], would vote "yea".

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

The result was announced—yeas 74, nays, 2, as follows:

[Rollcall Vote No. 164 Leg.]

YEAS—74

Abdnor	Gorton	Nickles
Andrews	Gramm	Nunn
Bentsen	Harkin	Packwood
Boren	Hart	Pell
Boschwitz	Hatch	Pressler
Bradley	Hatfield	Proxmire
Bumpers	Hecht	Quayle
Byrd	Heflin	Riegle
Chafee	Heinz	Rockefeller
Chiles	Humphrey	Roth
Cochran	Johnston	Rudman
Cohen	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Lautenberg	Specter
Dodd	Levin	Stafford
Dole	Long	Stennis
Domenici	Lugar	Stevens
Durenberger	Mathias	Thurmond
Eagleton	McClure	Trible
Evans	McConnell	Wallop
Exon	Melcher	Warner
Ford	Metzenbaum	Wilson
Glenn	Mitchell	Zorinsky
Gore	Moynihan	

NAYS—2

Helms	Hollings

NOT VOTING—24

Armstrong	Dixon	Leahy
Baucus	Garn	Matsunaga
Biden	Goldwater	Mattingly
Bingaman	Grassley	Murkowski
Broyhill	Hawkins	Pryor
Burdick	Inouye	Sarbanes
Cranston	Kerry	Symms
Denton	Laxalt	Weicker

So the motion was agreed to.

EXECUTIVE SESSION

NOMINATION OF MORTON L. ABRAMOWITZ, OF MASSACHUSETTS TO BE AN ASSISTANT SECRETARY OF STATE

Mr. EVANS and Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Madam President, I shall be brief in my remarks, as I hope others will be brief in their remarks, so that we may proceed to a vote on this outstanding nomination.

Mr. Abramowitz' nomination has been languishing before the Senate for several months now and I think it is long past time that the President's desire in his nomination and the Secretary of State's desire in his appointment of Mr. Abramowitz be ratified by the Senate. The position is Assistant Secretary of State for Intelligence and Research. It was clearly pointed out in the committee hearings that this position is not a policymaking position but, rather, an intelligence-gathering position, one in which a wide variety of research is assimilated, analyzed, and then presented to the senior members of the Department of State for their policy determination.

I was a careful observer at the hearings; in fact, I have read considerable portions of the reports from the hearings I did not have an opportunity to attend. It seems to me that this nomination is being delayed not so much because of the question of policymaking or nonpolicymaking aspects of the position, but because of an old and, I think, outdated and rather tired argument, which seems to persist in this Nation. That is the argument about Taiwan and its relationship to the People's Republic of China.

We can argue policy all we wish, Madam President. I think the important thing here is to insure that we have in place, as he is now serving in a temporary capacity, a person of undisputed intelligence and of unquestioned loyalty, a person who has had a long career in the Foreign Service and whose writings and whose recommendations in years past have led precisely to the policy which had been adopted by Secretary of State Kissinger, by President Nixon, and by administrations subsequent to that.

Rather than shrinking from or being embarrassed in any respect by those recommendations, this nominee, I think, should be proud that those recommendations helped to bring us to our current policies, which are widely accepted, overwhelmingly accepted, by Congress, by successive administrations, and, I believe, by a wide majority of the American people.

Let me lay that aside for a moment, because I suspect we shall hear much of that in succeeding comments. Let me turn to the man himself.

Morton Abramowitz has had a long and distinguished career: he is a native of Lakewood, NJ; a graduate from Stanford University with a bachelor's degree, and has a master's degree from Harvard University. He is fluent in Chinese.

After military duty, he entered the Foreign Service and successively had an opportunity to be engaged as a consular and economic officer and then a

language area training officer in Taichung, on Taiwan.

Then he was a political officer in Hong Kong, then member of the Bureau of Economic Affairs in the Department of State. Subsequent to that, in 1968, he was a staff member of the Senior Inter-Department Group of the Department of State, then special assistant to the Under Secretary of State.

He spent some time at the Institute of Strategic Studies in London as a research fellow, then was the Deputy Director for East Asian Affairs in the Department of State, Officer of Intelligence and Research; assistant to the Secretary of Defense, Commander in Chief, Pacific, Political Adviser in Honolulu; and Deputy Assistant Secretary of Defense for Inter-America, East Asia, and Pacific.

He was U.S. Ambassador to Thailand, then was with the Rand Corp. in Washington, DC, on detail from the Department of State.

He was U.S. Representative to the MBFR in Vienna, and is currently serving as acting Assistant Secretary of the Bureau of Intelligence and Research, to which this nomination would make him permanent.

Those are the positions he has held, each one with distinction, each one to the satisfaction of the Secretary of State and those who supervised him. In many cases, his appointment was subject to close scrutiny by the Secretary of State and, in fact, as U.S. Ambassador to Thailand, he was confirmed by the Senate. That was in 1978. I suspect there are many Senators here, including some who may object to this position, who very likely voted or at least certainly acquiesced in his appointment as U.S. Ambassador to Thailand.

Madam President, let me turn then to the views of others as to his capabilities, best expressed by a striking series, an almost unique series of public service awards which Morton Abramowitz has received from his supervisors and those who admired his distinguished service to the United States.

In 1976, he received the Distinguished Public Service Award of the Department of Defense. In 1978, he received the Distinguished Service Award from the Secretary of Defense while he was serving with the Secretary; in 1980, the Joseph C. Wilson Award for distinction in international affairs; and in 1981, the President's award for distinguished Federal service.

In any other circumstance, in a private enterprise or in an area in Government, where a man of this distinction might be available, virtually anyone would jump at the chance to utilize his services and appoint him to positions of extraordinary responsibility. I think the United States has been well served by his service in the past, we are extraordinarily well served by him in the position he now holds, and I think the Senate ought to proceed promptly to his confirmation.

Mr. HECHT. Mr. President, I support the administration's move to enhance the authority and prestige of the intelligence function in the Department of State, and their choice of Mr. Abramowitz to get the job done. As the administration points out, Morton Abramowitz has outstanding experience and qualifications in the foreign affairs and national security areas. In recent months, in connection with the work of the Select Committee on Intelligence, I've had a chance to observe him quite closely at work on national intelligence policy and operations issues of extreme importance to the Nation's welfare. I've been most favorably impressed by his knowledge and understanding of the intricacies of the national intelligence program and the services that program must furnish those who make decisions on critical foreign affairs and national defense issues. I've had a chance to watch him work on both specialized and general intelligence policy matters, and I am convinced that he'll make an excellent Assistant Secretary of State for Intelligence and Research. I urge the Senate to support his nomination.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

First, Madam President, I wish all Senators bon voyage today as they head toward the hinterlands. As the distinguished majority leader has indicated, there will be no more votes because a considerable amount of comment is essential in connection with this nomination.

Madam President, I object to the taking up of the nomination of Mr. Morton Abramowitz because, for me, he represents the kind of State Department official whose concept of foreign policy is to kick our friends and allies in the teeth while cozying up to the adversaries of the United States.

As I travel around North Carolina, around the country at large, there is no subject that seems to bother the American people more than the fact that the cause of freedom, the cause of justice, the cause of personal dignity and development seem to be losing out to the forces of socialism and communism throughout the world.

I might add that the same puzzlement exists in the few nations that I have visited in recent years.

The American people are deeply anti-Communist—and I use the term in a broad, philosophical sense. They realize that communism, and to a lesser degree, socialism, is, at its root, opposed to our deeply entrenched views of liberty, law, and the Supreme Being. In the end, there can be no compromise with communism. The Communists themselves have said that—and that is about the only thing I agree with them on. The simple truth is that either freedom will triumph or communism will triumph. There is no Mr. In-between.

So it seems to me that it follows that our foreign policy should be anti-Communist. We should be working to undermine the economic power, the social stability, and the military strength of every Communist regime in the world. We should be working to encourage those governments which adopt free enterprise principles and a constitutional system, and which support the traditional values of our Judeo-Christian civilization. But the Americans who come up to me wherever I go see that this is not the policy we have been following for the past 40 years.

If we look at the record, we see a dismal picture. We see the Soviet Union itself, how those who are working for trade and cultural exchange with the archetype of Communist regimes are willing to ignore not only the millions of documented cases of murder and torture, but also a regime whose power is based on fear and corruption.

They are willing to accommodate themselves to a regime which is based upon atheistic materialism, and dedicated to the extinction of every value which the American people hold dear. They are even willing to sign arms control agreements which are fatally flawed, and thereby threaten the peace and stability of the United States.

□ 1140

And we see in case after case how the apologists for communism work feverishly to aid and support Communist revolution everywhere in the world. They work to defeat the anti-Communist forces through propaganda, and denial of the supplies needed to resist the Communists, while at the same time they built up the Communist side—usually denying, of course, that the Communists are really Communists. It is very important to deny that the Communists are really Communists, since they know that the American people would never agree to the triumph of communism if they could prevent it.

So that is the explanation for the subterfuge, the biased news reports, the curious statements by some of our diplomats, and the outrageous activity of some of them.

The point is that this is a campaign against the American people. It is fundamentally a campaign to install regimes in every country around the world which are hostile to American

principles and values. Of course, it is always done in the name of "reform."

Thus the American people were told that Mao Tse-tung was "an agrarian reformer" working for noble goals. How many people remember that? There was a steady drum beat of propaganda—men like John K. Fairbank, Edgar P. Snow, Owen Lattimore, and others—that argued that America should support the Communist forces in China. And in our State Department, as many scholars have demonstrated, and as many hearings here in the Senate conclusively revealed, there were those who worked quietly to implement the pro-Communist policy in China.

And so it happened in every major confrontation with the Communist forces. We know what happened with Castro in Cuba. We know what happened with Tshombe in Katanga. We know what happened with Diem in Vietnam. We know what happened with Somoza in Nicaragua. We know what happened with the Shah in Iran. We know what happened with Muzorewa in Zimbabwe, and on and on and on.

Looking around even today, we see how the United States is working to undercut Savimbi in Angola, Renamo in Mozambique, Eden Pastora in Nicaragua. We see the campaign being directed against South Korea, South Africa, and Chile. In each case, the public campaign in the media is matched by those in the State Department who seek to undercut the anti-Communists and to, as they say, "normalize" relations with the Communists.

When will we learn the peril of patting a rattlesnake on the head?

Just this week, when Secretary Shultz appeared before the Foreign Relations Committee, I asked him whether he would meet with Oliver Tambo, the head of the African National Congress. He said that he would. And I asked the distinguished Secretary whether he would insist that Tambo and the ANC renounce terrorism specifically. I was astonished when the Secretary dodged the question. I asked him about the use of "the necklace," that utterly abhorrent terrorism conducted by the ANC in Africa, this business of filling tires with gasoline and hanging them around the necks of black people who will not go along with the ANC and the Communists. I said, "Mr. Secretary, will you condemn the use of the "the necklace" and make as a condition of your meeting with Mr. Tambo the stopping of this abhorrent crime?" And the Secretary said "no." He said he wanted to meet with Tambo to get his views.

Now, Madam President, perhaps it is as a result of my background, growing up in a small town in North Carolina, that I do not profess to have any sophistication about foreign policy. But I feel obliged to raise the question, how can there be any "views" on the use of terrorism against innocent black men, women, and children? Doesn't the Secretary know that Mr. Tambo and the African National Congress have refused to denounce "the necklace," the burning tires hung around the necks of those poor innocent black people? As a matter of fact, the ANC has encouraged the use of the so-called necklace.

Does not the State Department know that Winnie Mandela, for example, has proclaimed that "the necklace" will bring freedom to the blacks of South Africa? The truth is, "the necklace" will bring a tyranny worse than Africans have ever known. Does not Mr. Shultz know that the ANC is a Soviet-sponsored, Soviet-supported operation totally controlled through the South African Communist Party? Does not he know that the African National Congress, besides being a Communist organization, is also dominated by the Xhosa tribe and that a Xhosa Communist government would result in the greatest slaughter of black Africans of other tribes that the world has ever seen?

□ 1150

This raises the question, what kind of intelligence does the State Department give to Secretary Shultz? I will have more to say about that in a little while.

I have dispatched a letter to the Honorable DAVID DURENBERGER, who is chairman of the Senate Committee on Intelligence, addressing this subject. Let me read the letter into the RECORD:

HON. DAVID DURENBERGER,
Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I would appreciate a study by the staff of your committee to review the quality, accuracy and objectivity of the products of the Bureau of Intelligence and Research of the State Department with respect to the African National Congress. My concern is based on two matters that arose this week.

First, the New York Times reported that our intelligence community has been providing intelligence to the South African government about the African National Congress including its terrorist activities and communist influence, but this intelligence cooperation against a common threat may have been cutoff. I believe a review of this matter is urgently necessary, particularly with respect to the role played by the current Director of Intelligence and Research, Mr. Abramowitz.

The second matter of concern is the intelligence analysis provided to Secretary of State Shultz concerning Oliver Tambo, the President of the ANC. Apparently, this intelligence analysis has led Secretary Shultz to announce to the Foreign Relations Committee yesterday that he has decided to meet Mr. Tambo without preconditions. As you know Senator Denton held extensive hearings on the African National Congress which concluded that the ANC is Communist-controlled and dedicated to terrorism.

I would appreciate it if the Senate Intelligence Committee staff and the staff of Senator Denton's Security and Terrorism Subcommittee could produce a joint report about the ANC that will resolve these issues, including Mr. Abramowitz's role in these two matters.

Sincerely,

JESSE HELMS.

So let us return to the subject at hand.

A couple of weeks ago, I visited Chile, in response to an invitation that I had accepted 3 or 4 months ago from the National Agricultural Society of Chile, a 148-year-old private organization. It so happened that I arrived in Santiago just after two young Communist terrorists had been surprised in the act of setting fire to barricades during a Communist demonstration. As we know, a young man died from burns in this incident, and a young woman is still in serious condition.

The Government of Chile immediately set about to find out what happened in this incident. On the day it happened, the Government asked the independent judiciary to appoint a special prosecutor, and within days the special prosecutor set to work. But the State Department waited until after the special prosecutor had begun his work before a spokesman for the Department went public in the United States, rather sanctimoniously demanding that Chile appoint a special prosecutor.

The State Department was bound to have known that this was a matter already in progress. The implication was that Chile was somehow dragging its feet and impeding an investigation. But the fact was that the Government of Chile had already put the investigation out of its hands and into the hands of the independent judiciary, and the judiciary had already appointed a distinguished judge, a well-known professor of law, with an impeccable reputation, to investigate the matter.

Some of the facts have already been established by this investigation; and I predict that when the investigation is completed, the story will be turned 180 degrees from the propaganda promoted by the major news media in this country and by the State Department.

Again, Madam President, it makes one wonder what kind of intelligence information is being provided to the Secretary of State.

So we come to Mr. Abramowitz, who has been nominated to be Assistant Secretary of State for Intelligence and Research. When Mr. Abramowitz was nominated, I knew almost nothing about his background. I certainly had no bias against him. I knew that he had held many positions in the State Department, ISA, and the Diplomatic Corps, relating to the Far East; but when his hearing came up, the sellout

of Taiwan was particularly on my mind.

I asked Mr. Abramowitz if he thought that Taiwan should be pressured into making an accommodation with the Communist government in Beijing, and Mr. Abramowitz refused to answer my question. To his credit, he did not give a mealymouthed answer. He simply said that he did not have to answer questions on policy. In other words, he felt that the State Department should not be accountable to the people of the United States. He seemed to think that the Constitution should be set aside in his case, since he was so much more important than the U.S. Senate. Perhaps he got that idea when he saw that the salary he received in 1985 was $76,367, more than a mere ordinary Senator receives.

In any case, no sooner did this become public than I began to receive many calls and visits from some of Mr. Abramowitz' former colleagues and coworkers. They told me that he was an ardent and eloquent advocate, if not an architect, of the policy to betray Taiwan and to normalize relations with the Communists.

They also told me that during the Carter administration, Mr. Abramowitz was a strong proponent of pulling United States troops out of South Korea and that he worked to minimize intelligence reports that North Korea was at that time in the middle of a massive military buildup, information that was later confirmed.

They told me that when Mr. Abramowitz was Ambassador to Thailand, he worked to unseat the anti-Communist government of General Kriangsak who was a great hero of the Korean war.

They told me that he was systematically distorting, or at least had distorted, intelligence reports relating to the brutal invasions by North Korean Communist troops in Cambodia to make the Communists look good. They told me from firsthand knowledge Mr. Abramowitz insisted that the United States aid to the refugees along the Thai border be channeled through Communists in Cambodia where most of it went to support the Communist armies.

They told me that he was actively working in the State Department for early recognition and normalization of the regime in Hanoi.

I recognize that these voluntary statements from his coworkers are not the statements that they can afford to document. But they have a consistency with Mr. Abramowitz' position on Communist China because Mr. Abramowitz clearly worked to have the United States adopt a pro-Communist policy in China and now that it has been adopted, according to a schedule which he laid out in a little book which I shall shortly discuss, he continues to undermine Taiwan and to betray our friends and allies.

Mr. President, I examined Mr. Abramowitz' views extensively in subsequent hearings, a copy of which is supposed to be on the desk of every Senator, and I urge my colleagues to peruse these hearings carefully.

So, in short, the nomination of Mr. Abramowitz brings together a number of deeply troubling issues.

In my additional views of this nomination, I stated that in my judgment these issues may be summarized under two headings. The first is the question of imposing the reform of our foreign policy system upon a bureaucracy strongly resisting such reform; the second is the content of what the reforms should be.

Indeed, the nomination of Mr. Abramowitz is virtually a referendum on reform. Mr. Abramowitz is a strongly polarizing personality. Those who oppose reform and want to continue the direction which our foreign policy has taken for the past 40 years will very eagerly uphold Mr. Abramowitz. On the other hand, those who believe that the foreign policy elite should be accountable to the American people should be strongly opposed to this nomination.

The policy that Mr. Abramowitz stands for—and his record is clear—is one that has been central to the thinking of the foreign policy elite inside and ouside of our Government since the end of World War II.

This central idea is that the confrontation between communism and freedom is the most dangerous problem faced by the world today. These elitists think that the critical function of U.S. diplomacy is to manage the transition to a world in which both the Communist countries and the free countries can agree on the same values.

What does that do to our values?

The policies recommended to achieve this aim are always the same. First, they argue that the national interests of the United States require us to adopt the goals of the Socialist and Communist countries as a long-term policy to avoid war; the art of diplomacy, therefore, is the timing of the steps to reach those goals in a manner that will avoid turmoil, disruption of the economic system, and cataclysmic upheavals ending in slaughter. The fact that freedom will diminish, and eventually disappear, is considered unfortunate, but not a vital interest to be defended.

It is to be expected, of course, that the American people are not yet ready to be so flexible. They have this foolish notion that Communists and communism being athiestic, brutal, murderers, cruel, should not be embraced to any degree by our Government. Achieving the goals of the elitist policy requires secret diplomacy and patient, slow steps to place in motion irrevocable decisions before the American public wakes up and finds out what is going on. When the public does wake up, it is too late to restore the conditions which will allow freedom to exist.

This nomination is the perfect example of that syndrome. Mr. Abramowitz' nomination to be Assistant Secretary of State for Intelligence and Research places him in one of the key policymaking positions in the State Department. But when he came before the committee, he adopted the extraordinary position that the post for which he was nominated did not deal with policy, and therefore he declined to anwer any questions relating to policy.

He did not want to get into this little book that he wrote entitled "Remaking China Policy" in which he describes all of the steps taken to undermine Taiwan. No, he did not want to talk about that. But we required him to talk about it.

Such a position, as taken before the Foreign Relations Committee, makes a mockery of the constitutional role of the U.S. Senate in offering advice and consent to Presidential nominees. If the Senate may not ask substantive questions relating to the nominee's experience and views, how is it possible to judge his qualifications for office? It is not.

At a second hearing, the Deputy Secretary of State, Mr. Whitehead, a nice man whom I like very much, told the committee that it was the Department of State's position that "the Senate Foreign Relations Committee, in determining the qualifications of a candidate, has the right to ask the candidate questions about any relevant subject, including the candidate's views on our foreign policy, if he has any."

That was the statement by the Deputy Secretary of State, Mr. Whitehead.

Then and then only did Mr. Abramowitz deign to begin answering a few questions or at least evading them. He responded to a line of questioning which he had previously rejected.

It was perhaps only by chance that the original line of questioning, so forcefully rejected by Mr. Abramowitz, had to do with the Republic of China on Taiwan. At the time of the original hearing, I had been involved in a series of intelligence briefings on the proposed sale of advanced avionics to Red China, and I was deeply concerned with the impact on Taiwan of this transfer of technology to the Communists. I could see from the briefings that selection, presentation, and analysis of technical data relating to the installation of the avionics could very profoundly affect the policy decisions in this matter. A bias toward Red

China and against Taiwan could very well influence the presentation of intelligence data and skew the decision that is involved in it.

The crucial question was whether or not Mr. Abramowitz could separate objective analysis from ideological crusade.

Not knowing where Mr. Abramowitz stood on these matters, I asked him the following question: "Do you think that the U.S. Government should take any steps which would have the effect of encouraging the Republic of China to negotiate its future with Communist China?" It was one of only four questions I had planned to ask.

As far as I knew, it was unprecedented for a friendly witness to refuse to answer a relevant question, particularly a nominee seeking an office of high trust and responsibility. What could Mr. Abramowitz have to hide?

What I did not know then was that, in 1970, Mr. Abramowitz had written a book entitled "Remaking China Policy," a monograph arguing that, in order to "improve" relations with Communist China, we had to convince Peking that we were sincere in doing something about the Taiwan "problem."

"The Taiwan problem." Well, I guess it is a problem for a country to be both anti-Communist and a friend and ally of the United States. These are the countries that always get the short end of the stick.

Among the steps that Mr. Abramowitz recommended in his book were:

One, that we should not fight too hard to keep Taiwan in the United Nations, and

Two, that we should convince Peking we are serious about the Taiwan issue by adopting the policy that "there is but one China, and Taiwan is its province."

I find myself wondering what the distinguished Senator from Arizona, [Mr. GOLDWATER] would have said if he would have been there and read this book, because there is no stouter defender of Taiwan and the great Taiwanese people than Senator GOLDWATER.

The third step recommended by Mr. Abramowitz was that we should not allow Taiwan to become militarily independent.

Four, that we should, step-by-step, move toward the abrogation of the Mutual Defense Treaty with Taiwan.

Five, that we should always allow our policy toward Peking to be guided by the goal of convincing Taiwan that it is in Taiwan's best interest to accept autonomy or some other arrangement under Peking's sovereignty.

Mr. President, if that is not a sellout of Taiwan, I defy anyone to come up with a more exacting betrayal of a great friend and ally, which Taiwan has been.

Now, though all these steps have since become U.S. policy under four Presidents, I acknowledge, in 1970, when Mr. Abramowitz wrote this book, none of these events had happened. So, in a real way, this was a handbook on how to sell out a friend and ally, specifically, Taiwan.

None of these things had happened when this book was published. The American people, and the U.S. Congress were strongly opposed to the betrayal of the freedom and independence of the Republic of China. In fact, those views were a radical reaffirmation of the pro-Communist line of the 1940's, put forward by the stout defenders of Mao Tse-tung, such as Edgar P. Snow, John K. Fairbank, and Owen Lattimore.

In the early 1950's, I was here not as a Senator, but as administrative assistant to a great North Carolinian, who served on the Senate Judiciary Committee and on the subcommittee examining this kind of pro-Communist attitude. The subcommittee was called the Internal Security Subcommittee.

I remember the day that Owen Lattimore came before the subcommittee. He was remarkably like Mr. Abramowitz; he evaded questions. In one instance, a Senator caught him in an untrue statement, a statement that had to be intentionally untrue.

But those were the days, do you not know, Mr. President, when so-called experts such as John K. Fairbank could write.

> The Chinese Communist Party has capitalized upon this pressure for change. It has become the acknowledged champion of agrarian reform.

Where have we heard that before? Oh, I remember. That is what CBS News and the New York Times told us about Fidel Castro when he was on his rise to power. He was not a Communist. The State Department said he was not a Communist, he was an agrarian reformer and he was going to do great and good things for Cuba. But that was long after Mr. Fairbank said:

> The Chinese Communist Party has capitalized upon the pressure for change. It has become the acknowledged champion of agrarian reform—in a land of farmers—and has thereby set up its claim to be the party of progress. Chinese intellectuals generally recognize that the Communist Party is the party of change and is now the leading force in the Chinese revolutionary process . . . We would also note that humanitarianism is an important part of the Chinese Communist dogma.

Pardon me for chuckling.

Mr. Fairbank went on:

> Whatever may have happened in Russia, this ideal has not yet been perverted in Communist China, and Communist cadres there are sincerely intent on the uplifting and regeneration of their fellowmen.

That was in the Atlantic Monthly, September 1946.

Now, with friends like Mr. Fairbank and statements like he made and philosophies such as he held which permeated our diplomatic process, with friends like that, the Communists do not need to have Communists in the United States to attain their goals. The actions of the U.S. Government in withdrawing support from the Chinese Nationalists resulted in the Communist takeover of the mainland in 1949. These events were carefully documented by such scholars as Dr. Anthony Kubek in "How the Far East Was Lost."

Despite the Communist takeover, there still remained, as Mr. Abramowitz wrote in his book, the "Taiwan problem"—that is, the continued existence of the Nationalist government of Free China, which stood as a rebuke to the existence of the Communist government in Peking.

□ 1220

The Chinese leaders of the 1940's were not able to solve the "Taiwan problem" because this Senator for example then would not tolerate it. That was left to a new generation, a later generation of Senators who perhaps never knew or had forgotten the propaganda, the one-sided news reports. We now know what happened to Taiwan. The handbook is right here.

It is not surprising that Mr. Abramowitz was a pupil of Professor Fairbank at Harvard, nor that Dr. Fairbank contributed a laudatory introduction to his book, nor that Mr. Abramowitz testified that he still considers Dr. Fairbank to be one of the foremost American scholars on China. The fact the policies advocated by Mr. Abramowitz in 1970 have all been adopted does not make them any the less reprehensible.

The goals proposed by Mr. Abramowitz, and the policies adopted by the United States are identical to the goals of the Communist regime in Peking. They constitute a betrayal of the Republic of China and of the people of the United States. This view was summed up by Ronald Reagan in 1978 in a speech reported in the Los Angeles Times.

The future President told his audience then that:

> Americans are not willing to "normalize" relations on Peking's terms. "Normalization now" is the view of a few U.S. scholars and does not represent the widespread feelings of intellectual and political leaders. A Brown University study indicates that 93 percent of 1,800 leaders surveyed believe the United States should not accept Peking's "three conditions" in order to achieve normalization. The "three conditions" involve breaking diplomatic relations with Taiwan, breaking a mutual defense treaty with Taiwan signed in 1954, and withdrawing our remaining military advisers from Taiwan. The American people continue to express their strong belief that abandoning a good friend and ally to an unknown fate in order

to normalize relations with Peking is not worth the price of America's credibility.

That was Ronald Reagan in 1978. I admire and respect the President. I am fully aware that no President can know everything about every nominee recommended to him. But before this Senate votes on this nomination, if it votes, I want President Reagan to read his statement of 1978, and read at least excerpts from Mr. Morton Abramowitz' book "Remaking China Policy." And then explain to the American people why this nomination is even before the Senate.

Mr. Abramowitz was apparently among the few scholars who were promoting the sell-out of Taiwan. Throughout Mr. Abramowitz' career in the Government, almost every position he held touched on China policy in some way, except for a brief stint in Europe. For example, in the crucial months leading up to the abrogation of the Mutual Defense Treaty with the Republic of China, he was the principal adviser on arms policy in Asia to the Pentagon.

It is remarkable that Mr. Abramowitz' book, although it purports to deal with remaking China policy, completely omits any reference to the fact that China is governed by a ruthless Communist dictatorship. The word "Communist" does not appear in the book. The word "Marxist" does not appear. There is no reference to the fact that China is governed by the central committee of a one-party system. There is indeed no reference at all to the decisionmaking system of China at all, or to its ruthless and inhumane policies toward the Chinese people.

This lack of perspective is very disturbing in a person appointed to be the Assistant Secretary of Intelligence and Research [INR]. For example, Mr. Abramowitz prepares the daily morning briefing for Secretary Shultz. I have received comments from State Department officials, past and present CIA officials, NSC staff, and DOD officials about an alleged politicization of the INR products, particularly with regard to Korea, Taiwan, Communist China, Thailand, and the Philippines. As I mentioned earlier, I hope that the Senate Select Committee on Intelligence will undertake a review of the INR output since Mr. Abramowitz first became Director of INR last year to see to what extent it differs from the output of other intelligence agencies. If the same bias exhibited in Mr. Abramowitz' book is evident in the INR products, then our problems at the State Department are worse than is already apparent.

The bottom line is the question of how a President can get control of foreign policy when he is served by a permanent bureaucracy that may not be in sympathy with reform and change. We all know that it is one thing to order change; it is another thing to get those changes carried out.

Under the law, we have set up a mechanism which is supposed to enable any administration to control policy through the appointment of political nominees to the key posts for making and advocating of policy. There are 8,000 domestic jobs in the Department of State. There are only 246 of these, aside from ambassadorial posts, which deal with policymaking and therefore are exempt from being filled by civil service or career Foreign Service employees.

It seems reasonable to assume that any administration should take care to see that all 246 are filled by men and women who are philosophically in sympathy with whatever President has been elected by the people of the United States. In that way, the policies that are developed and advocated can be evaluated by persons who are expert in analyzing the political impact, as well as the technical impact, of any proposed policy.

A little research indicated that out of the 246 jobs open to political appointment, only 25 of the top 27 jobs in the State Department come to the Senate for its advice and consent—the ambassadorial slots, of course, excepted. These top 27 jobs range from the Secretary himself down to executive level VI.

□ 1230

Setting aside the Secretary and his Deputy, of course, there are only four members of the President's party in these key control slots. Indeed, the majority of these 25 key political slots are held by career service individuals who come from outside the political system. Small wonder that the President cannot get control of foreign policy.

The nominaton of Mr. Abramowitz is symptomatic of all of this. It has had a pronounced effect on our foreign policy. The only cure is reform, and there will be no reform as long as Mr. Abramowitz and his peers control the system.

Mr. President, I shall be prepared next week to go into this matter at great length.

Earlier today, I had a discussion with the distinguished majority leader and it was understood by me to be his intent to proceed to other business at about this hour.

The distinguished majority leader is not on the floor. I think in fairness to him, I should ascertain what he wants to do about it. Therefore, I ask unanimous consent that it be in order for me to suggest the absence of a quorum, provided that I shall be recognized at the end of the quorum call and the resumption of my speech shall not be considered a second speech.

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

Mr. PELL. Mr. President, will the Senator repeat that? I did not hear the Senator.

Mr. HELMS. I said that Senator DOLE had discussed with me the possibility of moving on to something else at this time. I asked unanimous consent that I be permitted to suggest the absence of a quorum with the understanding that I will regain the floor and that the resumption of my remarks will be considered a second speech.

Mr. PELL. Mr. President, I would like to make a short statement concerning Mr. Abramowitz.

Mr. HELMS. Then will the Senator put in a quorum call on the same basis as I asked?

Mr. PELL. Yes.

Mr. HELMS. I thank the Senator.

Mr. PELL. Mr. President, this is a nomination that the Foreign Relations Committee considered very carefully. We held hearings on March 5 and April 9. At the conclusion, the committee gave Ambassador Abramowitz its strong endorsement in a 16-to-1 vote.

The majority of the committee found that Mr. Abramowitz has a distinguished record of public service which serves as a reliable indication he can do very well in his new post.

After serving in the Army he joined the Government in 1958.

He joined the Foreign Service in 1960, and rose quickly to positions of authority based on his demonstrated intelligence, competence, and diplomatic skills.

Speaking as an old Foreign Service officer myself, I can vouch for the reputation he has within the Service, a reputation for ability and integrity.

He has served in various posts in the Far East, including Ambassador to Thailand.

He widened and broadened his experience in 1972–78, while serving with the Department of Defense, dealing with such issues as regional base arrangements, United States troop levels and defense relations with the Republic of Korea.

His second tour of duty as an Ambassador came when he became head of our delegation to the Mutual and Balanced Force Reduction Talks for this administration.

Mr. President, Ambassador Abramowitz has twice been confirmed by this body as U.S. Ambassador.

I have no reason to doubt that Ambassador Abramowitz will serve in this position well and capably. His background and achievements indicate that he will be of considerable value to the Secretary of State and the Department. He will continue to be a strong asset and credit to the United States.

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

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

Mr. HELMS. Mr. President, I believe under the unanimous-consent request, I am to be recognized. Of course, I yield to the distinguished majority leader.

Mr. DOLE. Mr. President, I thank the distinguished Senator from North Carolina. He has indicated to me privately and also on the Senate floor that he would be prepared to discuss this nomination the rest of the day, and perhaps longer. It seems to me that there might be some other way to approach this, and that would be in private discussions with the Senator from North Carolina. We have had one meeting with reference to the nominee.

Since we have indicated to Members, because of Senator HELMS' statement, that this would be discussed throughout this day, we have indicated no further votes.

LEGISLATIVE SESSION

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

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

Mr. DOLE. And now the nomination is back on the calendar.

The PRESIDING OFFICER. That is correct.

Mr. DOLE. Mr. President, I will indicate to Senator HELMS that this is not the end, but we will try to resolve this matter in the next few days.

Mr. President, I understand the distinguished Senator from Georgia, Senator NUNN, wanted to make a statement of about 15 to 30 minutes in length on a matter within the jurisdiction of the Armed Services Committee. And there may be other Senators who wish to speak.

I would say to my colleagues who may be listening, or to members of their staffs, that there are no more votes today. We do have a number of meetings going on. There is a tax conference. A number of Senators are meeting on Gramm-Rudman-Hollings. There will be a number of other meetings.

Mr. President, we will recess the Senate as soon as Members have made the statements they would like to make.

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.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, at this time, I ask unanimous consent that there now be a period for the transaction of routine morning business, not to extend beyond the hour of 1 p.m.

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

Mr. HELMS. Will the distinguished majority leader yield?

Mr. DOLE. I am happy to.

Mr. HELMS. As I understand, the nomination is returned to the calendar.

Mr. DOLE. Yes.

□ 1240

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

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

ACCESS TO ABM TREATY NEGOTIATION RECORD

Mr. NUNN. Mr. President, over the last 8 months, a number of Senators have joined together in a bipartisan effort to persuade the administration to grant the Senate direct and independent—I stress the word "independent"—access to the negotiating record of the 1972 antiballistic missile treaty, as well as other related documents. These Members include the distinguished minority leader [Mr. BYRD]; the chairman and ranking minority members of the Strategic and Theater Nuclear Forces Subcommittee of the Armed Services Committee, Senator WARNER and Senator HART; and other members of the Armed Services Committee, including myself, Senator COHEN, Senator KENNEDY, and Senator LEVIN.

I also note that other Senators have been particularly helpful in trying to resolve this issue. I am particularly grateful for the assistance of Senator STEVENS, who heads up our arms control observer group and has been very helpful in discussing the importance of this access with the administration, as well as Senator GOLDWATER, the chairman of the Committee on Armed Services.

Our keen interest in this matter was precipitated by the announcement by the Reagan administration last fall, based on a new analysis of the treaty negotiating record, that it had determined that the traditional and longstanding interpretation of restrictions in the treaty pertaining to the development and testing of futuristic or so-called exotic ABM systems and components was in error. I use the word "ABM" as standing for antiballistic missile systems. That was the conclusion they announced.

On October 14 last year, Secretary of State Shultz declared "a broader intrepretation of our authority is fully justified."

As a matter of policy, though, the Secretary stated that the United States would continue for the time being to conduct the strategic defense initiative "in accordance with the restrictive interpretation of the treaty's obligations."

Mr. President, I rise today to inform my colleagues that we have run into a brick wall with respect to our request. There are some indications that the Reagan administration may be reexamining their position on Senate access, but this remains to be seen. Thus far, the administration has stuck to the position that it will neither allow Senators to examine the negotiating record nor provide us with copies of several related documents which individual Members have requested. I hope that my colleagues will keep in mind, we are not talking about access to the current negotiating record, we are talking about access to a record that was made between the United States and the Soviet Union back in the early 1970's.

□ 1250

We are also talking about a record to which the Soviet Union itself, of course, has total access since they were a party to the record.

The most the administration is apparently willing to do is to meet with interested Senators for an informal discussion of the ABM treaty negotiating record. If we can really believe that this is their reply—and I hope that it will not be their reply next week when we meet again—the administration has actually put in writing that while they would bring parts of the negotiating record and related documents to this meeting and they would read from these documents, they would not let the Senators see them. Presumably the administration officials would hold the documents close to their vests so that Senators could not peek at the documents. Again, these are documents that the Soviet Union has a copy of and they have their own record, of course.

The bottom line position we find ourselves in is clear. The Senate—and this transcends any question of political party—ratified the ABM treaty back in 1972. That treaty has been reinterpreted by the Reagan administration in very substantial and important aspects. This reinterpretation supposedly was based on the negotiating record, but the Senate has no access to the record and therefore no way to judge the soundness of the administration's position. I want to stress that I have not made a determination on the

substantive question of whether the administration's reinterpretation is right or wrong.

In my opinion, the interpretation of the existing ABM Treaty will be one of the most important keys to whether we reach a future arms control agreement with the Soviet Union in the negotiations that are now ongoing.

IMPLICATIONS OF THE ADMINISTRATION'S POSITION ON ACCESS

Mr. President, in my opinion, the administration's rejection of our request for Senate access threatens a basic institutional interest of the U.S. Senate—its constitutional role in the treaty process.

The Senate is being asked to accept the premise that this or any other administration can unilaterally reinterpret key provisions of a treaty years after the Senate has given its advice and consent on the basis of a completely different interpretation and then deny the Senate the information upon which that reinterpretation is based.

I find this position totally unacceptable to the Senate as an institution.

Judge Abraham Sofaer, the State Department Legal Counsel, has even gone so far as to infer that Senate hearings on treaties are irrelevant in determining obligations under such accords. In response to a question I submitted at a November 21 hearing, Judge Sofaer stated that Senate's ratification process "could not result in authoritative clarifications of any ambiguities in the treaty, because statements made during the hearings were unilateral."

In short, the judge is saying that no matter how many hours we spend in ratification hearings asking administration witnesses about the exact meaning of various treaty provisions, their replies only reflect individual views. The only "authoritative" source is presumably the negotiating record itself—which they will not let us see. This, I would submit, is a classic catch-22.

Mr. President, the administration cannot have it both ways. If the testimony of executive branch officials to the Senate is merely "unilateral" and not "authoritative" in terms of determining our obligations under treaties, then the Senate must see the negotiating record. But if this or any other administration takes the position that the Senate cannot see the negotiating record of treaties, then the testimony of administration officials as to the meaning of the treaty must be deemed authoritative.

Carried to its illogical extreme, Judge Sofaer's reply would suggest that were this or any other administration to present a new arms control treaty for the advice and consent of the Senate, we would have to insist that administration officials, such as the Secretaries of State and Defense, come to the ratification hearings with the entire negotiating record in hand so they could "prove" to Members that their explanations as what was agreed were indeed "authoritative".

This would be a ridiculous way to proceed in fulfilling our constitutional duties. It would cause tremendous problems between the Congress and the executive branch.

I submit to my colleagues that this would obviously be an untenable way to conduct treaty ratification proceedings. The Senate cannot approach every ratification debate on the assumption that administration witnesses are either incompetent or deceitful. The testimony of key officials must count for something—after all, the Constitution invests the President with the authority to negotiate treaties and his officials must be assumed to speak in his name in interpreting treaties to which he has affixed his signature.

As Dr. Abram Chayes, professor of law at Harvard, and himself a former legal adviser in the Department of State, states in an article on this subject in the current issue of the Harvard Law Review:

> The Senate's understanding of the treaty on which it acts depends on the interpretations provided by the President, who negotiated the treaty. Such interpretations are decisive with respect to the obligations assumed by the United States.

Indeed, this concept is explicitly stated in the American Law Institute's restatement of the law. The ALI restatements are routinely cited by the courts as authoritative expressions of the law. Section 314 of the most recent draft of the ALI restatement of U.S. foreign relations law states:

> When the Senate gives its advice and consent to a treaty on the basis of a particular understanding of its meaning, the President, if he makes the treaty, must do so on the basis of the Senate's understanding.

The ALI restatement goes on to explain that even if the Senate makes no formal statement of understanding, "indication in the record that the Senate ascribed a particular meaning to the treaty is relevant to the interpretation of the treaty by a U.S. court in much the same way that the legislative history of a statute is relevant to its interpretation.

THE DEBATE OVER THE ADMINISTRATION'S REINTERPRETATION

Mr. President, I believe a careful reading of the 1972 Senate hearings and floor debate on the ABM Treaty makes it abundantly clear that the Senate understood quite well what it was being asked to approve with respect to limits on the development and testing of futuristic space-based ABM systems and components. I recognize that this point is being challenged by Judge Sofaer, who contends that the Nixon administration's presentation of the treaty to the Senate in 1972 was confused and at times contradictory with regard to these provisions.

At some other time, I would be prepared to go into this matter in considerable detail. But if, for the sake of argument, we set-aside the question of what the Senate thought was agreed upon in the course of negotiations and imply address the question of what was actually agreed, we are left with a disturbingly contradictory set of claims.

On one hand, Judge Sofaer insists that based on his review of the negotiating record, "the Soviets never agreed to ban development and testing of systems or components based on other physical principles, regardless of their basing mode." This conclusion is challenged by a statement released on May 26 by seven of the ranking members of the U.S. delegation that negotiated the treaty, including the chairman, the deputy chairman, the alternate chairman, the executive secretary and the legal adviser, as well as Harold Brown, who was a delegate-at-large.

In this statement, the seven former SALT I negotiators declare:

> We wish to confirm our view that the Treaty prohibits the development and testing, as well as deployment, of all space-based and other mobile-based ABM systems and components, regardless of whether they use 1972-era or newer technologies. This view of the Treaty is clear from the ordinary meaning of the Treaty text, the Treaty's negotiating record, the United States legislative history, and the subsequent practice of both the U.S. and the Soviet Union. We believe that a careful reading of the classified negotiating record will support our position.

Mr. President, this fundamental disagreement between those who negotiated the treaty under President Nixon and those who are now reinterpreting it under President Reagan would be confusing enough if the administration's position on this issue were monolithic. However, we know that the administration is itself divided on the question of how the treaty applies to the development, testing and deployment of exotic, space-based ABM technologies.

□ 1300

The inhouse memo for Assistant Secretary Perle prepared last year by a Department of Defense lawyer named Philip Kunsberg reportedly concludes that such systems cannot only be developed and tested, but also deployed. I say "reportedly" because the administration refuses to let us see this memo.

At the same time, I have been told that other knowledgeable administration officials have concluded that neither Judge Sofaer nor Mr. Kunsberg is correct and that the traditional interpretation is in fact fully consistent with the negotiating record.

Judge Sofaer's position is, I gather, also questioned by a detailed review of the negotiating record conducted last year under a DOD contract to the Systems Planning Corp. [SPC]. The SPC study was coauthored by Sidney Graybeal and Colonel Fitzgerald, both former members of the U.S. SALT I delegation. We have been refused access to this memo, too.

Mr. President, I might add that I find it completely unacceptable that the administration is prepared to give the negotiating record of the ABM Treaty to private contractors to analyze but denies it to Senators.

I repeat: Not only has this record been distributed to outside consultants, it is a record that the Soviets themselves have. I find that anomaly, to say the least.

THE CONSTITUTIONAL ROLE OF THE SENATE IN TREATYMAKING

Given the internal disarray of the administration on this issue, the strong dissent by those who negotiated the treaty, the profound implications of the administration's action for Congress' role in approving arms control agreements, and the significant impact that the revised interpretation would, if implemented, have on U.S. foreign and arms control policies, I think it is totally unreasonable for the administration to expect the Senate to take it on faith that the new interpretation accurately reflects the negotiating record. To do so would constitute a fundamental abdication of our important role and responsibilities in this area, assigned to us by the U.S. Constitution.

As the Library of Congress concluded in a study of the Senate's right to receive documents relevant to a treaty negotiation:

> The totality of authority to advise and consent demands that it [the Senate] be fully informed as to the process of negotiations and all matters ancillary thereto. Without information its ability to perform its Constitutional function is crippled and it would be unable to carry out the responsibilities devolved upon it by the Constitution.

I am prepared to say that it is possible that upon a close reading of the negotiating record, we may conclude that Judge Sofaer's view as to what was agreed in 1971 and 1972 between the United States and the Soviet Union is closer to the mark than Ambassador Smith and Harold Brown's recollections of what transpired. I will await an examination of the record, assuming that we get the record at some point, before I will make that judgment. However, it is clear as day that unless we can analyze the record for ourselves, we are left with having to trust that this administration's reading not only is in fact correct, but also is a correct legal interpretation.

If the administration has the courage of their convictions, and if they look at the history of cooperation with the U.S. Senate, they should be more than willing to let the Senate see the negotiating record. Until we have this access, we can only harbor strong suspicions that they have something to hide. That is the only conclusion I can come to.

Mr. President, in formulating the constitutional division of checks and balances in the treatymaking area, the Founding Fathers explicitly rejected an approach wherein the Senate would delegate exclusive authority over treaties to the Executive. As stated in Federalist Paper No. 75:

> The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to be the sole disposal of a magistrate created and circumstanced as would be a President of the United States.

One hundred years later, a distinguished American jurist, Supreme Court Justice Story, echoed this theme:

> It is too much to expect that a free people would confide to a single magistrate, however respectable, the sole authority to act conclusively, as well as exclusively, upon the subject of treaties . . . The check, which acts upon the mind from the consideration that what is done is but preliminary and requires the assent of other independent minds to give it a legal conclusiveness, is a restraint which awakens caution and compels to deliberation.

More recently, though in a different but related context, the distinguished chairman of the Armed Services Committee, Senator GOLDWATER, also warned against the notion that the Senate's role in treatymaking stops at the point where advise and consent is given. Arguing in 1978 against President Carter's unilateral termination of the United States mutual security pact with Taiwan, Senator GOLDWATER said:

> The Framers created a system of checks and balances especially to assure that there would be joint deliberation within the Government on important matters of this kind. The added deliberation called for by requiring legislative participation offers security to the people that an action of major consequences will not be taken lightly or without an opportunity for adequate consideration.

Mr. President, our judicial branch of Government does not take it on faith that the executive branch can in every case be relied upon to accurately represent the intent of parties to a treaty; it insists on being shown the evidence. A pertinent recent example is *Coplin v. the U.S.* [761 Fed 2d 688 (1985)]. In this 1985 case, the Reagan administration argued that the apparent literal meaning of one sentence in the Panama Canal Treaty could be disregarded because the executive branch said that the negotiating record made it clear that the two nations had something else in mind. The U.S. Claims Court rejected the administration's argument, stating that the Government had presented "no evidence whatsoever" as to the intent of the parties during the negotiations. Only after the Government presented documents on appeal indicating the intent of the contracting parties did the Federal courts agree that it should not give literal effect to the treaty language.

Mr. President, I believe we are in an analogous position here. The administration has presented the Senate with—in the words of the U.S. Court of Appeals in that case—"no evidence whatsoever" as to the intent of the signatories as represented in the treaty negotiating record. If there is such evidence, it rests within the negotiating record of this treaty and we must see it before we can judge who is right and who is wrong.

□ 1310

PRECEDENTS FOR SENATE ACCESS

The administration would have us believe that the principle of executive privilege prevents it from granting the Senate access to the ABM Treaty negotiating record. They suggest that there is an unbroken line extending back to the beginning of the Republic upholding the total confidentiality of treaty negotiations. For example, in a recent article, Judge Sofaer states:

> Nations maintain the confidentiality of Treaty negotiations in order to promote frank exchanges during the course of negotiations and to prevent negotiators from engaging in posturing for the benefit of their publics. As early as the administration of President Washington, the Executive Branch refused to release negotiating records to Congress or the public.

Judge Sofaer then cites "President Washington's refusal to communicate to the House of Representatives records of negotiations leading to the Jay Treaty."

Mr. President, this statement by the State Department's highest legal authority is sadly indicative of the kinds of half-truths, misrepresentations, and unsubstantiated assertions that have emanated from the Office of the Legal Advisor since the beginning of this controversy. To be sure, it is true that President Washington refused to release the negotiating record of the 1795 Jay Treaty to the House of Representatives. He did so because he believed the House had no direct role in the making of treaties or ratifying the treaties.

What Judge Sofaer does not say in this article is that President Washington did agree to a request from the Senate that it be provided with the negotiating record. It is doubly troubling that Judge Sofaer has misrepresented this event since he is widely acknowledged as one of our country's leading experts on the Nation's early experience in applying the Constitution's system of checks and balances in the foreign affairs area. Indeed, the

judge's own book, "War, Foreign Affairs and Constitutional Power," fully documents the events attendant to the ratification of the Jay Treaty, including submission of the treaty negotiating record by President Washington to the Senate.

Here we have a statement citing authority of the President by Judge Sofaer saying that the President did not submit to the House of Representatives.

Mr. President, the action by the Chief Executive in granting the Senate access to the negotiating record of the Jay Treaty was not an isolated historical event. A 1979 study prepared by the Library of Congress concludes that "Executive compliance with Senate requests for treaty-connected materials seems to be the rule; refusals, the exception." From the administration of George Washington to that of Warren Harding, the Library of Congress found only three occasions where a President refused a Senate request for the documents and ancillary material related to the negotiation of a treaty before it for ratification.

Moreover, there are innumerable precedents illustrating the direct access of the Senate to treaty negotiating records as they were being made. A number of contemporary examples come to mind. During the negotiation of SALT II, Senators sat in on negotiating sessions with the status of "Advisors."

Currently, the Senate arms control observer group, of which I am the ranking Democrat on that group, and Senator STEVENS, of Alaska, is the chairman, is closely monitoring the Geneva talks, not as negotiators but as observers.

The ultimate paradox is that we are observing the current negotiating records, but we are denied a record that is now some 15 years in the past.

Senators participated in the Law of the Seas negotiations and were fully and directly involved in the Reagan administration's review in 1981–82 of the entire record of the negotiation up to that date.

Under the Trade Act of 1974, Senators are accredited as official advisors on U.S. delegations to trade negotiations. Furthermore at this current time the Senate Finance Committee routinely receives confidential information regarding ongoing negotiations, including reporting cables, position papers and negotiating instructions.

This pattern of direct congressional role in treaty negotiations goes back to the turn of the century, when Senators were designated as negotiators during the 1898 peace negotiation with Spain. Senators Lodge and Underwood served as fully accredited delegates to the Washington Naval Conference of 1922. On study of the role of Congress in this area determined that from 1930 to 1960 alone, 252 places on U.S. delegations to international negotiations and conferences were filled by Members of Congress. Forty of these places involved full participation by the Member in a major treaty negotiation.

Mr. President, in reviewing this record, it is obvious that the Senate has routinely been represented at the bargaining table as major treaties were negotiated.

I am not requesting that here. We are simply asking for the record. It is also clear that the Senate has routinely asked for, and been granted, access to the negotiating record of treaties at the time that those treaties were before the Senate for its advise and consent. In short, the notion that there is some sort of impenetrable wall behind which negotiators conduct their business forever shielded from the scrutiny of the Senate is preposterous, preposterous today and preposterous based on the reading of the history.

I have heard some administration officials suggest that while these facts that I recited may be unassailable, it is a completely different question for the Senate to request access to the negotiating record of a treaty that has already been entered into force. This, they claim, is unprecedented.

Let me say in answer to that allegation, this is a position which I think is again preposterous.

First, I am aware of no rule that suggests that once a treaty is put into effect, its negotiating record remains forever sealed. To the contrary, the State Department publishes the historical series entitled, "Foreign Relations of the United States." This series discloses for public and congressional review previously confidential details of sensitive negotiations—albeit 20 years after the fact.

With this in mind, the administration is reduced to arguing what I would regard as an extraordinarily circumscribed concept of executive privilege. The administration seems to be claiming that it is all right for the Senate to see a negotiating record as it is being made; it is all right for the Senate to see it while a treaty is pending; and it is all right to see it 20 years after the fact, but it is not all right for the Senate to see it during the first 20 years following the conclusion of the negotiations.

Mr. President, I submit this is an absolutely absurd argument.

I do not see how people can make this argument with a straight face, frankly.

Second, I would point out that, as far as I can determine, there is no precedent for an administration acting unilaterally to reinterpret a crucial provision of a major treaty years after the Senate gave its advice and consent on the basis of an entirely different understanding. My staff has consulted with the Library of Congress, the Office of the Senate Historian and virtually every living former staff director of the Senate Foreign Relations Committee under Democratic and Republican administration and control going back over 30 years. In no case, could the Library of Congress, the Office of the Senate Historian or the former staff directors identify a precedent for this action.

WHY THE SENATE MUST ACT NOW

Mr. President, I recognize that the President decided last fall to adhere for the time being to the traditional interpretation of this ABM treaty as a matter of policy. Some would argue that this renders this issue moot. But we should not underestimate the significant pressures that are now being brought to bear against that decision.

In testimony before the Armed Services Committee, Assistant Secretary of Defense Richard Perle claimed that SDI research can be completed more quickly and at lower cost by abandoning the restrictive interpretation. Mr. Perle's deputy, Frank Gaffney, said in a speech this spring that the broader interpretation is "absolutely critical to our ability to validate many of the technologies in the SDI program." In addition, ACDA Director Ken Adelman recently revealed in the media that switching to the broader interpretation is one of the options the administration is considering as a response to Soviet arms control violations.

I do not dispute any of these courses of action provided they are done in accordance with the treaty provisions, provided they are done in accordance with the law, and provided they are done openly and freely with the American people. There are procedures set forth in the treaty for amendment, there are procedures set forth in the treaty for addressing even the question of whether we would comply with the treaty, and those procedures are not being complied with in this case.

In the Arms Control Impact Statement on SDI for fiscal year 1987, ACDA even goes one step farther, threatening that the decision will be reversed if Congress fails to give the SDI program "the support needed to implement its plan." According to the New York Times, this shot across the bow was cleared through the interagency process.

Mr. President, if for no other reason, we need to reach an independent judgment on this question simply to put an end to this absurd business of using treaties as some sort of political football. Treaties are the law of the land. They represent a solemn commitment by our Nation on behalf of all its citizens. Thus the question of what is the correct, legal interpretation of any treaty should not be taken lightly.

If the Soviets breach a treaty we ought to say so and we ought to take action. We can serve notice if we think their breach is serious enough. We can serve notice that we are disavowing the treaty. Those things are provided for. What we are talking about here is whether we are going to treat treaties indeed with the respect that they need to be treated with, if we are to have any kind of credibility in terms of our foreign policy and foreign relations, not just in this case, not just for the Soviet Union, but with any other country.

□ 1320

And certainly what is at stake here is whether we will have credibility between the executive branch and the legislative branch of Government.

The ABM treaty should not be bandied about as some sort of club threatening Congress if we do not fully fund any particular program, and it should not be manipulated to achieve shortcuts in achieving certain research goals.

The time to act is now, before there is any further erosion in the system of checks and balances that the Framers of the Constitution established in the treaty-making area. As the noted Supreme Court jurist, Justice Frankfurter, stated in 1952:

> The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

I certainly hope the Senate will be able to gain access to the negotiating record without recourse to legislation, or to subpoena, or to any other confrontation. Certainly in a period where we are going through sensitive and crucial arms control negotiations, to have the two branches of Government at a loggerhead on this question is not in the interest of our Nation. I hope that the administration will recognize the Senate's constitutional role in this area and agree to our request. That is a simple way to end it. Unfortunately, the administration has chosen to stonewall our request. I must say, I have received a phone call from Judge Sofaer. We do have meetings set up next week. I am hoping that the administration's position will change. So far, however, they have rejected the course of common sense and they have rejected the historical respect for the Senate's constitutional role. Unless the administration changes its position, I see no choice but for the Senate to confront them with a less attractive alternative.

Unless we can work out something before the defense bill comes up, or, if the defense bill is not coming up, before the debt ceiling bill is complete, I intend to offer an amendment designed to reinforce the Senate's position in this dispute. I intend to pursue this amendment, whether it takes days, weeks, months, or even years, because it is a very important institutional, as well as foreign policy, precedent.

Mr. President, I submit that one should not start out on a long journey unless he has an accurate and authoritative roadmap in front of him. There are many things that we need if we are to sketch out a useful roadmap for the Strategic Defense Initiative. We need to know what the goals of the program are. Are they to construct a perfect population peace shield or to enhance deterrence by improving the survivability of our retaliatory forces? We have heard top administration officials take both positions. We need to know the criteria for determining technical feasibility, survivability, and cost-effectiveness at the margin, and whether those criteria can be met. And, critically, we need to know the full implications of the Strategic Defense Initiative for arms control.

I do not think we can determine the last point unless we, in the Senate, independently resolve to our complete satisfaction the issue of permissible development and testing of exotic SDI technologies. And I do not think we can do that unless we let the administration know that we are perfectly serious about the constitutional prerogatives of this institution with respect to treaties.

Mr. President, the Senate, in my view, must take a stand on its treaty-making powers and insist on access to the negotiating record and to related documents.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SIMPSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1340

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

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

ORDER OF BUSINESS

(The following proceedings occurred earlier and are printed at this point by unanimous consent:)

Mr. HELMS. Madam President, (Mrs. KASSEBAUM) I ask unanimous consent that I be allowed to yield momentarily to the distinguished Senator from Ohio, provided that I do not lose my right to the floor and that the business that he will transact will appear elsewhere in the RECORD.

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

Mr. HELMS. I thank the Chair.

Mr. METZENBAUM. I thank my colleague from North Carolina. I appreciate very much his courtesy.

Madam President, I ask unanimous consent that, as in legislative session, I be able to speak as in morning business.

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

MEDICAL AND LIFE INSURANCE BENEFITS FOR RETIREES

Mr. METZENBAUM. Madam President, I send a bill to the desk and ask for first reading.

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

The clerk will report.

The legislative clerk read as follows:

A bill (S. 2690), to prohibit certain companies who have filed for bankruptcy from discontinuing medical and life insurance benefits to retirees.

Mr. METZENBAUM. I thank the Chair. I very much appreciate the courtesy of my colleague from North Carolina.

Mr. HELMS. My colleague is, of course, welcome.

(Conclusion of earlier proceedings.)

1985 TAX SUMMARY

Mr. DOLE. Mr. President, as has been my practice in the last several years, I would like to make available to the public a summary of pertinent information concerning my 1985 Federal and State income tax returns.

My 1985 income included a Senate salary of $84,945, honoraria of $127,993, $50,176 from weekly radio programs, and $5,842 in interest income.

In keeping with my long-standing policy, no honoraria were accepted, or will be accepted, which might create the appearance of a conflict of interest either for myself or for my wife, Department of Transportation Secretary Elizabeth Dole. Of the $127,993 in honoraria received, $106,618 or 83.3 percent, was donated to charity. An itemized list of these charitable donations is attached, and I request that it be included as a part of this statement.

The returns show that on taxable income of $129,933, $53,612 was paid in income taxes for 1985, including $45,949 in Federal and $7,663 in Kansas and North Carolina taxes.

Mr. President, I ask unanimous consent that a table summarizing my taxable income for 1985 be incorporated in the RECORD at this point as a part of my statement.

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

Robert J. Dole.—Summary of Income Tax Information

	1985
Senate salary	$84,945
Honoraria	127,993
Less honoraria donated to charity	(106,618)
Net honoraria	21,375
Radio fees	50,176
Interest income	5,842
Miscellaneous (rental income, State tax refund, other)	11,951
Office account reimbursement	6,091
Total	180,380

1985 Honoraria contributed to charity—Senator Robert Dole

Charity	Amount
American Lung Association of Kansas	$4,000
National Immigration Archives of the Balch Institute for Ethnic Studies	118
Foundry Methodist Church	13,000
United Cerebral Palsy of Kansas.	2,000
Kansas Society for Crippled Children	3,500
Trinity United Methodist Church	2,000
Academy of Mount St. Scholastica	2,000
Institute of Logopedics, Inc	4,000
Kansas Association for the Deaf, Inc	4,000
Lakemary Center	10,000
The Agricultural Hall of Fame & National Center	1,500
American Heart Association	2,000
Kansas Association for Mental Health	2,000
Leukemia Society of America	1,000
Kansas Commission for Prevention of Child Abuse	1,500
Kansas Foundation for the Blind	4,000
Russell City Hospital Foundation	2,000
Kansas State Hospital Society	1,000
Society for Autistic Children, Kansas Chapter	4,000
United Negro College Fund	2,000
National Hispanic Scholarship Fund	5,000
Goodwill Industries of Greater Wichita	2,000
United Negro Fund	4,000
Kansas Association for Retarded Citizens	2,000
National Kidney Foundation of Kansas and Western Missouri	4,000
Benedictine College	3,000
Mid-America All Indian Center	1,000
Sarah's Circle	1,500
Emporia State University Endowment	2,000
The William A. Steiger Congressional Fellowship	1,000
Fellowship of Christian Atheletes	2,000
American Heart Association, Kansas Affiliate	4,000
Huntington's Disease Fund of America, Kansas Chapter	2,000
The Capper Foundation for Crippled Children	3,000
Allyn Cox Memorial Art Fund	1,000
Kansas Wesleyan College	1,500
Leukemia Society of America, Kansas Chapter	2,000
Total	106,618

THE TAX AGREEMENT WITH THE PEOPLE'S REPUBLIC OF CHINA

Mr. MOYNIHAN. Mr. President, yesterday the Senate ratified the complete income tax treaty to be signed with the People's Republic of China. This was not a small event. Efforts were set in motion many years ago and the treaty was, in fact, initiated by the President in 1984 in Beijing, as he states to us in the letter of submittal July 24, 2 years ago.

The treaty is based on a model income tax treaty prepared by the Department of Treasury of the United States, and it is a matter of large consequence to the economic relations between our two nations.

Mr. President, I think it may be said that while the benefits of the treaty are reciprocal, as they ought to be or the President would not have signed the treaty and the Senate would not have approved it for ratification, the benefits, however, may be described as principally enabling and fostering American investments in the People's Republic.

The treaty provides a series of guarantees as to what income will be taxed, what will not be taxed, what could be repatriated, and other guarantees concerning investments. That is the principal purpose of tax treaties.

Mr. President, we do not anticipate that there will be a large amount of investment by the People's Republic in the United States. There has been much discussion of investment by United States firms and individuals in the People's Republic.

So we have accomplished something which will be mutually beneficial to our two nations and that is good.

I wish to reiterate today, Mr. President, so that the record is clear, that if the People's Republic of China had not on July 23 released the New York Times bureau chief in Beijing, Mr. John F. Burns, after 6 days in near solitary confinement on an absurd charge of espionage; had the People's Republic not released Mr. Burns, we would not have voted on this treaty.

Specifically, Mr. President, yesterday we were in executive session prior to proceeding to consider the tax treaty. Under the procedures of this Chamber, if the Senate is in executive session a motion to take up a matter on the Executive Calender is debatable.

This Senator would have debated it into October if need be, or indeed, until it was taken down, which would have been done very quickly and with no great resistance from the majority or minority leader in view of the extraordinary conduct of the Chinese authorities. This ought to be understood in Beijing.

Mr. A.M. Rosenthal, the executive editor of the New York Times, and Mr. Warren Hoge, the Times' foreign editor, flew from New York to Beijing to ask what was happening to American journalists. They made very modest statements to the effect that were Mr. Burns to be detained in the condition he was and for any length of time, it would damage relations between our countries. Yet, the Chinese authorities chose to dismiss this though as one beneath their concern.

If that were the case, then they might have considered whether they should have written that treaty in the first place; because, whether they understand this or not, the U.S. Senate holds as a matter of large consequence the treatment of American journalists abroad and takes a very concerned view of any charge of espionage directed against a distinguished journalist for a reputable journal.

Mr. President, I simply want the RECORD to show that it was just in the very nick of time that the Chinese authorities released Mr. Burns. For reasons that we could not find acceptable, they chose to expel him, but he is at least at liberty.

And it is a good thing this was done, else this treaty would not have been available for consideration. The Senator from New York would have felt it necessary to debate the motion. He would have found support in this matter on both sides of the aisle, and the effort would have prevailed.

I simply say in closing that not quite 1 year ago, our distinguished majority leader led a trade delegation to the Far East. I had the honor to be with it as well. We had a great many talks with the Chinese officials in the Great Hall of the People. We visited Shanghai. We inquired at length into possibilities for improvement of economic relations between our countries. We thought we had made some progress.

We were dismayed to see the behavior of the last week. We are relieved that it is over and I am happy that the recourse that would have been necessary did not in the end prove so. But I want the RECORD to show that if any police official in Beijing thinks it would not matter to the relationship between our countries that they simply threw an American journalist into prision and kept him there incommunicado, that official was wrong and would have been proved wrong in short order.

Mr. President, I thank the Senate for its courtesy in hearing me in this matter. I ask unanimous consent that there be printed in the RECORD the report of Mr. Burns' expulsion, together with the text of the Chinese statement on that occasion.

There being on objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 14, 1986]

TIMES REPORTER IS EXPELLED FROM CHINA

The Peking bureau chief of The New York Times was expelled from China yesterday after being detained for nearly six days on suspicion of espionage.

The correspondent, John F. Burns, was placed aboard a plane of the Chinese state airline and flown to Hong Kong.

The official New China News Agency said he had been ousted from the country for "activities incompatible with his status as a journalist." It said he had been involved in "deliberately breaking into Chinese areas closed to aliens, thereby violating the law governing aliens' entry into and exit from the People's Republic of China."

In a statement issued in New York, Arthur Ochs Sulzberger, publisher of The Times, said, "We are grateful for the prompt resolution of the problem facing John Burns, though we regret his expulsion from China after so many years of distinguished reporting for The New York Times."

ACCUSED OF "ACT OF SPYING"

The Chinese authorities told A.M. Rosenthal, executive editor of The Times that they considered Mr. Burns guilty of an "act of spying and intelligence gathering which will not be tolerated by any sovereign state."

Mr. Rosenthal, who arrived in Peking on Saturday with the newspaper's foreign editor, Warren Hoge, said of Mr. Burns: "I believe in his innocence of any espionage and intelligence gathering."

The Times editors were told by the Chinese authorities yesterday that Mr. Burns and an American traveling companion had broken into "a military restricted zone of our country" and had taken "numerous photographs of classified objects."

Mr. Burns's wife, Jane Scott-Long, and their two children, Jamie, 5, and Emily, 2, were allowed to remain behind in Peking to complete the family's preparations to leave China.

Mr. Burns said the trip out of which the charges grew had been "a legitimate journalistic venture."

"This is not the kind of thing spies do," he told reporters after his arrival in Hong Kong. "I'm not a spy. I'm a journalist. If I had been a spy, I certainly would not have chosen to do anything as clumsy as this way to go about gathering information."

Until yesterday, Mr. Burns, who spent most of his incarceration incommunicado in a small cell, had not been accused of any offense. On Monday he was allowed to see his family, British and American Embassy officials and his editors.

Mr. Rosenthal voiced regret over Mr. Burn's expulsion, adding, "We'll soon be asking the Foreign Ministry to accredit another New York Times correspondent to China." He said he had been assured by the authorities that the newspaper would be allowed to replace Mr. Burns.

The case against Mr. Burns arose from a motorcycle tour of central China that began late last month. He was accompanied by Edward McNally, a lawyer on leave from the United States Justice Department to teach constitutional law at Peking University, and Zhang Daxing, who had recently returned to China after studying in the United States.

During their trip, the three were stopped by the police near the border of Shaanxi and Sichuan provinces and told they were in a restricted area. They were held for two days but were allowed to return to Peking after writing long "self-criticisms."

Mr. Burns, who said he had thought the matter had been resolved, was taken into custody for a second time on Thursday at the Peking airport as he and his family prepared to leave China on vacation. He was questioned at the airport for 15 hours, his home was searched and he was taken to a detention center early Friday morning.

Film from the trip was confiscated, and Chinese officials told the Times editors yesterday that the materials would not be returned.

Mr. McNally had left China to attend to business in Hong Kong before Mr. Burns was detained. Mr. Zhang was reported to have been questioned for a day and ordered to write a second self-criticism. His whereabouts were not known.

Mr. Burns who is 41 years old, was born in Britain and travels on a British passport. He became the Time's Peking bureau chief in 1984. He reported from China for The Globe and Mail of Toronto from 1971 to 1975, when he joined The Times. He has also served as The Time's bureau chief in Johannesburg and Moscow.

TEXT OF CHINA'S STATEMENT

(Following is the text of a Chinese statement on the case of John F. Burns, the Peking bureau chief of The New York Times, who was expelled yesterday. The statement was read in Peking by Xu Hui, an official of the State Security Bureau, to A. M. Rosenthal, executive editor of The Times, and Warren Hoge, the newspaper's foreign editor.)

The Burns-McNally case is a grave one. They disregarded the laws of China, deliberately violating the law governing aliens entering into and exiting from the People's Republic of China. They broke into a military restricted zone of our country and took numerous photographs of classified objects.

Such demeanor obviously constitutes an act of spying and intelligence gathering which will not be tolerated by any sovereign state and needless to say is also a regrettable incident.

We attach great importance to friendly relations between China and the United States and are loath to see such a relationship impaired.

Since the beginning of the Burns and McNally case, while upholding the sovereignty of the law of China, we have acted with the utmost restraint and have sought earnestly to deal with the matter satisfactorily within the limits permitted by law and restricted to the least possible publicity.

It is out of such considerations that we did not investigate and affix criminal responsibility of the two persons through judicial procedures, which we could have done according to the nature of their offense.

Thus the penalization has been greatly mitigated. We hope this is taken notice of by the U.S. side.

We have made a decision to expel Burns from the territory of the People's Republic of China today.

We will only release a brief news item, without making public the details of the case.

We will adhere to this attitude unless we are faced with a difficult situation, in which case we will have to act against our will.

MESSAGES FROM THE HOUSE

At 9:55 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5162. An act making appropriations for energy and water development for the fiscal year ending September 30, 1987, and for other purposes.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

S. 415. An act to amend the Education of the Handicapped Act to authorize the award of reasonable attorney's fees to certain prevailing parties, to clarify the effect of the Education of the Handicapped Act on rights, procedures, and remedies under other laws relating to the prohibition of discrimination, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

At 12:13 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House insists upon its amendment to the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, disagreed to by the Senate; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that the following are appointed as conferees: for consideration of all provisions (except section 157) of the Senate bill and all provisions of the House amendment and modifications thereof committed to conference: Mr. HAWKINS, Mr. FORD of Michigan, Mr. GAYDOS, Mr. BIAGGI, Mr. WILLIAMS, Mr. OWENS, Mr. HAYES, Mr. PERKINS, Mr. BRUCE, Mr. SOLARZ, Mr. DYMALLY, Mr. ECKART of Ohio, Mr. PENNY, Mr. ATKINS, Mr. JEFFORDS, Mr. GOODLING, Mr. COLEMAN, of Missouri, Mr. PETRI, Mrs. ROUKEMA, Mr. GUNDERSON, Mr. TAUKE, Mr. MCKERNAN, and Mr. HENRY.

Appointed as an additional conferee, for consideration of title V of the Senate bill and title XIII and section 1405 of the House amendment, and modifications thereof committed to conference: Mr. KILDEE.

Appointed as an additional conferee, for consideration of title III of the Senate bill and title XIV of the House amendment, and modifications thereof committed to conference: Mr. BARTLETT.

Appointed as additional conferees, from the Committee on Energy and Commerce, for consideration of sections 147 and 189 of the Senate bill, and modifications thereof committed to conference: Mr. DINGELL, Mr. SCHEUER, Mr. WAXMAN, Mr. LENT, and Mr. MADIGAN.

Appointed as additional conferees, from the Committee on Foreign Affairs, for consideration of title VI of the Senate bill, and modifications

thereof committed to conference: Mr. FASCELL, Mr. HAMILTON, Mr. MICA, Mr. BROOMFIELD, and Ms. SNOWE.

Appointed as sole conferees, from the Committee on the Judiciary, for consideration of section 157 of the Senate bill, and modifications thereof committed to conference, and as additional conferees for consideration of section 198 of the Senate bill, and modifications thereof committed to conference: Mr. RODINO, Mr. EDWARDS of California, Mr. GLICKMAN, Mr. FISH, and Mr. BROWN of Colorado.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4421) to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990 to carry out the Head Start, Follow Through, Dependent Care, Community Services Block Grant, and Community Food and Nutrition Programs, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that the following are appointed as conferees: for consideration of the House bill and all provisions (except title X) of the Senate amendment, and modifications thereof committed to conference: Mr. HAWKINS, Mr. KILDEE, Mr. MURPHY, Mr. OWENS, Mr. PERKINS, Mr. BRUCE, Mr. ECKART of Ohio, Mr. JEFFORDS, Mr. GOODLING, Mr. COLEMAN of Missouri, Mr. PETRI, and Mr. TAUKE.

Appointed as additional conferees, from the Committee on Energy and Commerce, for consideration of title III of the Senate amendment and modifications thereof committed to conference: Mr. DINGELL, Mr. MARKEY, Mr. SHARP, Mr. MOORHEAD, and Mr. DANNEMEYER.

Appointed as additional conferees, from the Committee on Education and Labor, for consideration of title X of the Senate amendment and modifications thereof committed to conference: Mr. HAWKINS, Mr. BIAGGI, Mr. WILLIAMS, Mr. HAYES, Mr. ECKART of Ohio, Mr. MARTINEZ, Mr. JEFFORDS, Mr. GOODLING, Mr. COLEMAN of Missouri, and Mr. BARTLETT.

From the Committee on the Judiciary: Mr. RODINO, Mr. EDWARDS of California, Mr. CONYERS, Mr. FISH, and Mr. SENSENBRENNER.

Appointed as additional conferees, from the Committee on Energy and Commerce, for consideration of section 1006 of the Senate amendment and modifications thereof committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. SCHEUER, Mr. LENT, and Mr. MADIGAN.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 5162. An act making appropriations for energy and water development for the fiscal year ending September 30, 1987, and for other purposes; to the Committee on Appropriations.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, July 25, 1986, she had presented to the President of the United States the following enrolled bill:

S. 415. An act to amend the Education of the Handicapped Act to authorize the award of reasonable attorney's fees to certain prevailing parties, to clarify the effect of the Education of the Handicapped Act on rights, procedures, and remedies under other laws relating to the prohibition of discrimination, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 565. A bill to direct the Secretary of Agriculture to convey, without consideration, to the town of Payson, AZ, approximately 31.14 acres of Forest Service lands (Rept. No. 99-339).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment:

S. 1766. A bill to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr. (Rept. No. 99-340).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with amendments:

S. 1963. A bill to direct the Secretary of the Interior to convey certain interests in lands in Socorro County, NM, to the New Mexico Institute of Mining and Technology (Rept. No. 99-341).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment:

H.R. 1593. A bill to direct the Secretary of the Interior to release on behalf of the United States certain restrictions in a previous conveyance of land to the town of Jerome, AZ (Rept. No. 99-342).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

H.R. 1740. A bill to direct the Secretary of the Interior to release a reversionary interest in certain lands in Orange County, FL, which were previously conveyed to Orange County, FL (Rept. No. 99-343).

H.R. 1795. A bill to exempt certain lands in the State of Mississippi from a restriction set forth in the act of April 21, 1806 (Rept. No. 99-344).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. METZENBAUM (for himself, Mr. HEINZ, Mr. BYRD, Mr. DURENBERGER, Mr. GLENN, and Mr. SPECTER):

S. 2690. A bill to prohibit certain companies who have filed for bankruptcy from discontinuing medical and life insurance benefits to retirees; read the first time.

By Mr. MITCHELL (for himself, Mr. HOLLINGS, and Mr. BENTSEN):

S. 2691. A bill to allow Federal judges to receive the same by pay increases as are granted all other Federal employees; to the Committee on the Judiciary.

By Mr. McCLURE (by request):

S. 2692. A bill to provide for the payment of interest on certain lease revenues paid to the Secretary of the Interior, to eliminate certain unnecessary reporting requirements, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ARMSTRONG:

S.J. Res. 379. Joint resolution to designate the Fallen Fire Fighters Statue and Plaza in Colorado Springs, CO, as the National Fire Fighters Memorial; to the Committee on Rules and Administration.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BUMPERS (for himself and Mr. PRYOR):

S. Res. 453. Resolution expressing the sense of the Senate that the Secretary of Agriculture maintain the $5.02 per bushel loan rate for soybeans; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. RIEGLE:

S. Res. 454. Resolution urging the full restoration in Eastern Europe of the Byzantine Rite Catholic Church and of freedom of religion for the people of all captive nations, and for other purposes; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. METZENBAUM (for himself, Mr. HEINZ, Mr. BYRD, Mr. DURENBERGER, Mr. GLENN, and Mr. SPECTER):

S. 2690. A bill to prohibit certain companies who have filed for bankruptcy from discontinuing medical and life insurance benefits to retirees; read the first time.

PROVISION OF CERTAIN BENEFITS TO RETIREES

● Mr. GLENN. Mr. President, I am joining with several of my colleagues in sponsoring legislation to require the LTV Corp. to resume providing health and life insurance coverage for retirees, unless and until a court of competent jurisdiction tells them to cease. I believe this legislation is necessary in order to protect the 78,000 LTV retirees nationwide, including 31,000 retirees in Ohio, whose benefits were abruptly terminated July 17 when the corporation filed their chapter 11 petition.

The LTV Corp. believes that, when it filed under chapter 11, it was legally required to treat retirement health and life insurance benefits like all other obligations, and suspend payment. Under our bill, they would still

be able to present this argument to the court; I hope that the court would rule expeditiously on this very important legal issue. Most important of all, the LTV retirees would have insurance coverage until the matter is resolved by the court.

We do not have figures on LTV's financial condition, so we do not know how much of a burden this bill would impose. The legislation, however, does allow the corporation to go into court and show that it simply cannot pay health and life benefits to retirees without going into chapter 7; that is, liquidation of the corporation. Obviously, if LTV believes that payment of these benefits would force it into chapter 7, then it should immediately apply to the bankruptcy court for relief. As an example of such quick relief already granted, I note that LTV obtained permission from the bankruptcy court within 1 day for its active employees; I assume that it could obtain equally rapid relief in a bankruptcy court in other procedures covered by this bill.●

By Mr. MITCHELL (for himself, Mr. HOLLINGS, and Mr. BENTSEN):

S. 2691. A bill to allow Federal judges to receive the same by pay increases as are granted all other Federal employees; to the Committee on the Judiciary.

PAY TREATMENT OF FEDERAL JUDGES

Mr. MITCHELL. Mr. President, today I am introducing legislation to correct what I consider to be unfair treatment for Federal judges that is directly attributable to an amendment added to a continuing resolution passed in December 1981. I am pleased to be joined in this effort by Senator HOLLINGS and Senator BENTSEN.

In 1975, through Public Law 94-82, the Executive Salary Cost of Living Adjustment Act, Congress included within annual payroll comparability adjustment machinery embodied in title 5, United States Code, a group of government officers not previously covered by that law: the highest ranking officers of the executive branch, Members of the House of Representatives and Senators, Justices of the Supreme Court, and U.S. Courts of Appeals and district courts judges. That action was taken primarily to remove adjustments in salaries for Members of Congress from the political arena.

I think we can all agree that application of the 1975 purpose to Members of Congress has not worked at all. Year after year, we have struggled with the question of exempting ourselves from participation in the annual adjustment arrangement.

In our efforts to fashion exemptions for ourselves, we have often rendered complex a question which need never have been complicated and we have dragged our Federal jurists along with us. Our actions eventually spawned Supreme Court consideration of claims by individual Federal judges who believed themselves legally entitled to salary adjustments denied them by our efforts to exempt ourselves.

In its opinion in *U.S.* v. *Will*, 449 U.S. 200 (1980), the Court awarded judges two of four contested adjustments because article III of the Constitution expressly prohibits any reduction in Federal judicial salaries. In response to the decision, many individuals, who misread the Court's opinion, said that judges had conferred upon themselves a "backdoor salary increase."

That characterization is inaccurate. It was in that spirit, however, that I believe Congress approved section 140, Public Law 97-2, which provides that the salaries of Federal judges may not be increased except as specifically authorized by an Act of Congress.

As the Comptroller General has several times interpreted section 140, Public Law 97-92, judges, and judges only, are singled out for special treatment.

Judges, and judges only, are precluded from the operation of statutory provisions applicable to all others employed by the Federal Government.

Judges, and judges only, have to overcome the hurdle of affirmative congressional action that no other Federal employee need face.

We have now arrived at a point where Federal judges, who have agreed to serve for their lifetimes, have been singled out as a disadvantaged class in terms of application of the law. Yet, our Constitution clearly contemplates the insulation of judges from that type of coercive discriminatory treatment. That is precisely what article III was intended by our Founding Fathers to prevent. When salaries payable to our Federal judges become the stuff of political manipulation, we threaten the independence of the Federal judiciary which we purport to support.

I have examined the history of efforts by the Administrative Office of the U.S. Courts and the Comptroller General's Office to avoid potential problems inherent in section 140 of Public Law 97-92. I am convinced that the dangers in section 140 were not fully comprehended in 1981.

Congress has twice recognized the basic unfairness of denying to Federal judges a compensation increase afforded all other general schedule employees. Pursuant to section 2207, Public Law 98-369, Federal judges were given a 4-percent increase that earlier had been given Federal employees. In addition, Federal judges received a 3.5-percent comparability increase retroactively effective January 1985 pursuant to Public Law 99-88.

In February, the Comptroller General ruled for the fourth time that section 140 is permanent legislation and that Federal judges are not entitled to pay increases unless specifically authorized by an Act of Congress.

In reaching that decision, however, the Comptroller General took note of the two previous pay increases granted the Federal judiciary and said that, "* * * it is doubtful Congress intended to deny Federal judges the same comparability increases provided to other Federal employees * * * [T]herefore, we strongly urge that the Congress clarify this situation by amending the statutes governing pay for Federal judges and repeal section 140 to permit Federal judges to receive the same increases provided to other high-level executive and legislative officials."

To assist in the consideration of such equitable change, the Comptroller General submitted proposed language to Congress. The legislation I am introducing today is based on the Comptroller General's suggested language.

The legislation would repeal section 140. Any so-called "backdoor" increases for Federal judges would be prevented by delaying the judicial increases for 30 days following the effective date of pay increases for other high-level officials, but making the judges' pay increases retroactive to that effective date.

Before assuming my current office, I was a Federal judge in Maine. Perhaps because I have served as a Federal judge, I heard, directly or indirectly, from or about many judges all over this country. What I began to see ever more clearly on the part of Congress vitally affecting their security and their ability to plan for their families.

So intense is this focus of apprehensiveness becoming that we, perhaps unintentionally, are well along toward achieving precisely what the Constitution seeks to avoid: a judiciary in fear of a retributive Congress.

If we fail to correct this situation quickly, we may see the judiciary lose the services of those individuals who serve it best: those who will not permit their performance in office or their personal integrity to be compromised or questioned.

The bill I introduce today achieves those two commonsense objectives. It expressly repeals section 140, Public Law 97-92, which is the immediate source of the dilemma and allows Federal judges to receive the same pay increases offered other Federal employees, after a delay of 30 days, retroactive to the same date.

I urge Senators to support this commonsense remedy to this troublesome problem.

By Mr. McCLURE (by request):

S. 2692. A bill to provide for the payment of interest on certain lease revenues paid to the Secretary of the Inte-

rior, to eliminate certain unnecessary reporting requirements, and for other purposes; to the Committee on Energy and Natural Resources.

PAYMENT OF INTEREST ON CERTAIN LEASE REVENUES

● Mr. McCLURE. Mr. President, pursuant to an executive communication referred to the Committee on Energy and Natural Resources, at the request of the Department of the Interior, I send to the desk a bill to provide for the payment of interest on certain lease revenues paid to the Secretary of the Interior, to eliminate certain unnecessary reporting requirements, and for other purposes.

Mr. President, this draft legislation was submitted and recommended by the Department of the Interior, and I ask unanimous consent that the bill, and the executive communication which accompanied the proposal from the Assistant Secretary be printed in the RECORD.

S. 2692

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

SECTION 1. As used in this Act, the term—

(a) "Secretary" means the Secretary of the Interior or his designee;

(b) "Distributee" means any State, Indian tribe, Indian allottee, Alaska native corporation under any lease which the Secretary administers for such corporation, or any other recipient to whom any portion of mineral revenues is paid or distributed pursuant to applicable law; and

(c) "Mineral revenues" means royalty, rental, bonus, net profit share, proceeds of sale, or any other payment under or in connection with any lease or leasing law administered by the Secretary for exploration or development of oil, gas, coal, any other mineral, or geothermal steam.

SEC. 2. Beginning on the date of enactment of this Act, the Secretary shall pay interest on any refund of any monies that were paid to the Secretary as mineral revenues, pending any administrative appeal or judicial review thereof, and that are determined not to be due or owing to the United States or to any distributee. Any prohibition against payment of interest contained in section 10(a) of the Outer Continental Shelf Lands Act of 1953, (43 U.S.C. 1339(a)), shall not apply to any refund of monies to which this Act applies.

SEC. 3. Any interest which the Secretary pays pursuant to the first section of this Act shall be paid at the rate equal to the rate determined by the Secretary of the Treasury for interest payments under section 12 of the Contract Disputes Act of 1978, 41 U.S.C. 611, from the date of the Department of the Interior received the funds until the date of refund. Such sums as may be necessary to pay interest under the provisions of this Act or to pay refunds not recovered pursuant to section 4 and 5 of this Act are hereby authorized to be appropriated from monies received from sales, bonuses, royalties (including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982), and rentals of the public lands under the Mineral Lands Leasing Act of 1920 as amended, and the Geothermal Steam Act of 1970, which are not payable to a State or to the Reclamation Fund, prior to the crediting of such funds to miscellaneous receipts of the Treasury.

SEC. 4. Except as provided in section 5 of this Act, if any monies referred to in the first section of this Act are paid or distributed pursuant to applicable law to any distributee before the determination that they are not due or owing, the distributee shall repay the amount previously distributed together with the interest paid thereon pursuant to this Act. In addition to any other method authorized by law, the Secretary may effect any such repayment by making deductions from any subsequent payment to such distributee or from revenues derived from any leases in which such distributee has an interest.

SEC. 5. The Secretary may provide by rule for exemptions from any provisions of section 4 of this Act where repayment or recovery of any amount distributed, or the interest thereon, would be impractical or uneconomical

SEC. 6. Section 10(b) of the Outer Continental Shelf Lands Act (43 U.S.C. 1339(b)) is hereby repealed.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 26, 1986.

Hon. GEORGE BUSH,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is a draft bill, "To provide for the payment of interest on certain lease revenues paid to the Secretary of the Interior, to eliminate certain unnecessary reporting requirements, and for other purposes."

We recommend that the bill be referred to the appropriate Committe for consideration, and that it be enacted.

This draft bill would enable the Secretary to pay interest on amounts that are paid by oil, gas and mineral or other geothermal lessees and royalty payors and that are later determined not to be owing, and therefore are refunded. Under the current regulations of this Department, royalty payors who contest a particular assessment or royalty payment obligation are required to pay the disputed amounts to the Secretary of the Interior through the Minerals Management Service (MMS) pending administrative appeal or judical review. Sometimes, the review results in a determination that all or some portion of the amount paid should be refunded to the royalty payor. Under existing law, however, the Secretary cannot pay interest on that refund for the period that the Federal government has held the money.

The Department has concluded that it is only fair to pay appropriate interest on the amount refunded for the period of time during which the disputed amount has been held by the Federal Government. The interest rate provided in section 3 of our draft bill is one that corresponds closely to the time value of the funds, and is not punitive.

Our proposal is intended to cover all leasing operations under any law or lease administered by the Secretary for development of any subsurface mineral or energy resource, except water. Likewise, it applies to any refunds made once the provision is enacted, regardless of when the monies were received.

Our proposal also gives the Secretary the authority to recoup the funds necessary to pay interest on the required refunds. Under current law, substantial portions of onshore royalty revenues are distributed to other payees after receipt by the Secretary—for example, to the States under the Mineral Lands Leasing Act (30 U.S.C. 191), and to Alaska Native Corporations in the event of partial lease assignment under the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g)). Of course, all funds derived from leases on Indian lands are paid to the appropriate Indian tribe or Indian allottee, and all funds from leases entirely assigned to an Alaska Native Corporation are paid to it. In a few cases, amounts paid which are the subject of an appeal or dispute are placed in a suspense account and are not distributed until the matter is resolved. In most cases, the MMS distributes the funds received to the appropriate distributees, or payments are made directly to Indian or Alaska native recipients, even though an appeal is pending.

If funds have been distributed or paid, then the ultimate recipient, and not the Federal Government, has had the benefit of the use of the funds. Therefore, section 4 of the draft bill provides that the recipient shall repay the portion of the refund that corresponds to the prior distribution made to that recipient, together with the portion of the interest paid with the refund that corresponds to such distribution. If this provision is not included in the draft bill and the interest on the refund were to come from Government funds while the recipient has had the use of the money, the recipient would receive a windfall at taxpayers' expense.

Section 4 of our draft bill would also enable the Secretary to recover the amount due through reductions in future lease revenue payments. However, in the event that this method of recoupment is not possible or practical, the recipient would remain liable to the Federal Government for its portion of the amount refunded. Finally, section 5 of draft bill would authorize the Secretary to provide exemptions from the provisions of section 4 where repayment or recovery of amounts already distributed would be impractical or uneconomical.

Section 6 of the draft bill would repeal section 10(b) of the Outer Continental Shelf Lands Act (OCSLA), which requires that refunds or credits of overpayments on OCS leases be reported to the Congress, and that the Congress have a 30-day review period before the refund or credit is approved. During the 32 years that this Department has been reporting this information, the Congress has seldom questioned and never denied a single refund or credit.

The MMS expects to receive 2,000 requests for refunds or credits during this fiscal year. However, the implementation of a recent Solicitor's opinion, could cause that number to increase by as much as 10 times. That opinion states that virtually every refund or credit, no matter how small, should go through the section 10(b) reporting process, even if it is caused by an MMS action. MMS spends approximately $100 processing each claim and preparing the necessary report to the Congress.

Not only is the overpayment reporting requirement administratively burdensome and costly to the Federal Government, but it is also unfairly costly to our OCS payors. The payors receive no interest during the four months to two years they are without the use of their funds while processing and review of these reports is being done. Accounting cycles are interrupted, accounting periods cannot be closed out, and payors cannot settle with other interest owners. Because royalty payments are usually based on preliminary information, and then ad-

justed as more accurate information becomes available, the payors cannot avoid the overpayment situation.

There is little evidence that the section 10(b) process yields any revenue in addition to that which would be detected under the MMS's ongoing audit strategy. Therefore, we recommend that this requirement, which will become far more burdensome and costly in the near future, be eliminated.

The Office of Management and Budget has advised that submission of this proposed legislation is in accord with the program of the President.

Sincerely,

——— ———,

Assistant Secretary.●

By Mr. ARMSTRONG:

S.J. Res. 379. Joint resolution to designate the Fallen Fire Fighters Statue and Plaza in Colorado Springs, CO, as the National Fire Fighters Memorial; to the Committee on Rules and Administration.

NATIONAL FIRE FIGHTERS MEMORIAL

● Mr. ARMSTRONG. Mr. President, today I am introducing legislation to designate a national memorial for firefighters who have given their lives in order to protect the lives and property of their fellow citizens. The "Fallen Fire Fighters Memorial" is currently being constructed in Colorado Springs, CO, to represent professional and volunteer firefighters in every State.

"National memorial" status for the memorial would bestow much deserved recognition to the highly dedicated professional and volunteer firefighters, whose motto is "We Fight for Life." With nearly 1,200 firefighters' lives claimed since 1977 alone, it is no wonder firefighting is considered the No. 1 hazardous occupation. The modern firefighter, though, is not just fighting fire, but must also respond to hazardous material accidents and a variety of medical emergencies and rescue operations. A permanent national memorial will remind us forever of the sacrifices made by firefighters in every community throughout the Nation.

This legislation and H.R. 3646, the companion measure in the House, represent the culmination of efforts begun by professional firefighters in Colorado Springs in 1984 and endorsed by the International Fire Fighters Association last year to build and dedicate a memorial to the large number of firefighters who die each year.

This legislation gives Federal recognition to the "Fallen Fire Fighters Memorial" as a national memorial, but does not authorize Federal administration. Thus, there is no cost to the Federal Government. The parks and recreation department of the city of Colorado Springs has donated land for the memorial and surrounding plaza and will also assume the care and utility costs of the plaza. The memorial plaza will be paid for by foundation grants and architectual and design work has been donated.

Firefighters from around the Nation will pay for the statue itself and have already started donating money, conducting community projects, auctions, and other fundraising activities. Mr. Gary Coulter won the competition to sculpt the statue and entitled it "Somewhere Everyday" and recently began work on the mold.

When completed, the Colorado firefighters hope to illuminate the memorial and fly the American flag at all times. Upon notification by the International Association of Fire Fighters of a firefighter's death, the American flag will be flown at half mast, and an honor guard has been formed for such occasions. The flag flown at half mast will be presented to the widow or other close relative of the fallen firefighter.

I urge my colleagues to endorse this legislation and urge its quick adoption by the Senate.●

SENATE RESOLUTION 453—RELATIVE TO THE LOAN RATE FOR SOYBEANS

Mr. BUMPERS (for himself and Mr. PRYOR) submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 453

Whereas soybeans production and processing are two of the fastest growing sectors in agriculture, with production having increased seven fold over the last thirty years; and

Whereas soybeans rank number two in value in the United States for all crops grown, and nearly fifty percent of all soybeans grown in the United States are produced on farms harvesting 50 acres or less; and

Whereas one-fifth of all U.S. cropland is planted to soybeans, and soybeans account for over 30 percent of all land in production in Appalachia, over 40 percent in the southeast, and over 50 percent in the delta states; and

Whereas the United States is the leading exporter of soybeans, exporting over 40 percent of the soybean crop each year, and over 15 percent of the value of all U.S. agricultural exports is due to the sale of soybeans, oil, and meal; and

Whereas it is widely speculated that the Secretary of Agriculture will announce a new formula price support loan of $4.77 bushel for soybeans in August 1986, and that required budget cuts could push actual loan prices lower for 1986 soybeans; and

Whereas trading of soybeans is currently hovering near the $5.02 loan rate, USDA soybean acreage figures for 1986 were higher than predicted by trade analysts thus putting further pressure on prices, and export sales are slow with foreign buyers anticipating lower soybean prices with the expected lowering of the loan rate; and

Whereas United States soybean stocks are likely to remain near the 1985-1986 record level of 14 million metric tons (515 million bushels) and world soybean stocks are forecast to reach a record 23 million metric tons, and the anticipation of continued large supplies led the Secretary to announce a 12-month extension of 1985 price support loans in order to encourage continued on-farm storage, thereby relieving pressure on commerical storage; and

Whereas although world soybean exports are forecast to show a slight gain, United States soybean exports are forecast to remain near current levels during 1986-1987, and Brazil and Paraguay are expected to capture the small amount of projected gain; and

Whereas although drought conditions affect areas of the south, currently less that 5 percent of the United States soybean production lies within the drought area, and this has no significant impact on prices; and

Whereas soybeans are an important crop grown on 550,000 farms in the United States, and a drop in prices, whether brought on by higher than expected production, level exports sales, a decrease in the loan rate, or a combination of these, will have a serious negative impact on net farm income; and

Whereas in the Food Security Act of 1985, Public Law 99-198, under Section 801, the Secretary is directed to establish the price support rate for soybeans at $5.02 per bushel for 1986 and 1987, and the Secretary, at his discretion, may reduce the support rate no more than 5 percent per year nor below $4.50 per bushel in an effort to maintain domestic and export sales; and

Whereas under section 801(2)(i)(3)(A) the Secretary may authorize the use of a marketing loan to assist in the maintenance of the "competitive relationship of soybeans and domestic and export markets . . .".

Therefore, It is the sense of the Senate, that:

(1) the Secretary of Agriculture shall institute a marketing loan program for soybeans as authorized in the 1985 Food Security Act, and

(2) the Secretary shall maintain the formula of price support loan rate for soybeans at $5.02 per bushel.

● Mr. BUMPERS. Mr. President, today, I am introducing along with Senator PRYOR a resolution calling on the Secretary of Agriculture to maintain the formula price support loan rate for soybeans at $5.02 per bushel, and to implement a marketing loan program for soybeans under the discretionary provided in the Food Security Act of 1985. This resolution comes at a time of almost universal speculation that the Secretary will reduce the loan rate for soybeans the maximum extent allowed by that law.

Unfortunately for soybean producers in 1986, the establishment of the price support loan level will effectively set the market price for beans. And, as we all know, soybean producers have no income protection mechanism in the way of target prices to help offset a drop in prices. To make matters worse, we broke faith with soybean producers during the debate of the 1985 farm bill by failing to maintain the one-time payment included in S. 1714. Although at the time I decried the payment as a Faustian deal—a less than even quid pro quo for certain lower price supports—I believe one of the greatest failings of the 1985 Food Security Act was the deletion of the soybean payment while at the same

time retaining the Secretary's authority to lower the loan rate substantially.

Now, soybean producers face the reduction of the loan rate to the formula loan level of $4.77 per bushel, a rate that may be further lowered through required budget cuts. Market reactions to the expected loan rate drop, a drop which can't be announced until August, have caused futures prices to dip below $5 per bushel, and cash market prices through July have hovered near the $5.02 loan rate plus carrying charges.

The expected decrease in the loan price will cause a serious decline in net farm income for soybean producers without providing a significant boost to export sales. According to the USDA, the world forecast for oil seed production in 1986-87 is 196.5 million metric tons with the non-U.S. share to rise 9 million metric tons from last year to a record production of 137.9 million metric tons.

World soybean production will decrease slightly, due to the drop in production in the United States, from last year's record 96.12 million metric tons to this year's projection of 95.9 million metric tons. But foreign soybean production is forecast to reach a record 44.2 million metric tons, primarily due to production increases in Brazil, Paraguay, and China.

World soybean crush is forecast at 78.3 million metric tons, an increase of 2.3 million metric tons from last year, and an increased crush in the Southern Hemisphere will help displace U.S. oil and meal exports. Large global supplies of other oils, particularly palm oil, could push U.S. exports of soybean oil below last year's level of 570,000 million metric tons, although many analysts project that such export sales will remain at or near last year's level. World soybean exports are predicted to show a slight gain, but the USDA projects that Brazil and Paraguay will capture any increase in sales.

This poor forecast was developed by the USDA even with the Department's internal understanding as to what measures will be taken to boost soybean, oil and meal export sales. Therefore, the implementation of a marketing loan program would aid the U.S. soybean industry in effectively competing with foreign bean, oil and meal export sales, where the conventional response of simply lowering the loan rate is projected to fail. And it would slow the importation of foreign palm and rapeseed oils into the United States that are displacing normal U.S. soybean sales.

The pressure on prices has also come from internal sources. Although U.S. production is projected to decline from last year's production of 57.1 to 51.7 million metric tons, this level represents a significant increase from trade expectations. The USDA acreage report showing soybeans planted on 61.8 million acres in the United States also pressured weak soybean prices.

The pressure on soybean sales was further complicated with the notice published in the Federal Register on June 17, 1986, that the USDA intends to implement a temporary program to encourage the use of grain for fuel ethanol. Market analysts believe that this USDA program could displace up to $400 million in soybean, cottonseed, and sunflower seed sales. Under the proposed program, ethanol producers using corn as a feedstock will receive one bushel of CCC-owned grain for every 2.5 bushels purchased through September 30, 1986. This program is projected to produce 703,000 metric tons of corn gluten meal, 3.015 million metric tons of corn gluten feed, and 750 million pounds of corn oil as a byproduct from the manufacturing process. The subsidized production of these byproducts now places corn oil production competitively with production of other oils.

The USDA discounts any concern expressed by the soybean industry by claiming many soybean producers also grow corn and, therefore, money is being switched from one pocket to another. This ignores a significant segment of soybean producers who do not grow corn. The resulting increase in corn byproduct will unquestionably put further pressure on soybean prices. Unfortunately, soybean farmers who don't grow corn will not have a setoff nor will they have PIK certificates or deficiency payments to help cushion the price shock.

Of course, it should be noted that a drought is currently damaging soybean production in the South and Southeast, and some market watchers are expecting an increase in prices due to a resultant decrease in supply. However, less than 5 percent of the Nation's soybean production is located in the affected areas, and the drought would have to extend to significant areas of the delta and the corn States before most analysts believe prices will be affected, a condition not currently expected.

For these reasons and others, I do not believe that a decrease in the price support level of soybeans is advisable or warranted. Export sales can be better encouraged through the implementation of a marketing loan while net farm income can be better protected by maintaining the price support loan at $5.02. Under section 801 of the Food Security Act of 1985, the Secretary has the discretion to accomplish both of these necessary ends. If the Secretary refuses, it is my intention to pursue legislative changes in the soybean program.●

SENATE RESOLUTION 454—RELATIVE TO RELIGIOUS FREEDOM IN CAPTIVE NATIONS

Mr. RIEGLE submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 454

Whereas the Soviet Union, Romania, Czechoslavakia, and virtually all other Soviet-bloc Eastern European countries are parties to the Final Act of the Conference on Security and Cooperation in Europe and the Universal Declaration of Human Rights;

Whereas the Soviet Constitution provides that religious freedom is guaranteed to all and that anyone is free to adhere or not to adhere to a religious creed and that freedom of worship is guaranteed;

Whereas the Romanian Constitution provides for freedom of conscience and freedom of religion, and Romanian law guarantees full religious freedom to all citizens and states that no one may be persecuted for religious beliefs;

Whereas more than four million Ukrainians, 1,200,000 Romanians, and millions of other Eastern Europeans belong to the Byzantine Rite "Uniate" Catholic Church and cherish the principles of religious freedom;

Whereas the Government of Romania (through Decree 358 of December 1, 1948) and the Government of the Soviet Union suppressed the Byzantine Rite Catholic Church by forcing a merger with the Orthodox Church and imprisoned (1) Ukrainian Archbishop Metropolitan (Cardinal) Josyf Slipyi and all members of the Byzantine Catholic hierarchy, (2) Czechoslavakian Bishop Paul Goydych and all members of the Byzantine Catholic hierarchy, and (3) Romanian Cardinal Julius Hossu and all bishops, and members of the Byzantine Catholic hierarchy;

Whereas the Byzantine Rite Catholic Church is unique and is tied by church law to the Pope in Rome who is recognized as head of the church;

Whereas the Communist-controlled governments of the Soviet Union, Romania, and other Warsaw Pact nations have systematically sought to annihilate organized religions, especially the Byzantine Rite Catholic Church, by every possible means, including the imprisonment and or death of the church hierarchy—the only church leaders with authority to make decisions for the faithful;

Whereas no ecclesiastical document with canonical value exists calling for the dissolution of the Byzantine Rite Church, and no bishops have endorsed or agreed to any merger with the Orthodox Church, choosing instead intense suffering, persecution, and death at the hands of their captors;

Whereas even after brutal torture, intimidation, imprisonment, and threats against their families less than 40 of the considerably more than 2,000 priests in Romania submitted to the pressure of the Government of Romania and even so continue to practice their faith;

Whereas 142 Byzantine Rite Catholic monasteries and convents, 4,119 churches and chapels in Ukraine, and countless other such facilities and Church properties were seized throughout Eastern Europe, including the Romanian Catholic cathedral at Blaj;

Whereas the Byzantine Rite and Latin Rite Catholic faithful in Ukraine, Romania, Czechoslavakia, and throughout Eastern Europe continue to profess and practice

their faith despite a history of persecution which includes torture, imprisonment, harassment, and threats;

Whereas Byzantine Rite Catholic bishops and priests continue to be ordained and to serve the spiritual needs of the faithful in catacomb-like secrecy;

Whereas although the Soviet Union and its satellites wish the world to think that there are no Byzantine Rite Catholics within their borders, millions remain faithful to the Holy See and are conscientious, practicing Catholics and have asked their breathren in the West to plead for their religious freedom and the restoration of their churches; and

Whereas the Government of the Soviet Union and the governments of other Soviet-bloc Eastern European countries refuse to allow the restoration of the Byzantine Rite Catholic Church on an equal basis with other recognized religions and refuse to restore all confiscated property of the Byzantine Rite Catholic Churches: Now, therefore, be it

Resolved, That (a) the Senate hereby recognizes the continuing right of the people of Ukraine, Lithuania, Romania, Czechoslavakia, and all other Soviet-bloc Eastern European countries to have freedom of religion.

(b) The Senate hereby deplores the refusal of the Soviet Union and Romania to officially recognize the Byzantine Rite Catholic Church and the refusal of the Soviet Union, Romania, and Czechoslavakia (which allowed the restoration of the Byzantine Rite Church in 1968) to restore all Church properties and possessions.

(c) It is the sense of the Senate that the President should instruct the United States delegation to the Review Meeting of the Conference on Security and Cooperation in Europe, scheduled for November 4, 1986, to press for the full restoration of the Byzantine Rite Catholic Church and freedom of religion for the people of all the Captive Nations before the world community.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

● Mr. RIEGLE. Mr. President, today I am pleased to introduce this resolution concerning the absence of religious freedom in the nations of Eastern Europe. This type of repression is in direct violation of one of the key principles of the Helsinki Final Act.

As Americans who live in a land of great liberty, we must provide hope for freedom to the oppressed throughout the world. We must speak for those who have been brutally silenced and who will not otherwise be heard.

Through this resolution, the Senate has an opportunity to show strong support for the millions of individuals behind the Iron Curtain who are denied the freedom of religion. In particular, the Byzantine Rite Catholic Church in both Ukraine and Romania has suffered unusually brutal repression. Although the church in Czechoslovakia has been restored in principle, both the clergy and the faithful continue to be persecuted for their religious beliefs.

We do not accept this denial of religious beliefs. We will never accept it, and we remain dedicated to changing the Soviet Union's intolerable practice of religious repression.

The Communist governments in these countries would have the world believe that these people have willingly cast off the values and beliefs so vital to them. This is not true. We must set the record straight and make clear to the world that the church, if allowed to breathe, will flourish behind the Iron Curtain. The people of these captive nations deserve the right to practice their religions, and we must do all we can to safeguard that right.

In the United States we guarantee the right of all individuals to practice religious beliefs in accordance with the dictates of their conscience. This fundamental principle is essential to the preservation of human dignity.

I therefore urge my colleagues to join me in cosponsoring this resolution which encourages our own Government to aggressively promote the cause of the church in these captive nations. Together we must take up the fight of the courageous people of the captive nations until they can once again freely profess their religious beliefs.●

ADDITIONAL COSPONSORS

S. 477

At the request of Mr. ANDREWS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 477, a bill to enhance rail competition and to ensure reasonable rail rates where there is an absence of effective competition.

S. 1937

At the request of Mr. STEVENS, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 1937, an original bill to restrict smoking to designated areas in all U.S. Government buildings.

S. 2224

At the request of Mr. HUMPHREY, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 2224, a bill to limit the uses of funds under the Legal Services Corporation Act to provide legal assistance with respect to any proceeding or litigation which relates to abortion.

SENATE CONCURRENT RESOLUTION 136

At the request of Mr. GRASSLEY, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Concurrent Resolution 136, a concurrent resolution entitled "Volunteers are the Importance of Volunteerism."

SENATE CONCURRENT RESOLUTION 148

At the request of Mr. SYMMS, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of Senate Concurrent Resolution 148, a concurrent resolution expressing the sense of Congress concerning the nuclear disaster at Chernobyl in the Soviet Union.

SENATE RESOLUTION 381

At the request of Mr. DECONCINI, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Resolution 381, a resolution expressing the sense of the Senate with respect to United States corporations doing business in Angola.

AMENDMENTS SUBMITTED

STATUTORY INCREASE IN PUBLIC DEBT LIMIT

D'AMATO AMENDMENT NO. 2230

(Ordered to lie on the table.)

Mr. D'AMATO submitted an amendment intended to be proposed by him to the joint resolution (H.J. Res. 668) increasing the statutory limit on the public debt; as follows:

At the end of the amendment, add the following:

TITLE II—MONEY LAUNDERING

SEC. 201. SHORT TITLE.

This act may be cited as the "Comprehensive Money Laundering Prevention Act".

SEC. 202. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding at the end thereof the following new section:

"§ 5324. Structuring transactions to evade reporting requirement prohibited

"No person for the purpose of evading the reporting requirements of section 5313(a) shall—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

"(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.".

(b) CLERICAL AMENDMENT.—The table of section for chapter 53 of title 31, United States Code is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirement prohibited.".

SEC. 203. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS.

(a) FAILURE TO REPORT EXPORT OR IMPORT OF MONETARY INSTRUMENT.—The first sentence of section 5317(c) of title 31, United States Code (relating to seizure and forfeiture of monetary instruments in foreign commerce) is amended to read as follows: "If a report required under section 5316 with respect to any monetary instrument is not filed or, if filed, contains a material omission or misstatemennt of fact, the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized

and forfeited to the United States Government.".

(b) SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS INVOLVED IN STRUCTURED TRANSACTION VIOLATION.—Section 5317 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS INVOLVED IN STRUCTURED VIOLATION.—

"(1) IN GENERAL.—Any United States coins or currency (or such other monetary instrument as the Secretary of the Treasury may by regulation prescribe) involved in any violation of section 5313(a) or 5324 and any interest in property, including a deposit in a financial institution, traceable to such coins or currency (or other monetary instrument) may be seized and forfeited to the United States Government in the manner provided in subchapter C of chapter 75 of the Internal Revenue Code of 1954.

"(2) EXCEPTION.—Paragraph (1) shall not apply if the owner of the property or the interest in property otherwise subject to seizure and forfeiture under paragraph (1) is—

"(A) a bona fide purchaser for value who took without notice of the violation;

"(B) a depository institution (as such term is defined in section 19(b)(1)(A) of the Federal Reserve Act); or

"(C) a financial institution regulated by the Securities and Exchange Commission.

"(3) HOLDS ON PROPERTY HELD BY FINANCIAL INSTITUTIONS.—Any United States coin or currency (and such other monetary instruments as the Secretary of the Treasury may by regulation prescribe) and any other interest in property, including any deposit, which is in the possession or custody of any financial institution shall be held by such financial institution for a period of 15 days upon receipt of notice (in such form and in such manner as the Secretary's shall prescribe) from the Secretary of the Secretary's intent to seize such coin or currency, instrument, or other property under this subsection. The Secretary upon the issuance of a hold order: must disclose the following information to the institution subject to the hold order: the name, account or account numbers if known, taxpayer identification number, and such other information as may be necessary to locate the account or accounts or other property held by the institution.

"(4) SEIZURE OF PROPERTY HELD BY FINANCIAL INSTITUTIONS.—Upon a showing by the Secretary of the Treasury that there is probable cause to believe that any coin or currency, monetary instrument or other interest in property, including any deposit, which is in the possession or custody of any financial institution is subject to forfeiture under paragraph (1), the district court of the United States for the district in which such property is held may issue an order authorizing the Secretary to seize such property

"(5) EXEMPTION FROM LIABILITY FOR IMPOSITION OF HOLD.—The United States, any agency, department, or employee of the United States, any financial institution, and any officer, director, or employee of a financial institution shall be exempt from any liability to any other person which may otherwise arise for interest, damages, or any other type of compensation or relief, including injunctive and declaratory relief, in connection with or as a result of a hold being placed upon any property under paragraph (3).

"(6) LIABILITY OF FINANCIAL INSTITUTION TO THE UNITED STATES FOR FAILURE TO COMPLY.—Any financial institution which—

"(A) receives a notice under paragraph (3) with respect to any property or interest in property; and

"(B) after receipt of such notice, fails or refuses to hold such property or interests without reasonable cause until the earlier of—

"(i) the expiration of the 15-day period described in such paragraph; or

"(ii) the presentation by the Secretary of a court order issued under paragraph (4),

shall be liable to the United States for an amount which is equal to the value of the property or interests which such institution failed or refused to hold.".

(c) TECHNICAL AND CONFORMING AMENDMENTS TO INTERNAL REVENUE CODE OF 1954.—(1) Section 7302 of the Internal Revenue Code of 1954 (relating to property used in violation of internal revenue laws) is amended by adding at the end thereof the following new sentence: "The second and fourth sentences are hereby extended to coins, currency, and other monetary instruments (and to interests in property traceable to such instruments) seized pursuant to section 5317 of title 31, United States Code.".

(2) The heading for such section 7302 is amended by inserting "OR TITLE 31, UNITED STATES CODE" after "REVENUE LAWS".

(3) Section 7321 of the Internal Revenue Code of 1954 (relating to authority to seize property subject to forfeiture) is amended by inserting "and any coins, currency, or other monetary instrument (and any interest in property traceable to such instrument) subject to forfeiture under section 5317 of title 31, United States Code," after "this title".

(4) Section 7327 of the Internal Revenue Code of 1954 (relating to applicability of customs laws) is amended by inserting "and to forfeitures of coins, currency, and other monetary instruments (or interests in property traceable to such instruments) incurred or alleged to have been incurred under section 5317 of title 31, United States Code (except that, in the case of forfeitures under such section 5317, the customs laws shall apply only to the extent such laws are not inconsistent with any applicable provision of such section)" before the period.

(5) Section 7608(b)(1) of the Internal Revenue Code of 1954 (relating to authority of internal revenue enforcement officers to enforce certain internal revenue laws) is amended—

(A) by striking out "internal revenue laws or" and inserting in lieu thereof "internal revenue laws,"; and

(B) by inserting ", or any provision of section 5317 of title 31, United States Code, relating to seizures and forfeitures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments)" after "responsible".

(6) Section 7608(b)(2) of the Internal Revenue Code of 1954 (relating to functions authorized to be performed by internal revenue enforcement officers) is amended—

(A) by adding at the end thereof the following new subparagraph:

"(D) to make seizures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments) subject to forfeiture under section 5317 of title 31, United States Code.";

(B) by striking out "and" at the end of subparagraph (B); and

(C) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and".

(7) The item relating to section 7302 in the table of sections for part I of subchapter C of chapter 75 of the Internal Revenue Code of 1954 is amended by inserting "or title 31, United States Code" after "revenue laws".

SEC. 204. CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION.

(a) IN GENERAL.—Section 5321(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) STRUCTURED TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who knowingly violates any provision of section 5324.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transactions with respect to which such penalty is imposed.

"(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed.".

(b) CONFORMING AMENDMENT.—Section 5321(c) of title 31, United States Code, is amended by striking out "section 5317(b)" and inserting in lieu thereof "subsection (c) or (d) of section 5317".

SEC. 205. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) RIGHT TO REPORT.—Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following: "Such information may include only the name or names of and other identifying information concerning the individuals and accounts involved in and the nature of the suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any constitution, law, or regulation of the United States or any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) DELAYED NOTIFICATION.—Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, to delay notifying the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

(c) FINANCIAL RECORDS OF INSIDERS.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by

adding at the end thereof the following new subsection:

(1) CRIMES AGAINST FINANCIAL INSTITUTIONS BY INSIDERS —Nothing in this title shall prohibit any financial institution or supervisory agency from providing any financial record of any officer, director, employee, or controlling shareholder (within the meaning of section 408(a)(2)(A) and (B) of the National Housing Act or section 29(a)(2)(A) and (B) of the Bank Holding Company Act of 1956) of such institution to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such individual of—

"(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of financial institutions; or

"(2) any provision of subchapter II of chapter 53 of title 31, United States Code.".

SEC. 206 COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a) GENERAL POWERS OF SECRETARY.—"before "The Secretary of the Treasury";

(2) in paragraph (1), by inserting "except as provided in subsection (b)(2)," before "delegate";

(3) by striking out "and" at the end of paragraph (2);

(4) by inserting after paragraph (2) the following:

"(3) examine any books, papers, records, or other data of financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution or an officer or employee of a financial institution, or a former officer or employee, or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and";

(5) by redesignating paragraph (3) as paragraph (5); and

(6) by adding at the end thereof the following new subsections:

"(b) LIMITATIONS ON SUMMONS POWER.—

"(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

"(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

"(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

"(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

"(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

"(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

"(e) CONTUMACY OR REFUSAL.—

"(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

"(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

"(A) the investigation which gave rise to the summons is being or has been carried on;

"(B) the person summoned is an inhabitant; or

"(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

"(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

"(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.".

(b) CONFORMING AMENDMENT.—Sections 5321 and 5322 of title 31, United States Code, are each amended by striking out "5318(2)" each place such term appears and inserting in lieu thereof "5318(a)(2)".

SEC. 207. AMENDMENTS RELATING TO THE DEFINITION OF FINANCIAL INSTITUTIONS.

Section 5312(a)(2) of title 31, United States Code (defining financial institutions) is amended—

(1) by redesignating subparagraphs (T) and (U) as subparagraphs (U) and (V), respectively; and

(2) by inserting after subpargraph (S) the following new subparagraph:

(T) any foreign subsidiary or affiliate, as defined by the Secretary of the Treasury, of any entity described in this paragraph; however, any foreign subsidary or affiliate shall comply with the provisions of this subchapter only to the extent that compliance does not violate the law of the host country of such subsidiary or affiliate, except that such foreign subsidiary or affiliate shall require United States citizens, who enter into a financial transaction subsequent to the date of enactment of the Comprehensive Money Laundering Prevention Act, to waive any rights to the bank secrecy or blocking laws of the host country to which they may be entitled;"

SEC. 208. AMENDMENTS RELATING TO EXEMPTIONS GRANTED FOR MONETARY TRANSACTION REPORTING REQUIREMENTS.

Section 5318 of title 31, United States Code (as amended by Section 206) is amended by adding at the end thereof the following new subsections:

"(f) REVEIW OF EXEMPTIONS.—In any case in which there is a change in management or control of a financial institution, the Secretary of the Treasury shall review each currently outstanding exemption granted by such institution under subsection (a)(5) not later than 30 days after the date such change in management or control occurs.

"(g) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution prepares and maintains a statement which—

"(1) describes in detail the reasons why such person is qualified for such exemption; and

"(2) contains the signature of such person.".

SEC. 209. EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY.

Section 5321(b) of title 31, United States Code, is amended to read as follows:

"(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

"(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

"(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

"(A) the date the penalty was assessed; or

"(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.".

SEC. 210. DISCUSSIONS TO DEVELOP INTERNATIONAL INFORMATION EXCHANGE SYSTEM TO ELIMINATE MONEY LAUNDERING.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, shall initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to assist the efforts of each participating country to eliminate the international flow of money derived from illicit drug operations and other criminal activities.

(b) REPORT REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of negotiations initiated pursuant to subsection (a).

SEC. 211. INCREASE IN MAXIMUM CRIMINAL FINE FOR CERTAIN OFFENSES.

Section 5322(b) of title 31, United States Code, is amended by striking out "$500,000"

and inserting in lieu thereof "$1,000,000 if the person is an individual (and not more than $5,000,000 in any other case)".

SEC. 212. REGULATIONS RELATING TO CUMULATION OF OFFENSES FOR FAILURE TO REPORT EXPORT OR IMPORT OF MONEY.

Section 5316 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) CUMULATION OF CLOSELY RELATED EVENTS.—The Secretary of the Treasury may prescribe regulations under this section defining the term 'at one time' for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of such subsection (a).".

SEC. 213. EFFECTIVE DATES.

(a) The amendments made by section 202 shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act.

(b) The amendments made by sections 203 and 204 shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act.

(c) The amendment made by section 209 shall apply with respect to violations committed after the date of the enactment of this Act.

Mr. D'AMATO. Mr. President, I rise today to alert my colleagues that during debate on the pending debt ceiling legislation I intend to offer an amendment to curb the nefarious practice of money laundering that currently allows international narcotics traffickers to make their ill-gotten gains clean and almost untraceable. I have filed this amendment so that it can be numbered and printed in the CONGRESSIONAL RECORD for the scrutiny of my colleagues. It is for this purpose that I have sent the amendment to the desk.

Mr. President, the amendment I have filed today strengthens our efforts against the laundering of criminal and drug profits in three important ways. First, it creates the offense of structuring, and subjects to criminal and civil liability persons who, for purposes of evading the Bank Secrecy Act, make multiple deposits of under $10,000. Second, it authorizes the seizure and forfeiture of the cash and property of persons who willfully cause financial institutions not to file in accordance with the Bank Secrecy Act, or who willfully commit the offense of structuring. Third, it gives the Treasury Department an administrative subpoena power to investigate Bank Secrecy Act violations.

My amendment is based on the four money laundering bills I have introduced, as well as on the bill recently adopted by the House Banking Committee, and S. 2683, the Senate Judiciary Committee bill introduced yesterday by Senators THURMOND, BIDEN, DECONCINI, and myself.

Mr. President, I want to state here for the RECORD my intention in filing this amendment. Very frankly, I am concerned that we are running out of time to enact a money laundering bill this year. As one who has worked arduously on money laundering legislation for over 2½ years, this is a risk I am not willing to take.

I worked in the last Congress on money laundering legislation, introducing S. 2579 in April 1984, only to see nothing happen. I have introduced S. 571, S. 572, and S. 2306 in this Congress, only to see time start to run out again. While Congress delays, drug dealers continue to launder their obscene profits, and use these profits to subject this Nation, and particularly our Nation's young people, to a tidal wave of drug addiction.

It may be that we will have time to enact into law S. 2683, the bill we introduced yesterday. As of today, however, we have fewer than 35 working days to work on the nominations of Justice Rehnquist and Judge Scalia, tax reform, numerous appropriations bills and/or a continuing resolution.

I have discussed this matter with the chairman of the Judiciary Committee, Senator THURMOND, and representatives of the Departments of Justice and Treasury. They share my concerns and support amending the debt ceiling bill with a money laundering initiative.

Amending the debt ceiling bill does not preclude separate action by the Judiciary Committee or the Banking Committee, but if we take this opportunity now and pass a money laundering amendment, we can deliver a body blow to the drug profiteers who prey upon our children. I say this is a prudent and intelligent course of action, and I am confident a majority of my colleagues will agree.

If others wish to propose another money laundering amendment—the Judiciary Committee bill, for example—I would welcome it. I want to work with my colleagues to see that the best possible money laundering bill becomes law this year.

I suggest to my colleagues that amending the debt ceiling bill may be our best, and perhaps our only, genuine opportunity to do so this year.

GRAMM (AND OTHERS) AMENDMENT NO. 2231

Mr. DOLE (for Mr. GRAMM, for himself, Mr. RUDMAN, and Mr. HOLLINGS) proposed an amendment to the motion to recommit with instructions submitted by Mr. EXON to the joint resolution (H.J. Res. 668), supra; as follows:

Strike all beginning with "SEC. (a)" and insert in lieu thereof the following:

"TITLE II—BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL

SEC. 201. SHORT TITLE.

This title may be cited as the "Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1986"."

GRAMM (AND OTHERS) AMENDMENT NO. 2232

Mr. DOLE (for Mr. GRAMM, for himself, Mr. RUDMAN, and Mr. HOLLINGS) proposed an amendment to amendment No. 2231 proposed by Mr. GRAMM (and others) to the motion to recommit submitted by Mr. EXON to the joint resolution (H.J. Res. 668), supra; as follows:

Strike "of 1986"." where it appears at the end of the amendment and insert in lieu thereof the following: "of 1986".

SEC. 202. REVISION OF PROCEDURES.

(a) REFERENCE.—Except as otherwise specifically provided, whenever in this section an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered a reference to a section or other provision of the Balanced Budget and Emergency Deficit Control Act of 1985.

(A) by striking out "President" in paragraph (1) and inserting in lieu thereof "Director of the Office of Management and Budget";

(B) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively;

(C) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(D) by striking out "this subsection" in subparagraph (B) (as redesignated by subparagraph (C) of this paragraph) and inserting in lieu thereof "this paragraph";

(E) by striking out the subsection heading and inserting in lieu thereof the following:

"(b) REPORTS BY THE COMPTROLLER GENERAL AND DIRECTOR OF OMB.—

"(1) REPORT TO THE DIRECTOR OF OMB AND THE CONGRESS BY THE COMPTROLLER GENERAL.—"; and

(F) by adding at the end thereof the following:

"(2) REPORT TO PRESIDENT AND CONGRESS BY THE DIRECTOR OF OMB.—

"(A) REPORT TO BE BASED ON GAO REPORT.—The Director of the Office of Management and Budget shall review and consider the report issued by the Comptroller General under paragraph (1) of this subsection for the fiscal year and, with due regard for the data, assumptions, and methodologies used in reaching the conclusions set forth therein, shall issue a report to the President and the Congress on September 1 of the calendar year in which such fiscal year begins, estimating the budget base levels of total revenues and total budget outlays for such fiscal year, identifying the amount of any deficit excess for such fiscal year, stating whether such deficit excess will be greater than $10,000,000,000 (zero in the case of fiscal year 1991), specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative economic growth, and specifiying (if the excees is grater than $10,000,000,000, or zero in the case of fiscal year 1991), by account, for nondefense pro-

grams, and by account and programs, projects, and activities within each account, for defense programs, the base from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year in order to eliminate such deficit excess. Such report shall be based on the estimates, determinations, and specifications of the Comptroller General under paragraph (1) and shall utilize the budget base, criteria, and guidelines set forth in subsection (a)(6) and in sections 255, 256, and 257.

"(B) CONTENTS OF REPORT.—The report of the Director of the Office of Management and Budget under this paragraph shall—

"(i) provide for the determinatioin of reductions in the manner specified in subsection (a)(3); and

"(ii) contain estimates, determinations, and specifications for all of the items contained in the report submitted by the Comptroller General under paragraph (1).

The report of the Director of the Office of Management and Budget under this paragraph shall explain fully any difference between the contents of such report and the report of the Comptroller General under paragraph (1).".

(2) Section 251(c) is amended—

(A) by striking out "President" in subparagraph (A) of paragraph (2) and inserting in lieu thereof "Director of the Office of Management and Budget";

(B) by striking out "subsection (b)" each place it appears in such paragraph and inserting in lieu thereof "subsection (b)(1)";

(C) by striking out "subsection (b)(2)(B)" in subparagraph (B) of such paragraph and inserting in lieu thereof "subsection (b)(1)(B)(ii)"; and

(D) by adding at the end thereof the following new paragraph:

"(3) Report by the Director of OMB.—

"(A) On October 15 of the fiscal year, the Director of the Office of Mangement and Budget shall submit to the President and the Congress a report revising the report submitted by the Director of the Office of Management and Budget under subsection (b)(2), adjusting the estimates, determinations, and specifications contained in that report to the extent necessary in the light of the revised report submitted to the Director of the Office of Management and Budget by the Comptroller General under paragraph (2) of this subsection.

"(B) The revised report of the Director of the Office of Management and Budget under this paragraph shall provide for the determination of reductions as specified in subsection (a)(3) and shall contain all of the estimates, determinations, and specifications required (in the case of the report submitted under subsection (b)(2)) pursuant to subsection (b)(2)(B)(ii).".

(3)(A) Section 251(e) is amended by striking out "Directors or the Comptroller General" and inserting in lieu thereof "Directors, the Comptroller General, or the Director of the Office of Management and Budget".

(B) Section 251(f) is amended by striking out "subsections (b) and (c)(2)" and inserting in lieu thereof "subsections (b)(1) and (c)(2), and the reports of the Director of the Office of Management and Budget submitted to the Congress under subsections (b)(2) and (c)(3),".

(c) PRESIDENTIAL ORDERS.—(1) Section 252(a) is amended—

(A) by striking out "Comptroller General" the first place it appears in paragraph (1) and inserting in lieu thereof "Director of the Office of Management and Budget";

(B) by striking out "section 251(b)" each place it appears in paragraphs (1) and (3) and inserting in lieu thereof "section 251(b)(2)";

(C) by striking out "September 1" in paragraph (1) and inserting in lieu thereof "September 3"; and

(D) by striking out "Comptroller General's" in the heading for paragraph (3) and inserting in lieu thereof "Director's".

(2) Section 252(b) is amended—

(A) by striking out "Comptroller General" each place it appears and inserting in lieu thereof "Director of the Office of Management and Budget";

(B) by striking out "section 251(b)" each place it appears and inserting in lieu thereof "section 251(b)(2)";

(C) by striking out "section 251(c)(2)" each place it appears and inserting in lieu thereof "section 251(c)(3)"; and

(D) by striking out "October 15" in paragraph (1) and inserting in lieu thereof "October 17".

(d) TERMINATION OR MODIFICATION PROCEDURES.—(1) Section 251(d) is amended by striking out paragraph (3).

(2) The last sentence of section 251(c)(1) is amended by striking out "and authorized under subsection (d)(3)(D)(i)".

(3) Section 256(l)(2) is amended by striking out ", in accordance with section 251(c)(3),".

(e) TECHNICAL AMENDMENTS.—(1) Section 254(b)(1)(A) is amended by striking out "Comptroller General under section 251(c)(2)" and inserting in lieu thereof "Director of the Office of Management and Budget under section 251(c)(3)".

(2) Section 274(f)(5) is amended by striking out "section 251(b) or (c)(2)" and inserting in lieu thereof "section 251(b)(2) or (c)(3)".

(3) Section 274(h) is amended—

(A) by striking out "Comptroller General" the first place it appears and inserting in lieu thereof "Director of the Office of Management and Budget"; and

(B) by striking out "Comptroller General under section 251(b) or (c)(2)" and inserting in lieu thereof "Director of the Office of Management and Budget under section 251(b)(2) or (c)(3)".

(f) APPLICABILITY.—The amendments made by this section shall apply with respect to any report required to be submitted, and any order issued, after the date of enactment of this Act under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION

Mr. WALLOP. Mr. President, I would like to announce for the information of the Senate and the public that a public hearing has been scheduled before the Subcommittee on Public Lands, Reserved Water and Resource Conservation of the Committee on Energy and Natural Resources on Monday, August 4, 1986, at 10 a.m. in room SD-366 of the Senate Dirksen Office Building, Washington, DC 20510.

Testimony will be received on the following measures: S. 485, to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged land and ownership by the Alaskan Native Corporation; S. 1330, to amend section 504 of the Alaska National Interest Lands Conservation Act to allow expanded mineral exploration of the Admiralty Island National Monument in Alaska; S. 2065, to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares pursuant to the act and for other purposes; and S. 2370, to allow the Francis Scott Key Foundation, Inc. to erect a memorial in the District of Columbia.

Those wishing to testify should contact the Subcommittee on Public Lands, Reserved Water and Resource Conservation of the Committee on Energy and Natural Resources, room SD-308, Dirksen Senate Office Building, Washington, DC 20510. Witnesses are asked to identify the measures on which they will be testifying. Oral testimony may be limited to 3 minutes per witness. Written statements may be longer. Witnesses may be placed in panels, and are requested to submit 25 copies of their testimony 24 hours in advance of the hearing, and 25 copies on the day of the hearing. For further information, please contact Patty Kennedy or Tony Bevinetto of the subcommittee staff at (202) 224-0613.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Friday, July 25, to conduct a business meeting to consider Senate Concurrent Resolution 120, reconciliation instruction pursuant to concurrent resolution on the budget, fiscal year 1987.

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

SUBCOMMITTEE ON TRANSPORTATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Transportation of the Committee on Commerce, Science and Transportation be authorized to meet during the session of the Senate on Friday, July 25, to conduct a hearing on short-line and regional railroads.

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

ADDITIONAL STATEMENTS

SENATE JOINT RESOLUTION 378—EXTENSION OF COOLING-OFF PERIOD IN RAILROAD/LABOR DISPUTE

● Mr. D'AMATO. Mr. President, today I offer my comments on Senate Joint Resolution 378, introduced yesterday by my distinguished colleague, Senator MITCHELL. I was pleased to be one of nine original cosponsors of this timely proposal.

Senate Joint Resolution 378 would extend the cooling-off period by 60 days in the current dispute between the Maine Central Railroad Co./Portland Terminal Co., owned by Guilford Transportation Industries, and certain of their employees represented by the Brotherhood of Maintenance of Way Employees. It would also require the Secretary of Labor to issue recommendations on resolving this dispute, and a report on the progress of any negotiations between the parties 15 days before the expiration of the cooling-off period.

I had previously joined many of my colleagues in writing to the President to urge him to appoint an emergency board to resolve this strike. I was pleased when, on May 16, 1986, the President did appoint such a board. Recommendations were offered by the emergency board, but the railroad and the union have not yet come to an agreement. For this reason, I believe it is important to extend the cooling-off period for 60 days.

I am hopeful that the parties will be able to reach an agreement in the near future. The effects of a protracted strike and its potential for spreading to other railroads would be extremely harmful to all parties to the current dispute, as well as to shippers and to the general public. I am certainly concerned about the possibility of adverse effects on rail transportation in and through my State of New York. This resolution represents a well-tempered and appropriate response to the present situation.●

S. 2683—CONSENSUS MONEY LAUNDERING CRIMES ACT

● Mr. D'AMATO. Mr. President, yesterday, Senators THURMOND, BIDEN, DECONCINI, and I introduced S. 2683. This is the consensus Money Laundering Crimes Act that has the best chance of becoming law this year. Earlier today, I filed a money laundering amendment to the debt ceiling bill in an effort to increase the likelihood that S. 2683 will become law this year. I again urge my colleagues to recognize the need to act in the most expeditious manner possible to pass money laundering legislation this year.

The amendment I filed today and S. 2683 have three key elements in common. I am very pleased that S. 2683 contains these elements, which I have included S. 2579 in the last Congress, and S. 571 and S. 2306 in the present Congress.

First, they create the offense of structuring financial transactions to evade the reporting requirements of current law. This is intended to close the so-called smurfing loophole, by which money launderers make multiple transactions of under $10,000 to evade the Bank Secrecy Act's reporting requirements.

Second, they authorize forfeiture to the Government of laundered money. S. 2683 provides for forfeiture of property obtained through the new crime of money laundering, property involved in a financial transaction representing proceeds of an offense against a foreign nation involving illegal trafficking in controlled substances, and property involved in a transaction the owner knew to be conducted in violation of the new money laundering offense or the reporting rules (31 U.S.C. 5313(a)) of the Bank Secrecy Act.

Third, they grant the Treasury Department a subpoena power to improve enforcement of the Bank Secrecy Act.

S. 2683 also contains a modest amendment of the Right to Financial Privacy Act by permitting financial institutions to notify law enforcement agencies about the illegal activities of their customers in limited circumstances.

S. 2683 also makes it a crime to launder money, much as S. 572, a bill I introduced in the last session, does. Violators who intend to facilitate the carrying on of unlawful activity, or who know that the transaction involved is designed to conceal certain specified facts regarding criminal proceeds (nature, location, source, ownership, or control) shall be fined up to $250,000 or twice the value of the property involved, whichever is greater, and shall be imprisoned for up to 20 years, or both.

As I stated on the Senate floor earlier today, I would welcome and encourage any effort to attach S. 2683 to the debt ceiling bill now before the Senate.

Senators THURMOND, BIDEN, and DECONCINI also are working to ensure that S. 2683 moves quickly through the Judiciary Committee, and I encourage my colleagues to do all in their power to support these efforts.

Efforts to enact S. 2683 as a separate bill may succeed. I very much hope that they will. However, time is running short, and, as the majority leader has frequently advised the Senate, there are many other items the Senate must act on in the few remaining working days of this Congress. The most prudent course, therefore, seems to be to amend the debt ceiling bill with the strongest money laundering bill possible.

Senators THURMOND, BIDEN, and DECONCINI deserve the heartfelt thanks of the entire Nation for their efforts in forging this bipartisan consensus bill. I urge my colleagues to give this legislation and the effort to enact a money laundering bill into law this year their full support.●

MINI-CONGLOMERATE IN VERMONT

● Mr. LEAHY. Mr. President, I would like today to introduce the Senators to a truly remarkable Vermonter—a self-made millionaire—and a gentleman I have known and admired for a long time.

Ray Pecor is one of those rare people who lives the American dream every day of his life. He is a courageous businessman who has won some and lost some, but always eagerly anticipates that next opportunity looming on the horizon.

He has made a lot of friends and influenced many Vermonters, me among them, during his career. And since we are the same age, I would like to share with Senators this splendid article by Susan Youngwood that appeared in the Burlington Free Press on June 22, 1986. It is an inspiration to us all.

The article follows:

[From the Burlington Free Press, June 22, 1986)

SMILIN' RAY PILOTS CONGLOMERATE

(By Susan Youngwood)

He is a mini-conglomerate.

Raymond Pecor Jr., 46, owns two ferry companies, two cable companies, the Champlain Mill, mobile home parks, a real estate development firm. He has developed shopping centers and industrial parks, and has interests in restaurants and a fitness center.

Although he is on the board of several Burlington companies, and oversees about 150 employees, Pecor manages to spend most of the winter in Florida, playing golf.

He was a millionaire before he turned 30.

"He's got the Midas touch, this guy," said Patrick Robins, president of McAuliffe's and Pecor's old friend.

A Burlington boy who did well, Pecor—who has built in many of the city's suburbs—is finally building in his native city. His announcement last month of his plans to put a five-story office building on the long-vacant Strong block, at the southwest corner of Main Street and South Winooski Avenue, stunned many of his friends and brought out many skeptics.

They shake their heads at his timing—his building will add 70,000 square feet to an already oversaturated office market in Burlington. They wonder why he even thought of the project—his bank account is large enough, they say, and the building might cut into his Florida time.

But no one doubts that this project, like almost all of Pecor's ventures, will be a success. He is a risk-taker who seldom guesses wrong, a hard-nosed negotiator who never sacrifies quality.

"If anyone is going to pull it off it would be Pecor," said developer Gerry Milot.

As in most conglomerates, Pecor's companies, with gross revenues of $8 million, have few similarities. Pecor insists there is one.

"They're fun," he said. "Look at the Mill. There are balloons. On the ferry, the kids get balloons. The cable company has fun programming. The Burlington building will have banners. I like banners and balloons—anything that's going to fun."

* * * * *

Ray Pecor is *always* happy.

He greets people with booming hellos, he insists every day is a good day and defies you to show him otherwise.

"How in hell does he smile all the time?" asked his closest friend, Bert Moffatt, who now works for the city of Burlington.

Moffatt met Pecor in the 1950s, when they were growing up in the Old North End. Roosevelt Park was their stomping ground.

"It was a tough neighborhood," Moffatt said. "Everyone permanently wore a chip on their shoulder."

At Burlington High School and then at the University of Vermont, Pecor met many of his friends and business associates—Robins and Moffatt; Harlan Sylvester, who runs E.F. Hutton's offices in Vermont; J. Richard Corley, a developer and local businessman; Louise Weiner, owner of Magrams department store; Jack DuBrul, owner of the Automaster.

"I didn't think he was going to get out of high school," Robins said. "He didn't work very hard."

Pecor started working for his father at Ray's Mobile Homes when he left UVM in 1961. He invested his savings in real estate, developing shopping centers in Champlain, N.Y., and Northfield, Randolph and Hardwick.

"I found out that selling was not the thing I want to do all my life," Pecor said. He started franchising mobile home sales lots, until he had between 45 and 50 along the East Coast. He started an insurance company to insure mobile homes.

Then, in 1973, the prime rate went to 13 percent, he said. Real estate flagged.

"There went my business. After 12 years, almost everything I built either no longer existed or was very fragile," he said.

He spent two years fighting bankruptcy.

"It was tough. It was a tough time in my life," he said.

In 1975, searching for a new investment, Pecor learned from Robins that Lake Champlain Transportation Co. was for sale.

In six months, the deal was made; the ferry company was his for $2.45 million. Pecor remembers the day he closed, like he remembers all dates and trivial information—April 8, 1976.

In 1979, he bought the Champlain Mill in Winooski for $200,000. It had been unused for years.

"You looked at it and it was just a spectacular building," Pecor said. He pointed at the parking lot, now filled with cars. "All this was dirt and weeds and brush. All the windows were out and the roof leaked. Pigeons had a great home here."

He took his wife and two children to see his latest purchase. As they drove away, his son looked at him and said, "Dad, I have to give you an A for imagination."

It cost him $4 million to turn it into the upscale shopping center and office building it is today.

In 1979, while thinking about the oil shortage and wondering what people would do for recreation if driving were too expensive, Pecor decided to get into the cable television business. Lake Champlain Cable TV serves 80 percent of the homes in Colchester, Georgia and Milton. His Richmond Cable TV, a new firm, is serving Richmond and surrounding towns.

There are some similarities among Pecor's investments.

Both the ferry and cable companies are monopolies. And most of his other holdings are in real estate.

"Fixed assets and exclusive franchises," Robins noted.

To list some of Pecor's other holdings: he has part-ownership in the Olympiad fitness center and the two restaurants at the Mill; he owns Lakeview, a mobile home park in South Burlington, and the Champlain Lanes building; he is developing the Meadows Industrial Park in Colchester and is a partner in a 220-acre industrial park in Williston. He has a ferry company in Mobile, Ala. He recently bought a marina next to the ferry dock in Charlotte for $440,000; he owns land on Flynn Avenue in Burlington appraised at $1.1 million.

* * * * *

The control center of Pecor's realm is a nondescript gray building off the King Street ferry dock.

From his office, Pecor views Lake Champlain and the Adirondacks; gulls swoop outside his window. A set of vintage wooden golf clubs hangs on the wood-paneled walls. The top of his wooden desk is virtually empty. The wood parquet floor has no rug.

To manage all his interests, Pecor delegates a lot of responsibility and does a lot of traveling.

He describes it as management by wandering around.

Every weekend, Pecor climbs into his 7-year-old gold-and-black Datson 280ZX and makes a tour of many of his holdings.

He stops by the Champlain Mill, waving to the employees and picking up stray trash on the floor.

He drives to Grand Isle, where he boards a ferry to Plattsburgh, N.Y.

"Hi, Louise." He waves to the woman in the ticket booth.

"Hello, hello, hello," she says.

"Things fine?" he asks.

"Oh, things are always good."

On the boat, he chats with engineer Tom Carr and captain David Garrett about minor things like oil changes and paint jobs. Once on the New York side, he talks to the ticket booth operators, the snack bar proprietor.

"Ray's a good guy. Everybody likes Ray," says the man at the snack bar, unaware that Pecor's companion is a reporter.

At Port Kent, he consoles Liz Heberts, the gift shop operator, who was upset over vandals who tore up her flower beds.

Gesturing at the gift shop, Pecor says to the small woman, hunched over with old age, "Everything looks good in here."

"But not out there," Heberts replies.

"Everything's all right, don't you worry," he says. "You do such a good job. Let's replace them. We want them to look nice."

When he leaves the gift shop, Heberts is smiling.

* * * * *

Pecor's friends, his employees, his business associates, all puzzle over his perpetual optimism and good humor. People who have known him for 30 years say they have never seen him unhappy or upset for longer than 10 minutes.

"He is absolutely the most upbeat character I ever met in my life," Robins said. "He never worries about anything. (In the winter) he blows in for two days a month, hatches a deal, then goes fishing. He goes away for long periods of time and the rest of us sit here and sweat and worry."

Said Moffatt, "As down as he gets is when the Red Sox lose."

His optimism, which makes him a great salesman, is just one element of his success.

He is a risk-taker.

"I really believe that people like to make their own decisions, but don't like to take risks. So I've taken the risks," Pecor said of himself. Although he admits he is worth a lot of money, he said all that means is he has larger debts than most other people.

His friends agree that he takes chances—but only after carefully calculating the downside.

Deciding to run the Grand Isle-Plattsburgh ferry in winter was a risk, for example, but one most of the company's employees backed.

He is a creative, quick thinker, associates say, who prefers working by himself.

"Ray marches to his own drummer," Robins said. "In a town like this, the same ideas go round and round. Ray's are always very unique."

Harlan Sylvester said, "A lot of people sit around with good thoughts. He acts. He's a doer."

Robins also described Pecor, who is on McAuliffe's board of directors, as a very tough negotiator.

"You have to hang on to your silverware when negotiating a deal with Ray," he warned.

But once the deal is set, Pecor does not waiver.

"He's the one developer I feel comfortable sealing a deal with a handshake," said Peter Clavelle, Burlington's director of economic and community development.

Despite all his deals and schemes, Pecor seems to have made more friends than enemies.

"Considering the number of lives he touches, from mobile home parks to big-wheel bankers, he has the least enemies of anyone I've ever known," Moffatt said.

Pecor keeps promising his friends and family that he has done his last deal. He had said the Mill would be the end, then cable television.

But he was so tired of driving by the empty Strong block that when he heard of a law firm's desire to locate there, he decided to build Court House Plaza.

Now, he is being asked if this will be his last project.

He throws back his head and lets out a laugh.

"Ah, this is it," he promises.

"This is the last one. No question." ●

HARRY HALE COOLEY

● Mr. LEAHY. Mr. President, when I was born, 46 years ago, one of Vermont's treasures was already the age that I am today. Today that unique Vermont treasure, Harry Hale Cooley, is exactly twice my age and, at 92, is still going strong.

This farmer, teacher, political leader, and true Vermonter has inspired generations in our State.

Who else would have taken time as a 76-year-old VISTA volunteer to work in rural America. And then he came back to continue to give yet another

generation of Vermonters the benefit of his advice and wise counsel.

Harry Cooley not only reflects the best of Vermont, but he brings out the best in all Vermonters.

I was very pleased when I went home for the weekend, to read in the Sunday edition of the Rutland Herald/Times Argus an article entitled "Harry Cooley's View from the Ridge." I would like to share this with everyone else and I ask that it be printed in the RECORD at this point.

The article is as follows:

[From the Rutland (VT) Herald/Times, June 29, 1986]

HARRY COOLEY'S VIEW FROM THE RIDGE

(By Will Lindner)

It's not easy to milk a smile out of Harry Hale Cooley, but it's worth the effort. At the turn of a phrase that catches his fancy, at the suggestion of an interesting thought, his reserve breaks like an ice jam on the White River during a February thaw, and a grin spreads slowly across his wide, cool face.

Cooley sits in an overstuffed chair in the lived-in living room of his farmhouse in Randolph Center, and reads by the light from the windows. He can read for just so long until the cataracts beginning to shade his eyes turn the quiet pleasure to a tiring effort. Then he lays down his book and, sometimes, casts his thoughts back over a long, industrious life.

He remembers 50 years he spent as a farmer and teacher, and how his life bloomed all over again after his retirement, when he was elected a state representative from Randolph and then, during the historic Hoff administration, Vermont's first Democratic secretary of state.

Politics gave way to a stint as a 76-year-old VISTA volunteer serving alongside college kids in impoverished rural Arkansas.

In fact, Harry Cooley's careers string like pearls along a necklace 92 years long.

Smaller pearls along the string include service as administrator of his local milk marketing cooperative and civic positions in his community. Cooley also held an array of other jobs and compiled a book, "Randolph, Vermont Historical Sketches—To Which Are Added Personal Reminiscences of the Author," published in 1978.

His house is littered with honoraria for his public service—including a 1976 award from then-Gov. Edward T. Breathitt of Kentucky making him an honorary Kentucky colonel. Cooley leaves the items on tables and desks, rather than mounting them prominently on the walls.

The most eye-catching decoration in the living room is a framed portrait the color of a faded envelope that shows two young girls in turn-of-the-century apparel. The older child, Cooley's deceased wife, Gertrude, stares out of the past with wide, clear eyes.

Mostly, in these quiet afternoons, Cooley thinks about farming. It's a memory he cherishes and a vocation he considers the most honorable profession of all.

"I think more about it than I do anything else. I think farming is something that I ought to be doing," he said during a recent interview at his Randolph Center home.

"I was brought up to do it. It's something that's worthy of a man. A lot of things men do to make a living, I don't think are worthy. But to stay on your land and tend it. . . .

"I shouldn't complain," he sighs, gazing out the window over the purple mountains, darkened by high clouds, in the distance. "But I would prefer to be more able-bodied."

THE BARN IS GONE

Cooley is frustrated that age has stiffened his knees and deprived him of the ability to get his hands back into the dirt and fill his barn once more with Holsteins.

The fact is, he doesn't even have a barn now. The man who once tended 500 acres—working alongside his father, molding three farms into one over 40 years by adding to the Randolph property purchased in 1910—now owns only an old farmhouse and two acres.

Cooley's grandson's vegetable garden lies on the far side of the yard, a little too far for the grandfather to manage easily.

A red, wide-wheeled tractor, a has-been machine no longer in use, sits parked in high weeds on the edge of the woods, sinking seasonally into decrepitation.

The grandson and his wife live here, too, but their busy schedules leave the grandfather most often in the company of a black dog named Matter, a silent cat and a white dove that coos softly from her cage and occasionally lays a pointless, unfertilized egg.

A cherry tree grows by the kitchen door, its leaves a glossy green in early summer and its immature fruits dangling like soft marbles from the delicate branches. This year a mockingbird has come to the ridge. It repeats its rambling songs from somewhere in the tall maples in Cooley's front yard.

But the former teacher, farmer and statesman stays mostly inside, in the company of books. Reading has been a life-long passion for Cooley, who was alternating between John Dean's "Blind Ambition" and Studs Terkel's "The Good Way" early this summer.

"My family were great readers when I was growing up, and not just foolishness," he recalls. "If you're farming to the limit, it's easy to get insular, where when you get together all people talk about is each other."

The world wasn't beating a path to the Cooleys rural home 80 years ago, so they sought out the world through books. The reading habit spawned a family of teachers, writers, college professors and school administrators.

THE RIGHT PLACES

"I've been more lucky than sophisticated," Cooley says, looking back on his impressive string of careers. "I just happened to be in the right place at times."

A struggling young farmer in 1917, he began searching for a teaching position to supplement his income. An opening came unexpectedly in Stowe.

"I taught agriculture for a teacher who was sick, which he had taught to me four years before that," he recalled.

Cooley had graduated in 1913 from the Vermont School of Agriculture in Randolph Center. (In a neat turn of events, Cooley was born just when West Randolph outgrew its name and became Randolph; what had been Randolph—his home—was eclipsed by the neighboring community and renamed Randolph Center.)

The Stowe job was his entry into the field of education. He later spent 20 years in the state agricultural school, a decade teaching farming to veterans after World War II.

In those early years, as his family grew to include five children, teaching was something Cooley had to do. His recollection of agrarian life in the early 1920s sounds startlingly familiar today.

"I couldn't make a living at farming. I even tried to give up the farm entirely and just teach," Cooley says. "We couldn't live on either one but managed to make do with the combination."

For most people, the story would end there, when his active careers in agriculture and education slowed down around 1960. But for Cooley retirement brought other opportunities, tossed his way, he says, by timing and luck.

Harry Cooley, a retired teacher and farmer, was elected to the Legislature in 1959. He failed in his bid for a second term, but in 1964, when state Sen. Philip Hoff of Burlington was campaigning for governor and attracting unprecedented attention for a Democrat in Vermont, Cooley was invited to run for secretary of state and fill out the ticket.

"I was sitting here doing nothing in particular when he (Hoff) called. Politics for me was just a way to pass the time, to see if I could do it," said Cooley.

Much to his surprise, he won the secretary of state's post, a Democrat emerging from rock-ribbed Republican Orange County to capture a statewide office.

He was re-elected in 1966. Though an actor in a notable chapter in the state's political history, Cooley had no pretentions for his post then, and has none 20 years later in hindsight.

"The secretary of state (job) was administrative," he says. "I just tried to run the state's business as best as I could, like the head of a company. Some of these boys since then have tried to make it a stepping stone to something bigger, but I've never seen anyone succeed."

One thing Cooley has learned by living through most of the 20th century is that nothing stays the same. Including political opinion. Including his own political opinion.

"The only reason I got into politics as far as I did was because Barry Goldwater was running," he chuckles. The thought of a Goldwater presidency appalled him, but considering that prospect in the Ronald Reagan era, Cooley pauses and one of those rare grins erases the austerity from his face.

"He (Goldwater) looks good now, though," he confides.

When the state government reverted to the GOP, the septuagenarian farmer-teacher retired again to the ridge in Randolph. He had outlived two wives, his children were grown and the next generation of Cooleys was expanding.

VISTA SERVICE

Once again, his respite from public affairs was short.

In 1969 Cooley applied to VISTA—Volunteers In Service To America, billed as "the domestic Peace Corps" by idealistic recruiters who saturated the nation's college campuses.

Despite his age, Cooley was the type of volunteer recruiters were looking for. He was a lifelong farmer, and the unproductive rural pockets of the South and West were chief targets of the Kennedy-Johnson "War on Poverty."

He also was a lifelong educator, a skill at the heart of the philosophy that poverty could be licked by teaching hard-working but deprived farmers how to make the best of their resources.

And, he was a former *Secretary of State*, for God's sake.

He was in Arkansas so fast it made his head swim. But not for long. The structure of the anti-poverty program, flawed to begin

with, crumbled fast when President Nixon appointed Donald Rumsfeld to oversee the subtle dismantling of the agency.

Like others sent to the rural South, Cooley found that the local Community Action Agencies sponsoring his work were headed by retired military officers.

"They spent their time in Dardenelle (Ark.), holding meetings with each other and drinking coffee," he recalls. "I couldn't stand it; just couldn't seem to get anything started."

Cooley was assigned to a feeder-pig cooperative for poor farmers, advertised to him as substantially organized and on the brink of taking off like a rocket. When he got there, however, he found it consisted of a handful of people who had attended a few meetings.

Disappointed, he devised an operating plan for the cooperative which he submitted to his coffee-drinking superiors and which, he says, disappeared in the anti-poverty pipeline that ran from Dardenelle to regional VISTA headquarters in Austin, Tex., and thence to Washington.

So he shifted his attention to a community of blacks interested in starting a cooperative gardening project. That was a success, he says, the two-acre plot being plowed "by a colored gal with a horse and mule. But they didn't need a supervisor. They knew as much about it as I did."

Cooley was disillusioned by the federal government's luke-warm commitment to the poor, but the final straw came when he picked up a newspaper and saw that the Ohio National Guard had shot into a crowd of students at Kent State University, killing four.

Cooley decided he and the federal government had little in common and would be better off apart.

So it was back to Vermont. Cooley, born in the last years of the 19th century on a farm on the North slope of Arrowhead Mountain in Georgia, Vt., returned to the family homestead on the ridge in Randolph Center. He had time, now that his secondary careers were over, to convert his thoughts and memories into book form, to wind down.

The Holsteins are all gone now; the aromas of manure, fertilizer, hay and sweet milk, the humidity created by dozens of warm cows in a cold barn, all mix in Harry Cooley's memories.

A new generation of Democrats is installed in Montpelier, and Cooley reads with interest of the small wars of party politics in the State House.

The Vermont School of Agriculture, just down the road and around the bend from his farmhouse, has become Vermont Technical College. It offers engineering and other practical sciences now, along with a handful of farming courses.

It's all food for thought, and Harry Hale Cooley has time to digest some morsels.

In time, the pressure eases behind his eyes and he picks up the hardbound volume in his lap. He adjusts his glasses, straightens the sweater over his shoulders, and goes back to his reading.●

ESTHER VAN WAGONER TUFTY

● Mr. LAXALT. Mr. President, a legend in the capital news corps has passed from the Washington scene.

A fine journalist and great human being passed away early in May. Esther Van Wagoner Tufty, known as "The Duchess," was 89.

She came to Washington in 1936 and covered top stories of the succeeding decades, at home and abroad, for her papers, mostly in her native Michigan. For professional and human qualities she was renowned and a great credit to journalism.

I ask to insert in the RECORD a fine, sensitive, engrossing obituary written by Martin Weil, in the May 5 Washington Post. Also a eulogy delivered at a memorial service for the Duchess at the National Press Club of Washington, June 4, by Kenneth M. Scheibel, former president of the club, a close associate and friend of Mrs. Tufty.

The obituary and eulogy are as follows:

OBITUARY BY MARTIN WEIL

This tiny tribute, this paean of praise, to a big, great, grand human being focused on the elegance, style, wit, charm and warmth the Duchess unstintingly gave the world in which she lived. And if the world in which she lived . . . was not the perfect place she might have wanted it to be . . . it was far less imperfect. . . . when she left it than when she found it.

For she was a wondrous woman who left us a legacy: Keep the faith, with a smile on your face!

It is right that we grieve that the Duchess is gone. It is also right that we rejoice the more that she lived.

As memories fade and recollections blur, pray let us remember one thing above all others about Esther Van Wagoner Tufty:

She was a great, big, bright ray of sunshine in our lives. And every man, woman and child upon whom she cast her glow gained new luster by her light.

EULOGY BY KENNETH M. SCHEIBEL

The tyranny of words . . . stifles . . . accurate portrait of the life of Esther Van Wagoner Tufty.

No one word, or series of words and phrases strung together, can frame a precise picture of this human, talented, warm, compassionate and fun loving lady we knew and loved as "The Duchess."

But maybe—just maybe—one of the tiniest of the words in our language comes closer than any other in a one-word portrait: b-i-g.

The Duchess was big in her plan of life. She was big in her goals and desires. She was big in accomplishments, recognition, reputation, ideals. She was big in her hopes for herself, her family, and friends—and her beloved United States of America. And she was big in her perceptions of humankind—what it ought to do, what it ought to be to make the world better.

And if her favorite politician, official, friend, relative, or cause, foundered and failed, she fussed and fumed, sniffed and snorted, put a fresh sheet of paper in her battered typewriter—and turned, with new hope, new optimism, to a new chapter of endeavor.

Outwardly, the Duchess always seemed to have a rosy outlook on life. Her boisterous manner and hearty guffaws roared out through her beloved capital city wherever her nose for news or social inclinations took her. And her fun-loving manner and breezy style went with her to far-flung trouble spots of the world.

For all her warmth, charm, joviality, the Duchess was the ultimate professional in journalism. She hewed tightly to her role as the amiable skeptic—of the people, places, things, she wrote about. But her criticism was constructive, not destructive. Thus she was a builder—not one, as the saying goes, who always tried to kick the barn door down.

Generosity was another of the Duchess' great virtues. She took great pains to help young people get started in journalism. Esther was never too busy, in her busy, busy years, to counsel, cajole, praise, and persuade. And if someone was a bit down and out, the Duchess managed to find a few dollars in her cash box.

Esther was a person of many deep beliefs. One was that basically human beings are good. She felt very deeply that the underdog, the underprivileged, deserved a break. And much of her time and energies was spent to this end.

The Duchess' list of achievements is testament to her hard, hard work. She loved her profession. It honored her. With the hard work she had fun, let others share it. She felt that was part of being a journalist.

Whatever she did—writing a story, giving a party, cooking a meal, raising a family—she did—with class. There was no holding back, no being niggardly, restrained, halfway. She gave life all she had—gave it big, with style, fervor, all the strength and drive she drew from her Dutch ancestry.

And life gave back to her—recognition, warmth, love and respect of friends, family, colleagues . . . big. As a journalist, the Duchess knocked heads with the grubbiness and sordiness . . . disappointment . . . that go with the job. But her own conduct and demeanor were dignified, straightforward, regal . . . majestic.

The magnificance of the Duchess' life and elegance of her soul, the simplicity and sweetness of her spirit . . . mark her as one of God's finest creations. And if she sinned or made mistakes, they were sins or mistakes of commission, not omission. To sit idly by and simply do nothing to right wrongs was abhorrent to her. When you were right, she told you so. When you were wrong, she made that very plain, too . . . in earthy, forceful terms.

One always felt much better whenever they encountered the Duchess. It was simply impossible to brood, or be unhappy, for very long . . . in her presence. Always . . . quick to praise, slow to criticize . . . a kind word, a pat on the back.

She would rather trust than doubt, rather have faith than disbelieve, would rather commend . . . than castigate. And if someone let her down, brought disappointment or bitterness, she tried to keep the hurt to herself. If there was a mean bone in her body, nasty thought in her head, her resentment was hard to find.

The Duchess would rather lift up than beat down. She looked for, and found . . . the good in people . . . always believing good outweighed bad. Her secret weapon for success was . . . the kind word, deed, thoughtful note or phone call. And an understanding heart—for whomever needed it, whether he or she was in high place or low. Kindness, not the curse, was her style.

Kings and queens, princess and presidents were intrigued by her grace, comfortable in her presence—treated her as equal. And because she had the unique ability to win the respect and trust of people in high station and low—she advanced and brought great credit to her profession of journalism. Not

for Ester Van Wagoner Tufty, to rant and rail if journalism or its practitioners at times attained a frowsy, tattered, or tarnished image. The Duchess' work, professionalism, and drive, brought credit, honor, dignity. Esther knew many Presidents, called some by their first name. They looked to her.

The true meaning of the Duchess' life will be a long time coming into sharp focus. But we know already that she was important to all of us—not only for what she was—but for what she taught us about ourselves. She helped us be—better than we could be.

The Duchess took lots of hard knocks. She went through the mill. She paid her dues. Life was no big bowl of cherries.

Esther competed, very effectively, in a rough and tumble business.

She asked no special favor. She beat the bushes for business in the best competitive style. She knew what it was to meet a payroll. She could be tough, but she was not hard, vengeful or cruel. As the years advanced so did the Duchess' health problem. She met them with optimism, courage, steadfastness—and stayed at her typewriter through recurring travail.

With the knocks and bumps and setbacks, the Duchess kept her sparkle. She stayed the course. She kept the faith. She fought the good fight. She never tried to be anything but what she was—a hard working, dedicated, journalist—but much more—a friend, a neighbor, a mother, a woman—completely feminine.●

INSTALLATION OF ARCHBISHOP THEODORE McCARRICK OF NEWARK

● Mr. LAUTENBERG. Mr. President, I am pleased today to offer congratulations to Archbishop Theodore McCarrick, of Newark, on the occasion of his installation. Archbishop McCarrick is being installed at the Cathedral of the Sacred Heart on July 25. He received the pallium, the traditional symbol of an archbishop, from Pope John Paul II at a special mass at the Vatican on June 29. The installation ceremony will be a major spiritual event, with over 3,000 invited guests. Among those attending will be four cardinals, 13 archbishops, and 65 bishops.

The archbishop is no stranger to New Jersey, serving as the founding bishop of the diocese of Metuchen since 1981. While serving in Metuchen, he became known for appearing unexpectedly at parish events and celebrations throughout the diocese. This personal touch has been a hallmark of Archbishop McCarrick's ministry. He will bring this warmth to his new position, as he has been quoted as saying that he considers his family to be the church of Newark.

Mr. President, Archbishop McCarrick is a gracious, outgoing, and thoughtful leader. He has shown a deep concern for the wellbeing of the people of New Jersey, with a special emphasis on the needs of the poor and requirements for economic development in our cities.

Both the Catholic community in New Jersey, and indeed all the citizens of the State, are fortunate in having the benefit of the leadership of Archbishop Theodore McCarrick. I ask my colleagues to join me in congratulating the archbishop and wishing him well in his new position.

I ask that the following editorial about Archbishop McCarrick from the Newark Star-Ledger be printed in the RECORD.

The editorial follows:

THE NEW ARCHBISHOP

The newly named spiritual leader of the Newark Archdiocese—Bishop Theodore McCarrick—is amply qualified by training and experience to deal with the religious and secular problems he will find in his hew papal assignment as successor to the retiring Archbishop Peter Gerety.

As the fourth archbishop of the state's largest Catholic vicinage, Bishop McCarrick can draw on the broad administrative background he acquired as the founding bishop of the Metuchen diocese, created by a split of the Trenton diocese in 1981.

For a prelate whose religious origins and formative stages in the Catholic Church were deeply rooted in New York City, the Metuchen diocese represented a marked change in the upwardly mobile course his career was taking at that point. But, as Bishop McCarrick noted, it "was the best introduction to the state of New Jersey anyone could ask for."

In retrospect, the Metuchen diocese may have been an essential evolutionary stage of transition, a pragmatic administrative basis for his elevation by Pope John Paul II as the new archbishop of the Newark Archdiocese. The problems of the two Catholic vicinages are not greatly dissimilar, but they are more complex and therefore challenging in the substantially larger and more ethnically mixed Newark Archdiocese.

Archbishop Gerety decided to retire a year earlier than the mandatory age of 75, stating that another year would "only put off certain necessary plans for the future of this archdiocese.

The new archbishop will take over a Catholic jurisdiction that has undergone significant constructive change under 12 years of Archbishop Gerety's spiritual and administrative guidance. He has provided an urgently needed stabilizing force, resolving critical financial problems and implementing in a vigorous manner an overall administrative restructuring of archdiocesan institutions, functions and programs.

But problems remain, religious as well as secular—a serious shortage of priests, sharply differing views among the laity over the future role of the church, and long-range capital planning. These are the problems that Bishop McCarrick will inherit when he takes over in July as the new spiritual leader of the Newark Archdiocese.

They are not insurmountable, but they are demanding and challenging-a formidable assignment for the incoming archibishop—Theodore McCarrick.●

GRAMM-RUDMAN—QUESTIONS RAISED BY SENATE GOVERNMENTAL AFFAIRS COMMITTEE

● Mr. HART. Mr. President, through the courtesy of the distinguished Senator from New Hampshire, Mr. RUDMAN, I have had the opportunity to read through 159 pages of testimony from the Governmental Affairs Committee hearing on GAO.

A number of the issues which were raised at the hearing are significant. Let me summarize them:

OMB will have enormous discretion to manipulate the economics of the sequester: The assumptions, the size of the sequester base, the defense BA/outlay ratio.

Gramm-Rudman-Hollings has had, and will continue to have, a troubling impact on defense.

The sequester process, if not unconstitutional, represents a tremendous shift in the power of the Congress.

CONCERNS RAISED ABOUT OMB DISCRETION

There is an instructive colloquy in the testimony among Senator DOMENICI, the distinguished chairman of the Senate Budget Committee, Senator ROTH, the distinguished chairman of the Governmental Affairs Committee, and Senator CHILES, the distinguished ranking member of the Budget Committee. This colloquy involves the issue of OMB discretion. The opponents of the Gramm-Rudman-Hollings "fix" argue that OMB will have discretion in the following areas: Changing the size of the sequester base; changing the composition of domestic and defense cuts in defiance of the 50-50 percent split in the law; and changing the defense budget authority and outlay ratio.

Mr. President, I will first quote from the remarks of Mr. DOMENICI on pages 20, 21, and 22 of the transcript:

So I think the rub comes in, Mr. Chairman and members of the committee, in that there are some who will say it is apt not to work the same way because the OMB does, indeed, if you want to give it its broadest capabilities and powers, it has the potential, the prospect, the power, whatever word you want to use, to substantially modify, so long as they have given due regard and given explanation.

But I must tell you that the arguments that will be made that they could, indeed, dramatically change it, as I see it, interpreting it, and thus put on their shoulders and in their Executive capacity as representative of the President some very significant powers that are not there now is true.

I do think they would have the power to change the economic assumptions and some things that would have an up or down effect in a substantial way on the amount of deficit that they are attempting to sequester.

That's a very significant statement. The sponsors of Gramm-Rudman-Hollings II, the "fix," have told us that OMB is performing a "green-eyeshade" function. Ministerial. We have the testimony of Senator DOMENICI stating that is not the case.

Further on in the record, Senator CHILES addresses the same issue. This is on page 33 of the record:

It seems to me that there is certainly the power there, the possibility is there that if OMB wanted to they could use, for exam-

ple, could they not, a high BA outlay ratio for domestic programs and a low BA outlay ratio for defense programs * * * For example, if it is $20 billion in outlays that were to be sequestered, OMB could assume a 1:1 ratio for defense and a 3:1 ratio for domestic programs, which would mean you could seqester $10 billion in budget outlay in BA for defense and up to $30 billion in domestic programs. So certaintly, that is something, that the power is there.

Senator CHILES then turned to Senator DOMENICI and said: "You would agree to that?" Senator DOMENICI said, "I would agree with that."

Chairman ROTH asked the Comptroller General, Mr. Bowshwer, whether he thought there was discretion under Gramm-Rudman-Hollings II to change the sequester. Mr. ROTH asked of the OMB function: "Is this clerical, or is it a pretty extensive economic forecast requirement?" On page 77 of the transcript, Mr. Bowsher states:

It is quite different than it was in January on economic forecasts. In other words, you are actually forecasting what the number is that has to be sequestered. Therefore, it is quite a bit of discretion there.

OMB WILL NOT NECESSARILY USE GAO ECONOMIC ASSUMPTIONS

Under the "fix" procedure OMB is given latitude to use its own forecasts for the final seqestration order. These are likely to differ substantially from CBO's—even James Miller, the current Director of the OMB, suggests that the similarity in deficit forecasts was "more coincidence than anything else."

OMB Director Miller further stated that he would not assure Senators that he would use either the CBO assumptions or the GAO averaging of the CBO and OMB reports.

IMPACT ON DEFENSE

Later on in the transcript, on page 65, the distinguished Senator from Georgia, Mr. NUNN, emphasizes this point on the defense issue. Senator MOYNIHAN and I have discussed the ability of OMB to fudge the defense number. Mr. NUNN says this precise thing occurred in terms of the fiscal year 1987 budget:

The American people don't recognize the President's budget does not even come close to meeting the Gramm-Rudman-Hollings targets, because the outlay number on defense was grossly underestimated.

Mr. Nunn continues on page 66:

We are going to have to cut that budget authority number, and we are going to have to cut defense much more than people have anticipated in order to meet that outlay number * * * when we get down to the sequester process, and your OMB would have that, if they play the same kinds of games with sequester the way they have played with the submission of the budget, then what we are going to have is a sequester that still doesn't meet the goals.

Director Miller states, on page 136 of the record, that the OMB's preliminary estimates suggest that the "excess deficit"—the amount necessary to sequester—will be $20 billion. This figure corresponds closely to an "illustrative" sequester of $22.6 billion analysed in the Congressional Budget Office's February annual report. In that report, the nonpartisan CBO estimated that such a sequester would reduce defense budget authority by $21 billion in fiscal 1987 alone. This represents a 6.2-percent across-the-board cut in defense programs, and 8.4 percent for nondefense programs. But, as the CBO wrote, the sequester "would be much more severe than these percentages imply."

Combined with the 1986 sequester percentage, the possible 1987 sequestration implies reductions from 1986 appropriations levels of 10.8 percent for defense and 12.3 percent for nondefense programs. The reduction in real terms would even be greater because of the loss of any adjustments for inflation in 1987.

So, I would say to my colleagues, the impact on defense is very real.

FORMER COMPTROLLER GENERAL OPPOSES SEQUESTER PROCESS

Mr. Elmer Staats, who served for more than 20 years at OMB before spending 15 years as the Comptroller General, opposed the sequestration process in the stongest of terms.

In summary, I am strongly opposed to the sequestration concept. It is arbitrary and it damages highly essential programs which Congress otherwise would not reduce or eliminate. These judgments historically have been made on a case-by-case basis after careful review of the authorizing and appropriations committees.

I do not believe there is a substitute to this approach. Is Congress willing to give up its constitutional responsibility for appropriating?

Has it examined the far-reaching implications of delegating this responsibility to anyone outside of Congress? The guidelines, even though tightly drawn, do not solve this problem.

In listening to the discussion this morning, Mr. Chairman, the point is being made that the guidelines are so tight that the OMB would not have much discretion. I would say in response to that if those guidelines are adequate for that purpose, then why doesn't Congress enact the appropriation itself? In other words, the executive either has discretion, or they don't. I don't really quite see the value of the guidelines as solving the basic problem.

In summary, again, I am strongly opposed to the sequestration concept. It is foreign to all that I have experienced in the many years that I have been in Government. The Congress has a clear and important responsibility for oversight. This is something that I worked with the Congress closely on for the 15 years I was Comptroller General. The executive agencies are clearly accountable to the Congress in carrying out their responsibilities. Isn't there an incompatability, even an inconsistency, in delegating the decisionmaking as to the final resources available for the execution of governmental programs and this responsibility? And I believe there is.

While we appreciate the fact that a hearing was held, that a record was produced, and that these points were made, we must be concerned the hearing occurred on the same day GRH II was offered.

There is much at stake. The Constitution. The balance of power between Congress and the executive branch. The quality and composition of defense spending. The ability of Congress to establish priorities.●

THE GENTLEMAN FARMER FROM VERMONT

● Mr. LEAHY. Mr. President, for the past 12 years I have had the privilege of serving on the Senate Agriculture Committee. From the days when I was the most junior member of that committee up until now, when I am the most senior member of my party, I have benefited from the advice and constant good judgment of J. Douglas Webb of Fairfax, VT.

Doug Webb, a native Vermonter and respected dairy farmer, has always been there when I—or anyone else—have needed his help and advice.

We in Vermont know how valuable a person he is. Many do not know, however, of the tremendous work he does with the United Dairy Industries Association. We are accustomed in the Congress, to seeing people put in long hours, but I know of no one who works harder than Doug Webb.

Recently the Burlington Free Press wrote an article entitled "The Gentleman Farmer From Fairfax." It said a lot about Doug Webb that should be shared with the rest of the country. He and his wife, Nellie, reflect the best of Vermont and I ask unanimous consent that the article be printed in the RECORD.

The article follows:

THE GENTLEMAN FARMER FROM FAIRFAX—J. DOUGLAS WEBB'S QUIET STYLE HELPS STEER THE DAIRY INDUSTRY

(By Steve Rosenfeld)

FAIRFAX.—For a dairy farmer, J. Douglas Webb spends more time jetting around the country than milking cows in his picturesque red barn.

The 64-year-old native Vermonter heads the world's largest commodity promotion organization—United Dairy Industries Association—which has the responsibility of marketing the nation's steadiest and most efficiently produced crop, milk.

These days, that is no easy task. There is competition from the soft-drink and beer industries, which spend billions on advertisements. There also is the industrywide milk surplus to deal with and divisions among regional milk marketing groups across the country.

It takes a cool head and a to-the-point style to manage these challenges and chart an industry course into the future. Webb has both—but ask the unpretentious son of British immigrants about his work and he will quietly say, "Agriculture has been my life. . . . You do what you can do."

William Paine, state deputy agriculture commissioner, said Webb has a national reputation "of being a straight shooter."

Said Paine, "He is one of the few national officials who is a very active dairy farmer. He doesn't mince his words, he is a typical Vermonter. He just lays it out the way it is and you have to make your own decisions."

Webb has had a hand in guiding UDIA since its formation 15 years ago. The organization, which represents 95 percent of the nation's dairy farmers and 85 percent of the milk sold in the country was modeled after a New England-wide marketing group, which he helped organize nearly 20 years ago.

In many ways, UDIA's work—marketing, nutrition research and education, and product and process development—has changed little since its inception in 1971.

"Your ad agency comes up with creative themes. But basically, you are doing the same "thing," said Webb, in an interview at his Fairfax home. "You are trying to sell more dairy products and you are trying to educate the general public about eating a proper diet."

The more pressing task, and what Webb says has been the major challenge faced by UDIA in recent years, is unifying national milk marketing efforts. Today, that means bringing a coalition of three West Coast states into UDIA's fold.

"It just makes sense," he said, speaking of UDIA's nationwide marketing goal. "The American dairy farmer's promotion dollar can be spent more efficiently that way. We are talking about a $15 million to $20 million savings if we can put this together." UDIA spends $120 million of a $210 million annual budget on promotion. Initially, co-ops voluntarily supported UDIA, but as of 1985 with the Farm Bill, all milk producers contribute based on production, 15 cents per hundredweight.

Though Webb was only elected UDIA chairman in March, he has been a key player in industrywide politics for some time. Three years ago, the battle was how to get Wisconsin—which produces one-sixth of the nation's milk—to join UDIA.

Webb fondly recalls his role in UDIA's successful bid.

It was one of those meetings only businessmen could love. For more than three hours, California's Milk Advisory Board made pitch after pitch to Wisconsin dairymen to woo them into their organization. By 12:30 p.m., everyone was exhausted and Webb had not said a word.

"It gets to be 12:40 and you're last on the program. You know they don't want to sit any longer," recalled Webb. "I said, 'I will take three minutes of your time.'

"I said, 'I can't say it emphatically enough. You should belong to UDIA. You are terribly important to the dairy industry. You can be more effective by belonging to UDIA.' And by gosh, they chose to join."

Said Webb, "The message is the same—and it is so simple. We can accomplish so much more by working together."

For the last 40 years, Webb has farmed a 600-acre spread in Fairfax. His 160-animal herd last year produced more than 2 million pounds of milk. He is a member of the St. Albans Cooperative Creamery and also harvests lumber and maple syrup.

Webb, one of four children, was born in 1912 in Fairfax to parents who had emigrated from England. His parents' farm had 15 dairy cows. They also had a small sugarbush and were involved in market gardening, raising bees and berries.

By high school, he said he "pretty much knew" he would go into farming. After graduating from the Vermont State School of Agriculture, now Vermont Technical College in Randolph, he worked for five years as a herdsman in Connecticut. He purchased his farm with his brother in 1946.

He married two years later—his wife, Nellie was the town clerk who recorded the purchase of the farm—and reared three children. Webb's involvement in public affairs began in 1961, when he was appointed selectmen. He has held the job for all but two years since.

Webb traces his political side to his upbringing.

"People who come from other countries appreciate the way things operate here in America—more than we natives do. Seeing my folks come here, it is not the same as it was back there," he said.

"I think you have to be interested in your community. I just think it is important. The philosophy is if you don't want to get involved in things, you have to be satisfied by those who will govern."

Webb's interest in his community led him to become chairman of the Vermont Maple Festival and a trustee of the Vermont Electric Cooperative. He has also been involved in Franklin County Field Days, an annual agricultural-oriented fair.

Webb's work shifted from the local to the regional in the late 1960's when he became involved with state and industry officials to set up a New England marketing organization. He was the first president of the group, called Milk Promotion Services Inc. It is funded by contributions from co-ops.

Paine, who worked for Milk Promotion Services before becoming deputy agriculture commissioner, said Vermonters have benefited from Webb's role in UDIA affairs because he is able to bring the concerns of the state's farmers into a national arena.

"One of the major benefits is the ability of the board to be constantly in touch with everything that is happening all over the country," said Paine, speaking of Webb's influence. "That is the major benefit. And knowing what is going on, he can give better and more informed imput."

Today, there are 23 regional member groups making up UDIA, representing about 235,000 farms. Its members annually produce 120 billion pounds of milk. The organization is split into three divisions, handling direct advertising, nutrition research and education and product development.

With his two sons running the farm, Webb said he spends "two-thirds" of his time on UDIA business. Even though his weekly itinerary may take him to several cities, his approach and attitude reveal his rural Vermont roots. He is paid $125 plus expenses for every day he is working on UDIA business.

"I believe—and this is where I come from—that instead of drinking 10 soft drinks, if people just drank a couple of glasses of milk, they would be more healthy," he said. "It is almost so simple it is elementary. But people don't think about this." ●

THE WORLD COURT

● Mr. GORE. Mr. President, ever since President Theodore Roosevelt brokered an end to the Russo-Japanese war, the United States has stood for a peaceful resolution to international problems by means of diplomacy and law. The fate of the International Court of Justice is of great importance to us, because it is only from such institutions that we may expect to see the growth of a process whereby nations abandon war and the threat of war in their relations with each other and shift by degrees toward adjudication and arbitration of their disputes. Clearly, the present administration's rejection of the Court's authority in the matter of Nicaragua affects these hopeful prospects. Many of us differ in our views of the legitimacy of the administration's position, but nonetheless it is one which deserves serious critical review. In this regard, I commend to the attention of my colleagues comments by Prof. Richard N. Garner of Columbia University which recently appeared in the New York Times.

[From the New York Times, July 2, 1986]

A REAGAN FIASCO IN THE WORLD COURT

(By Richard N. Gardner)

Suppose you had a lawyer who failed to shield you from an impending lawsuit by neglecting to exercise in a timely manner your right to refuse the court's jurisdiction? And, having missed that opportunity, suppose your lawyer then failed to present the merits of your case to the court, thus helping to assure a judgment against you? That is essentially what our Government has done in the case we lost last week to Nicaragua in the International Court of Justice.

Nicaragua brought its case to the court in April 1984, nearly three years after we started organizing, training and financing a 10,000-man contra army for operations inside Nicaragua. We could easily have blocked the Sandinistas' suit well before it came to the court by refusing to accept the court's jurisdiction in cases involving armed conflict—on the reasonable grounds that the security interests involved are too great, the factual issues too hard to resolve and the law on the subject insufficiently developed. But we failed to do so, and now we stand condemned before the world of breaking international law and violating Nicaraguan sovereignty.

To be sure, the International Court of Justice is not the same as a domestic court. Its decision that we should stop aiding the contras and pay damages to Nicaragua cannot be enforced. Nevertheless, the court's judgment will influence public opinion and policy in other countries, undermining confidence in our foreign policy and tarnishing our reputation as a law-abiding nation.

Significantly, no member of the court was prepared to accept President Reagan's argument that we have a right to aid "freedom fighters" seeking to overthrow or force the liberalization of Communist regimes. But even the judges who voted against us acknowledged that our aid to the contras might be justified if it were shown to be part of a "collective self-defense"—if it were proved that Nicaragua was aiding leftist guerrillas in El Salvador and if our response was necessary and proportional.

The United States' refusal to come to court to make that case meant that the court heard only the self-serving arguments of the Sandinista witnesses, many of whom, to put it bluntly, lied through their teeth in denying Nicaragua's substantial involvement in the Salvadoran insurgency.

With such self-destructive behavior on our part, it is not surprising that we obtained scant support from the court, since it is dif-

ficult for judges to resolve factual issues in favor of a litigant who does not appear to present his case. In the larger court of international opinion, many will conclude that we have no case at all.

There is a new "realism" in vogue in our country today that considers international law a utopian dream and international institutions irrelevant or worse to the advancement of our national interests. That view, which is not shared by most other democratic countries, is itself unrealistic.

International law is a system of mutual restraints and concessions that nations accept because it serves their interests. The fact that the Soviet Union and its allies repeatedly violate international law does not mean that it does not exist; nor does it justify our doing the same. Democratic governments, unlike totalitarian ones, hold themselves accountable for their actions under a rule of law. When we exercise our lawful right to use armed force in individual or collective self-defense, as we must in some cases, we should be willing to justify our actions in legal as well as political terms.

To say that we cannot do so in the Nicaraguan case because we would compromise vital intelligence sources is simply not credible. We were willing to show satellite photographs of Soviet missile sites during the Cuban missile crisis, and we revealed intercepts of Libyan messages to help justify our recent air strike against that country. If our case against Nicaragua is a good one, we must also have nonsensitive evidence from Salvadoran sources.

The Administration could still salvage something from its errors by publishing a full statement of the international law basis for aiding the contras. Other nations have the right to expect this from the world's greatest democracy. The American people, who correctly like to think of themselves as a law-abiding nation, have the right to demand no less.●

AT&T BREAKUP

● Mr. SIMON. Mr. President, we have had numerous postmortems on the breakup of AT&T and it's likely we will be feeling its negative impact for years to come. The message I receive from people in my State is that service has not improved and for the most part, they have not noticed savings. In fact, many say their bills have gone up. In a column I write for Illinois newspapers, I've taken a look at this problem and seek solutions. I ask to have it printed in the RECORD.

The column follows:

[P.S./Washington: A weekly column by U.S. Senator Paul Simon of Illinois]

WITH LONELY MA BELL, SERVICE WAS BETTER

The telephone system is a mess.

That will not come as a great surprise to many of you.

When I hold town meetings people get up, wave their phone bills and say, "I can't understand my phone bill." I sympathize with them. I can't understand them either.

The telephone system in the United States for decades was by far the best in the world. Now the quality is deteriorating. In calling from a hotel to another city, when I ask why there is an echo, I am told there is "equipment that is not compatible." That is supposed to satisfy me.

We formerly had a regulated monopoly. It worked reasonably well and protected the public from excessive phone charges.

Now "competition" is the watchword, and in most things like shoes and cars and groceries, I welcome competition. But for most citizens, in telephones and telephone service, it means higher costs, confusing bills and equipment that is sometimes less than quality equipment.

Once all the telephones were made in the United States. Now only about 40 percent are, and as competition becomes more severe those who make phones appear to be cutting costs wherever they can. The net result is flawed, weaker equipment.

There have been some improvements. I can now sit at my desk and punch one of 30 buttons and a phone will ring in one of 30 locations automatically. Car phones are better. But on the whole, equipment is getting worse.

It is also true that under the present system large companies and some consumers can achieve substantial savings. But if they have a harder and harder time communicating, I wonder what they are really saving.

And clearly, if present trends continue, people in rural areas will be paying more for service because competition in high-density areas will force down prices for some and up somewhere else, and "somewhere else" is rural areas.

Be thankful you do not live in rural Utah or Nevada or Wyoming! Those people will really be paying bills a decade from now.

I opposed the break-up of AT&T because I felt that a regulated monopoly in this case—whatever its defects—offered the public more protection than a non-monopoly situation. I feel the same about electric service, even though I fight the utilities from time to time.

Whether we can put Humpty Dumpty back together again after it has broken apart I do not know.

I've thought about legislation authorizing states to grant monopoly jurisdictions, provided there are certain safeguards for the public.

I don't serve on a committee with immediate jurisdiction, but I am ready to follow someone on one of those committees, who comes up with a sensible plan.

Since I have learned that lobbyists for various groups seem to read this column more carefully than many others do, perhaps one of them can come up with better ideas.

Or maybe someone in Johnston City or Chicago or East Moline or Bowen or Carlinville who reads this column can come up with an idea for improving things.

All I know is that a phone system that ought to be improving is moving in the opposite direction.

And somewhere out there is an idea for solving our problem.●

NAUM AND INNA MEIMAN: RESTRICTED RIGHTS

● Mr. SIMON. Mr. President, Naum and Inna Meiman are Soviet Jews who want to emigrate to Israel. Inna is critically ill with cancer and requires treatment that is only available in the West. Naum is a 74-year-old man who once worked as a physicist. Since he applied for his exit visa, however, the Soviet Government has kept him confined to his apartment and isolated him from the scientific community.

The Soviets have persecuted the Meimans persistently. Their telephone has been cut off and much of their mail has been confiscated. The Meimans have done nothing illegal, yet the Soviets have taken away their basic rights. The Soviets have denied the Meimans the right to choose the place in which they want to live, the right to obtain proper medical treatment, and the right to practice their religion. The Meimans deserve to live a life of freedom and happiness.

I strongly urge the Soviet authorities to grant the Meimans exit visas to Israel.●

A POLICY OF FOLLY

● Mr. SIMON. Mr. President, history has some pretty powerful lessons to teach us. But time and time again, we fail to learn these lessons. This is especially true of economic lessons. Fifty years ago our country was floundering in its worst depression. Recognizing the flawed policies that led to the Great Depression might help us avoid another depression. In a column I write for newspapers in my State, I've focused on an analysis of those policies by a wise and astute Illinois Congressman who served during the 1930's. I ask to have the column printed in the RECORD.

The column follows:

A POLICY OF FOLLY

(By Senator Paul Simon)

Illinois had a remarkable congressman who served in the U.S. House of Representatives from 1931 to 1941. His name was Kent Keller and he lived in Ava, a Southern Illinois community of about 800 population.

Recently someone gave me a mimeograph statement written by him—and apparently mimeograph by him—that is unfortunately undated. It was written after he left Congress. There is a reference to 1945 in the document. My guess is that it was written in 1946, but it could have been written in late 1945.

What he had to say has a ring of familiarity to it.

Keller reviewed the fiscal policies of the Harding, Coolidge and Hoover administrations and found they helped to bring on the Great Depression by providing tax breaks for the wealthy rather than facing the problems of the nation's indebtedness and people in trouble.

Keller observes, "Our first obligation is to pay our debts and continue to do so, and only reduce taxes as we reduce our debts. That appears to me to be common sense and good financing."

That makes as much sense today as when he wrote it—and is followed even less today than during the times he complained about.

In 1921, the Harding Administration and Congress decided that rather than face up to the indebtedness caused by World War I, they would substantially cut taxes.

In 1924, Congress voted another income tax reduction rather than deal with the debt, including almost $4 billion in rebates

to corporations for taxes they had already paid.

In 1926, the Coolidge Administration decided another tax reduction was in order, rather than doing something about the debt. The inheritance and gift taxes were virtually repealed.

In 1928, the Coolidge Administration and Congress again reduced taxes and on Dec. 14, 1929—while the nation teetered on the brink of financial chaos—another income tax reduction was passed.

Those five major tax reductions in the fact of unpaid federal indebtedness were primarily made to the wealthiest Americans. That totaled $35 billion in tax reductions—a huge sum for those days—while state and local taxes were being forced up almost 300 percent, in part because of a decline in federal services, and an unwillingness of the federal government to face our problems.

While these federal tax reductions were being voted, more than a million farms were foreclosed. We had the money to please the wealthiest of our citizens, but not the money to help farmers in great need.

Because we refused to reduce the national debt substantially, too much federal money went to pay interest rather than help the people who were out of work or who had other great needs.

Congressman Keller made the point that these flawed policies led to the Great Depression. The theory that helping the wealthiest of Americans will ultimately benefit all Americans did not work in practice.

The idea that it was wise just to ignore the federal debt, and let someone else pay for it eventually, turned out to be a policy of folly.

There is a familiar sound to all of this.

Will we learn from history?●

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, first let me indicate, as I have said earlier, that there are a number of meetings going on around the Capitol which are quite important. That is why we have not been able to move on the debt limit extension. One meeting involves the principal sponsors of the so-called Gramm-Rudman-Hollings II. There are Democrats and Republicans involved in that meeting.

We also have Members of the Senate in the tax conference. It is my understanding that they could come to an agreement today on Superfund, which is very, very important legislation, something we were hoping could be accomplished before we leave on August 15.

So there is no reason for the Senate to stay in session any longer today.

ORDERS FOR MONDAY, JULY 28, 1986

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate convenes on Monday, July 28, the reading of the Journal be dispensed with, no resolutions come over under the rule, the call of the calendar be dispensed with, and, following the recognition of the two leaders under the standing order, there be special orders in favor of the following Senators for not to exceed 5 minuts each: Senators PRESSLER, PROXMIRE, and LEVIN; to be followed by a period for the transaction of routine morning business, not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for not more than 5 minutes each, provided further that the morning hour be deemed to have expired.

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

COMMITTEES HAVE UNTIL 6 P.M., THURSDAY, JULY 29, 1986, TO SUBMIT RECOMMENDATIONS

Mr. DOLE. Mr. President, I ask unanimous consent that Senate committees have until 6 p.m., Thursday, July 29, 1986, to submit their recommendations to the Senate Budget Committee pursuant to section 2 of Senate Concurrent Resolution 120.

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

THE CALENDAR

Mr. DOLE. Mr. President, I would like to inquire of the distinguished minority leader if he is in a position to pass or indefinitely postpone any of the following calendar items: Calendar No. 202, Calendar No. 265, Calendar No. 660, Calendar No. 678, Calendar No. 718, and Calendar No. 732.

Mr. BYRD. Mr. President, I am pleased to be able to respond to the distinguished majority leader by saying that these measures have been cleared by all Members on this side of the aisle. We are ready to postpone in some instances and to act positively on others of the items which have been identified by the leader.

Mr. DOLE. I thank the distinguished minority leader.

Mr. President, I ask unanimous consent that the calendar items just identified be considered en bloc and passed or indefinitely postponed en bloc and that all committee amendment be considered and agreed to en bloc and that certain statements by Members be appropriately entered into the RECORD.

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

S. 1353 INDEFINITELY POSTPONED

Mr. DOLE. Mr. President, I ask unanimous consent that Calendar No. 202, S. 1353, to authorize appropriations for nongame fish and wildlife conservation during fiscal years 1986, 1987, and 1988, be indefinitely postponed.

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

S. 1827 INDEFINITELY POSTPONED

Mr. DOLE. Mr. President, I ask unanimous consent that Calendar No. 678, S. 1827, to amend the act entitled "An act granting a charter to the General Federation of Women's Clubs," be indefinitely postponed.

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

NONGAME FISH AND WILDLIFE CONSERVATION AUTHORIZATION

The Senate proceeded to consider the bill (H.R. 1406) to authorize appropriations for nongame fish and wildlife conservation during fiscal years 1986, 1987, and 1988.

Mr. CHAFEE. Mr. President, this legislation, which was passed by the House last year, is identical to the bill (S. 1353) reported by the Committee on Environment and Public Works on June 25, 1985. H.R. 1406 authorizes appropriations through fiscal year 1988 under the Fish and Wildlife Conservation Act of 1980, often called the Nongame Act. The Nongame Act is a key component in the protection of this Nation's fish and wildlife resources.

Over the years wildlife management programs have been funded almost exclusively from the sale of hunting and fishing licenses and from excise taxes on sporting equipment. As a result, these programs have focused principally on enhancement of populations of fish and wildlife species of interest to anglers and hunters. Efforts on behalf of these species have produced tremendous benefits not only for the particular kinds of fish and wildlife targeted for management but also for the many other animals which live in association with these so-called game species.

Nevertheless, the needs of the vast majority of fish and wildlife species remain incompletely addressed by existing programs for game animals. Approximately 90 percent of our wild vertebrate animals are not ordinarily taken for sport, fur, or food. These species have come to be known collectively as nongame wildlife.

Management and protection of nongame wildlife is an important but often overlooked aspect of natural resources conservation. Benefits from maintaining healthy nongame wildlife populations are derived from the ecological, scientific, recreational, educational, and aesthetic values of these animals.

Maintenance of healthy nongame wildlife populations helps ensure a full diversity of life in this planet's living systems. We should value, and even celebrate, the diversity of wildlife species because of the richness that this variety brings to our lives. The returns to each of us from the millions of spe-

cies with which this planet has been blessed are of inestimable importance in how we view the world around us.

Because more than 70 percent of the U.S. population lives in urban areas, nongame wildlife programs in these environments have especially great potential to produce tremendous benefits. Yet urban areas and their nongame species are all too often the most neglected by State and Federal wildlife programs. By increasing the availability and diversity of wildife in urban residential areas, nongame programs can improve the quality of human life in these areas as well as reduce open space maintenance costs and increase property values. Moreover, urban wildlife programs may help educate a majority of our people in the basic principles and values of wildlife conservation, which in turn helps to stimulate greater public support for the full range of national and global wildlife and natural resources conservation programs.

The young people of this country, in particular, have an almost insatiable appetite for information about and exposure to wildlife. One study in 1977 found that 92 percent of the schoolchildren surveyed wanted to learn more about wildlife. Nongame management programs for urban wildlife species can help meet this demand by increasing the abundance and diversity of wildlife in urban areas, which in turn will enhance understanding and awareness of wildlife needs among our youth.

Older Americans also value the presence of wildlife in their lives. More than half of all Americans over the age of 16—an estimated 93 million of us—indicated in one 1980 study that they enjoy wildlife around the home. This interest clearly demonstrates the potential benefits that could be generated by urban wildlife programs, yet a 1983 study found that only six States had such formal programs.

Most Americans, according to U.S. Fish and Wildlife Service estimates, do more than just passively enjoy knowing that wildlife are around. Most of us actively participate in some form of wildlife-associated recreation other than hunting, fishing, or trapping. In fact, Yale University's Stephen Kellert found that 1 in 4 Americans is a birdwatcher and that 68 percent of us had fed birds during 1978 and 1979. Sixty percent of the wildlife enjoyed in these so-called nonconsumptive recreational activities are nongame species. In other words most wildlife-associated recreation in this country is centered around species that remain largely ignored by current State and Federal wildlife conservation programs.

We also have a larger responsibility to do a better job of conserving our wildlife populations before they reach the point where their numbers are so depleted that no other recourse is left but to protect them under the Endangered Species Act. All too frequently we wait until a species is classified as threatened or endangered before taking steps to rebuild its numbers to a self-sustaining level. Unfortunately, efforts to bring species back from the brink of extinction are far less likely to be successful and far more costly. Habitat destruction is the major reason for the decline and subsequent endangerment of nearly all wildlife species. Programs for the conservation of nongame wildlife can provide needed habitat protection and can help us monitor the status of species and sound an early warning signal for additional protective measures.

There are, of course, other more pragmatic, but in my view less important, reasons for maintaining the greatest possible diversity of nongame wildlife species. These species have substantial economic value. Ten years ago approximately one-fifth of all U.S. households spent close to $170 million annually to purchase food for wild birds. At that time bird-watching accounted for between one-half and one-third of the dollar sales of binoculars, and sales of gift books about birds brought in $4 million annually. Total direct expenditures in 1975 for the enjoyment of nongame birds alone was $500 million. I have no doubt that these expenditures have increased tremendously over the past decade.

More importantly, our future comfort and even existence may depend upon the continued survival of some unknown or little known species of nongame wildlife. When we allow a species to become extinct, or even endangered, we run the risk of losing or impairing important sources of genetic material, pharmaceuticals, or other chemical or structural materials.

Congress recognized that the conservation of nongame wildlife improves the quality of our lives in these many tangible and intangible ways when it passed the Fish and Wildlife Conservation Act 6 years ago. The act authorized Federal funding for nongame wildlife programs and Federal support of State efforts, through matching funds, to develop comprehensive wildlife management programs.

Regrettably, however, Congress has never appropriated any funds to implement the Nongame Act. States have had to raise what money they can from other sources, such as through voluntary checkoffs on State income tax forms. The States have been highly creative in developing funding mechanisms for nongame wildlife, but these mechanisms were intended to complement anticipated Federal matching funds not replace them. Average State nongame revenues fall far short of what is needed. Moreover, they lack the year-to-year stability guaranteed by Federal matching funds, such as those which have ensured the effectiveness of the Pittman-Robertson and Dingell-Johnson programs for State fish and game management.

Increased funding for Federal efforts on behalf of nongame wildlife is also appropriate and badly needed. There are 757 nongame migratory bird species for which the U.S. Fish and Wildlife Service has responsibility under the Migratory Bird Treaty Act. These species are not being managed adequately. Some of these species, such as the common loon, the spotted owl, the osprey, the roseate tern, and the loggerhead shrike, have been designated by the Fish and Wildlife Service as "National Species of Special Emphasis." Yet these nongame species are faltering and sufficient resources have not been forthcoming to arrest or reverse the downward trend in their numbers. By providing funding for nongame management of these species now, we can avoid more drastic, less successful, and more costly remedies later.

The most pressing need to continue support for State and Federal nongame wildlife conservation programs is reauthorization of the Fish and Wildlife Conservation Act of 1980. The authorization to appropriate funds under this act expired on September 30 of last year. The legislation before us here today would only extend this authorization through fiscal year 1988.

I believe a short reauthorization of the Nongame Act is appropriate at this time. It will allow Congress to appropriate some funds for particularly pressing Federal research on dwindling migratory bird species in the short term. And I might note that the Committee on Environment and Public Works in its report to the Budget Committee recommended an increase of $500,000 in the U.S. Fish and Wildlife Service's budget for fiscal year 1987 in order to support such nongame migratory bird research.

In the long term an independent and reliable source of funding is needed to support greater Federal involvement and Federal support of States in nongame conservation efforts. A short reauthorization will help ensure that Congress continues to work toward developing and passing amendments to the Nongame Act that will provide the kind of stable funding mechanism which has proven so effective in conserving wildlife and their habitats in the duck stamp and P-R and D-J programs.

Over the next year, I will be seeking additional research on possible mechanisms to fund the Nongame Act. It is my hope that such research and hearings next year will yield an effective and workable funding mechanism which Congress and the President will support. In the meantime, I would ask

my colleagues to support the straightforward, brief reauthorization provided by H.R. 1406.

The bill was ordered to a third reading, read the third time, and passed.

USE AND DISTRIBUTION OF CERTAIN INDIAN JUDGMENT FUNDS

The bill (H.R. 1904) to provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Chippewas of the Mississippi in Docket Numbered 18–S before the Indian Claims Commission, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

U.S. TRAVEL AND TOURISM ADMINISTRATION AUTHORIZATION

The Senate proceeded to consider the bill (S. 2307) to provide authorization of appropriations for activities of the U.S. Travel and Tourism Administration.

Mr. PRESSLER. Mr. President, I rise today in support of S. 2307, legislation which I introduced with 17 cosponsors to reauthorize funds for the U.S. Travel and Tourism Administration (USTTA). As we prepare to vote on this legislation, I would note that a few of my colleagues have suggested that we no longer need a national office to promote America as a travel destination. They are mistaken.

The United States is facing serious competition for the world tourism dollar. Developing countries recognize that they must earn foreign exchange and have established national tourism offices which are successfully capturing an ever-increasing portion of the world market.

The U.S. Department of Commerce estimates that non-oil-exporting developing countries increased their share of the world travel market by nearly 5 percent between 1976 and 1984. The U.S. share of the international travel market has not expanded appreciably until this year's unprecedented turn of events helped us along.

This reflects no failure on the part of the USTTA. It has done an outstanding job with extremely limited funding. The USTTA is currently working with 46 States "packaged" into 8 destination regions located throughout the United States.

Within each of those regions, State tourism offices, cities, and towns, large and small businesses, and the USTTA pool modest resources to create maximum results. USTTA helps regions to produce "cooperative advertising" campaigns to attract visitors from one or more specific foreign markets.

A coordinated 2- to 3-year international marketing plan is developed and the USTTA's nine overseas offices go to work promoting our destination areas—the Old West Trail which includes my own State of South Dakota, the Great Lakes, New England USA, Travel South, Foremost West, America's Heartland, the Pacific Northwest, George Washington Country—in the foreign market.

Through tourism trade shows, familiarization tours, and educational programs for wholesale and retail travel trade promoters who will be selling U.S. tours, lesser known parts of the United States become popular destinations. The return to the U.S. economy has been $18 for every dollar spent by the USTTA. How many ventures are so successful?

Despite the evidence and my efforts along with those of many of my colleagues here in Congress, spending money on the USTTA's programs has not been viewed as a good investment by the Office of Management and Budget (OMB).

After putting up a good fight for appropriations, we were only able to provide the USTTA with $11.5 million to promote the United States as a destination in 1986. Canada, in comparison, will spend almost $70 million (U.S.).

As we approach this Senate vote on S. 2307, some of you are saying we no longer need a U.S. Travel and Tourism Administration. Others are saying it's a good idea, but we should save our money for other purposes. I believe this is false economy.

It is true that America is experiencing a boom year in domestic and international tourism. However, we must not let this year's unique circumstances lull us into a false sense of security. Successful marketing and promotion requires planning and incremental image building over the long term.

Interestingly, recent studies indicate that our own self-concept of the United States of America as the perfect destination is not necessarily shared by the rest of the world.

According to Alastair Morrison, who is a professor at Purdue University and a specialist in the study of tourism marketing, America has some perception problems overseas.

Many foreigners have the impression that Americans are unfriendly, and that all of the United States is riddled with crime and running at a breakneck pace. We need to show them the real America.

Without the USTTA to present the whole story, the potential foreign visitor may never learn the truth about our wonderful country. Without the USTTA, international travelers may never discover the 90 percent of America that awaits them beyond the coastal States. Without the USTTA, the U.S. economy will lose an excellent vehicle through which the balance of payments can be improved.

We need the USTTA, and passage of S. 2307 is an important step toward ensuring its future. I urge you to join me in supporting this important legislation. Tourism works for America. Let us keep the USTTA working for tourism.

The PRESIDING OFFICER. The bill is before the Senate and 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 (S. 2307) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2307

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds and declares that—

(1) the travel and tourism industry in the United States is vital to the economy of the Nation, and accounts for more than $240,000,000,000 in annual revenues, employes more than five milion persons, and contributes to the international balance of payments by generating nearly $15,000,000,000 as an export; and

(2) the United States Travel and Tourism Administration serves a unique and vital role in the promotion of travel and tourism in the United States, by—

(A) coordinating travel and tourism activities of the Federal Government, State, and local governments, and the private sector in order to optimize their contributions to economic prosperity, employment, and the international balance of payments;

(B) ensuring the compatability of travel and tourism with other national interests, including historical and cultural preservation, energy development and conservation, environmental protection, and the judicious use of natural resources;

(C) eliminating unnecessary trade barriers to international operations of the United States travel and tourism industry;

(D) encouraging the free entry of individuals traveling to the United States in order to enhance international understanding and good will, consistent with immigration laws, laws protecting the public health, and laws governing the importation of goods into the United States;

(E) assisting in the collection, analysis, and dissemination of data which accurately measure the economic and social impacts of travel and tourism to and within the United States, in order to maximize the efficacy of planning in, and cooperative activities between, the public and private sectors; and

(F) harmonizing, to the maximum extent possible, all Federal activities in support of travel and tourism with the needs of the general public, the States, territories, local governments, and the travel and tourism industry, and providing leadership in the areas of travel, tourism, and national heritage preservation within the United States.

(b) It is therefore the purpose of this act to provide authorization of appropriations for the United States Travel and Tourism Administration, in order that the Administration may continue its activities to promote travel and tourism in and to the United States.

SEC. 2. Section 304 of the International Travel Act of 1961 (22 U.S.C. 2126) is amended by inserting immediately after "1982" the following: "not to exceed

$13,000,000 for the fiscal year ending September 30, 1987, not to exceed $14,000,000 for the fiscal year ending September 30, 1988, and not to exceed $15,000,000 for the fiscal year ending September 30, 1989".

RETIRED ENLISTED ASSOCIATION, INCORPORATED

The Senate proceeded to consider the bill (S. 524) to recognize the organization known as the "Retired Enlisted Association, Incorporated."

Mr. ARMSTRONG. Mr. President, 2 years ago, I was approached by representatives of the Retired Enlisted Association [TREA] who were seeking a Federal charter for their organization. At the time, I learned that TREA was committed to assisting retired enlisted personnel from all branches of the service. However, over the period of 2 years, I have come to understand and appreciate just what a fine group of people make up TREA.

Frequently when Members of Congress are asked to help with legislation, they are left with a substantial burden in attaining the support necessary to have it enacted. Nothing could be further from the truth with TREA. TREA's leadership provided concise, factual information on the work they do, and the entire organization helped in contacting Senators to gain the necessary cosponsors required for passage.

In retrospect, this level of activity shouldn't have been surprising. TREA was founded in 1963 in my home State of Colorado, however it remained a regional organization until 1981. At its 1981 convention, TREA committed itself to becoming a national veterans organization and its membership started to grow. From 1,300 members in 1981, TREA now has over 40,000 and is growing at an average rate of 1,000 new members each month. It is currently the fastest growing veterans organization in the United States, with members in all 50 States, Guam, the Virgin Islands, Puerto Rico and overseas.

There is little question as to why TREA has received so much support from the veterans community. It seeks to serve its members by keeping them informed of new legislation and regulations that affect their status in an understandable and even-handed manner, and it provides information on matters that have special significance to retirees. However, TREA's greatest asset is its membership. People who join TREA are interested in the future of their Nation, the welfare of their fellow servicemen and the defense of democracy.

I commend the Senate for showing its recognition and support for the Retired Enlisted Association. TREA is truly an outstanding organization, and we all wish it success in its endeavors.

The PRESIDING OFFICER. The bill is before the Senate and 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, read the third time, and passed, as follows:

S. 524

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

CHARTER

SECTION 1. The Retired Enlisted Association, Incorporated, organized and incorporated under the laws of the State of Colorado, is hereby recognized as such and is granted a charter.

POWERS

SEC. 2. The Retired Enlisted Association, Incorporated (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 3. The objects and purposes for which the corporation is organized shall be those provided in its articles of incorporation.

SERVICE OF PROCESS

SEC. 4. With respect to service of process, the corporation shall comply with the laws of the States in which is it incorporated and those States in which it carries on its activities in furtherance of its corporation purposes.

MEMBERSHIP

SEC. 5. Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this Act, be as provided in the constitution and bylaws of the corporation, and terms of membership and requirements for holding office within the corporation shall not be discriminatory on the basis of race, color, religion, or national origin.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. 6. The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

SEC. 7. The officers of the corporation and the election of such officers shall be as is provided in the articles of incorporation and in conformity with the laws of the State or States in which it is incorporated.

RESTRICTIONS

SEC. 8. (a) No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State or States in which it is corporated.

LIABILITY

SEC. 9. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

BOOKS AND RECORDS; INSPECTION

SEC. 10. Subject to any applicable State law—

(1) the corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors;

(2) the corporation shall keep at its principal office a record of the names and address of all members having the right to vote; and

(3) all books and records of the corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 11. The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(68) The Retired Enlisted Association, Incorporated."

ANNUAL REPORT

SEC. 12. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 11 of this Act. The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

SEC. 13. The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

DEFINITION OF "STATE"

SEC. 14. For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. 15. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1954. If the corporation fails to maintain such status, the charter granted hereby shall expire.

TERMINATION

SEC. 16. If the corporation shall fail to comply with any of the restrictions or provisions of this Act the charter granted hereby shall expire.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the various measures were passed.

71-059 O-87-44 (Pt. 12)

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

The motion to lay on the table was agreed to.

AN ACT GRANTING A CHARTER TO THE GENERAL FEDERATION OF WOMEN'S CLUBS

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.R. 4434, an act granting a charter to the General Federation of Women's Clubs, and I ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 4434) to amend the act entitled "An Act granting a charter to the General Federation of Women's Clubs."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

Mr. BYRD. Mr. President, there is no objection to the discharge of the Committee on the Judiciary of the bill, H.R. 4434, and there is likewise no objection to proceeding to its immediate consideration on this side.

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

The Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, I rise in support of H.R. 4434 a bill amending the charter of the General Federation of Women's Clubs. As you may know this legislation is identical to S. 1827, a bill I introduced earlier this Congress.

The General Federation of Women's Clubs is the largest and oldest nondenominational, nonpartisan, international service organization of volunteer women in the world with membership in the United States numbering 50,000. In 1984 alone, GFWC members donated $50 million and 18 million hours on volunteer projects. The effect of the GFWC's work is seen around the world.

The General Federation of Women's Clubs aims at involving their members in concerns of their local community. To this end, the GFWC has sponsored seminars on child abuse, missing children, latchkey children, women in the Third World, and disposal of hazardous wastes. Such seminars provide a forum for open discussion of the problems and possible solutions. The GFWC also lends its time to CARE and Save the Children. GFWC members are committed to improving the quality of life of the communities they serve.

A special project of the GFWC is the Youth City Councils. This event is a leadership training program for teenagers ages 13 to 18. Elections are held for positions on a mock city council. Once elected, these Youth City Councils work on projects to better their locality. One YCC in my own State of Utah reduced juvenile crime by 50 percent within their city. Many of the YCC's hold a Christmas dinner and dance for the elderly members of their community.

Because they are such an asset to our society it is urgent we help them in the best way we can. This bill will enable the GFWC to qualify for 501(c)(3) tax status. They presently hold a 501(c)(4) tax status. As a result, they would be able to apply for special third-class rates of postage. The money they save on postage can be applied to many of their worthwhile projects.

I congratulate my fellow Senators in supporting the legislation to amend the General Federation of Women's Clubs charter so that this fine organization may continue to serve this Nation and the world as it has for the past 95 years.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H.R. 4434) was ordered to a third reading, read the third time, and passed.

□ 1350

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

ORDER FOR ADJOURNMENT UNTIL MONDAY, JULY 28, 1986

Mr. DOLE. Mr. President, I ask unanimous consent that following the minority leader's statement in morning business, the Senate stand in adjournment until noon on Monday, July 28.

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

NO VOTES ON MONDAY

Mr. DOLE. Mr. President, let me repeat that there will be no votes on Monday.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BYRD. I thank the Chair.

Mr. President, I shall be brief.

ABM TREATY NEGOTIATING RECORD ACCESS

Mr. BYRD. Mr. President, I rise to reinforce what our distinguished colleague from Georgia [Mr. NUNN] has stated about the efforts he and I and other Senators on both sides of the aisle have made to obtain increased access to the ABM Treaty negotiating record.

The Senate and at least two committees, the Foreign Relations and Armed Services Committees, have a major interest in the institutional and the substantive issues surrounding our request for this increased Senate access.

We believe that increased Senate access to the ABM Treaty negotiating record is critically important for proper Senate consideration of the SDI Program, both now and in the future.

The administration's new interpretation of ABM Treaty obligations could have profound implications for arms control and for the magnitude, pace, and composition of the SDI Program. The administration's process of crafting, propounding, and justifying this reinterpretation also threatens the Senate's constitutional role in the treatymaking process.

We also think this request should be resolved as soon as possible, because the Senate action on SDI matters could occur very shortly. We hope the meeting we are scheduled to have with the administration next week results in speedy negotiation of an adequate access arrangement.

I remain confident that, if we approach the matter in a cooperative manner, a satisfactory access arrangement can be established which adequately addresses the Senate's need for this information, maintains its coequal role with the executive branch in the treatymaking process, and protects the confidentiality of the negotiating process.

I can understand the administration's concerns about my request, and I understand that those concerns which are addressed to the request that Senator NUNN made and that I have made, fall in two general areas: First, whether it sets a precedent which would bind future Presidents; and second, whether the confidentiality of the negotiating process necessary for successful international bargaining can be safeguarded. Let me briefly address those concerns.

Regarding precedents, there apparently have been only about three instances in U.S. history when a President refused a Senate request for treaty-related materials during the ratification process, according to the Library of Congress. Thus, past executive branch compliance with access requests indicates most Presidents have accepted the views of those eminent constitutional scholars who conclude the Senate is coequal in the treatymaking process, and thus entitled to all requested documentation.

The fact that our request comes after ratification is of no particular significance if one accepts the judgment that the Senate's coequal status in the treatymaking process probably would have resulted in its receiving

these materials in 1972 if they had been sought.

Confidentiality should not be an issue for three reasons:

First, the fact that executive branch compliance with Senate requests for treaty-connected materials before ratification seems to be the rule during our Nation's history, and refusals the exception means negotiators already operate with awareness that their candid communications may be transmitted to the Senate. There is little reason to think this has hampered American negotiators throughout history or injured our Nation.

Second, any Senators involved would fully understand their obligations. Also, a case might be made that the Senate's record in keeping secrets probably is much better than the executive branch's performance under every recent administration.

Third, the Senate arms control observer group experience demonstrates that carefully controlled staff access also protects that confidentiality.

We hope the administration will cooperate with us in establishing a satisfactory access arrangement to the ABM Treaty negotiating record without further delay and without the need for the full Senate to consider legislative remedies to resolve this important issue.

□ 1350

Mr. President, I ask unanimous consent that pertinent correspondence be inserted in the RECORD at this point.

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

U.S. SENATE,
DEMOCRATIC POLICY COMMITTEE,
June 6, 1986.

Hon. GEORGE SHULTZ,
Secretary of State, U.S. Department of State, Washington, DC.

DEAR MR. SECRETARY: Two of the most controversial national security issues expected to come before the Senate in the near future will be the Administration's interpretation of the Anti-Ballistic Missile (ABM) Treaty, and the Fiscal Year 1987 request for the Strategic Defense Initiative (SDI). The Administration's interpretation of the ABM Treaty obligations regarding permissible research on future strategic defense technologies could have profound implications for arms control, and for the magnitude, pace, and composition of the SDI program. The Administration's process of crafting and justifying this reinterpretation also may have major ramifications regarding the Senate's Constitutional role in the treaty-making process.

As a member of the Senate when it approved the ABM Treaty, and now as a member of the Defense Appropriations Subcommittee and the Democratic Leader, I believe that access to the ABM Treaty negotiating record, as well as to certain related documents, would be of great assistance to the Senate before and during our forthcoming deliberations on these matters.

This necessary information includes the ABM Treaty negotiating record, a review of the record prepared last year by the Systems Planning Corporation (under contract to the Office of the Secretary of Defense), and the detailed legal analysis of the ABM Treaty limits written in 1972 by the Legal Adviser to the U.S. negotiating delegation, Mr. John Rhinelander.

I am aware of recent attempts by individual Senators and a Senate subcommittee to obtain access to this information. I am disappointed at the Administration's response to these requests, because that response edges toward threatening the basic institutional and Constitutional interest of the Senate as a full and equal partner in the treaty-ratification process.

It is clear that the Senate needs access to the ABM Treaty negotiating record both to assess properly various interpretations being proposed and to continue to play a viable, Constitutional role in arms control matters. Thus, I would like to formally request such access for myself, as Democratic Leader, and for members of the appropriate committees. Since you and I share a commitment to protect the confidentiality of the negotiating process, I am confident that a satisfactory access arrangement can be established if we approach the matter in a cooperative manner.

As you know, 46 Senators already have sent a letter to the Armed Services Committee urging that no more than three percent real growth be authorized for the Fiscal year 1987 SDI budget. Whether this is the most reasonable funding level for SDI in Fiscal year 1987 remains to be seen. However, my own thinking on this issue will be influenced by the extent of the Administration's recognition of the Senate's proper role in evaluating national security matters and of its cooperation in arranging adequate access to information required to permit the Senate to fulfill that role. Because these issues are interrelated and so very important, I am confident you will understand my concern that the Senate receive the most comprehensive information possible about them.

Thank you for your consideration of this request.

Sincerely,

ROBERT C. BYRD.

U.S. DEPARTMENT OF STATE
Washington, DC, June 16, 1986.

Hon. ROBERT C. BYRD,
U.S. Senate,

DEAR SENATOR BYRD: The Secretary has asked me to respond to your letter of June 6, 1986 (received here on June 9) requesting access to various documents relating to the ABM Treaty, including the negotiating record.

As you know, the Administration previously received a similar request from Senators Warner and Hart. We responded to that request on April 11 (copy enclosed) by offering to present a detailed briefing on the negotiating history of the Treaty to members of the Armed Services Subcommittee on Strategic and Theater Nuclear Forces. We would be happy to have you attend such a briefing.

We have not yet received a formal response to our offer from Senators Warner and Hart. Discussions are under way between State Department representatives and the Armed Services Committee to resolve this matter in a manner that accommodates the Senate's concerns without undermining the principle of confidentiality of treaty negotiating records. We hope that these discussions will produce a mutually acceptable resolution of this matter in the near future. We would be happy to meet with you and your staff to discuss how best to proceed.

Sincerely,

JAMES W. DYER,
Acting Assistant Secretary, Legislative and Intergovernmental Affairs, U.S. Department of State.

U.S. DEPARTMENT OF STATE,
Washington, DC, April 11, 1986.

Hon. JOHN W. WARNER,
Chairman, Subcommittee on Strategic and Theater Nuclear Forces, Committee on Armed Services, U.S. Senate.

DEAR MR. CHAIRMAN: The Secretary has asked me to respond to your letter of January 14, 1986 requesting access to various documents relating to the ABM Treaty. As I indicated to you in my letter of February 5, 1986, our delay in responding has been caused by the need for coordination among the various agencies that received similar letters from you. This letter is being sent on behalf of the Department of Defense and the National Security Council, in addition to the Department of State.

As your letter acknowledged, a request to examine the negotiating record of a treaty raises sensitive issues regarding the integrity of the negotiating process. At the same time, we recognize the Senate's interest in reviewing the manner in which the Executive Branch engages in treaty interpretation.

State Department representatives have met on two occasions with Armed Services Committee staff members in an effort to reach an accommodation in this matter. Based on those discussions, we propose to proceed in the following manner. Ambassador Paul Nitze, Legal Adviser Abraham Sofaer, and ACDA General Counsel Thomas Graham would be pleased to meet with interested members of the Subcommittee on Strategic and Theater Nuclear Forces in an informal, off-the-record session to discuss the negotiating history of the ABM Treaty and the Administration's analysis of that history in our recent interpretation of the Treaty. The Administration representatives would attempt to answer the Senators' questions on the negotiations (if necessary, by reference to particular documents that they would bring with them), but would not make the negotiating documents themselves available to the Senators. With regard to documents that you requested other than the negotiating record (including various internal memoranda and directives, both contemporaneous with and subsequent to the negotiations), the Administration representatives would be able to discuss those documents, as appropriate.

We are hopeful of resolving this matter in a manner that satisfies the Senate's legitimate concerns. We believe that the session we have proposed would do that. Please have your staff contact Eileen Giglio in my office to arrange the meeting.

Sincerely,

JAMES W. DYER,
Acting Assistant Secretary, Legislative and Intergovernmental Affairs.

U.S. SENATE,
OFFICE OF THE DEMOCRATIC LEADER,
Washington, DC, June 26, 1986.

Hon. GEORGE SHULTZ,
Secretary of State, U.S. Department of State, Washington, DC.

DEAR MR. SECRETARY: I would like to pursue matters raised in my June 6, 1986, letter (attached) to you requesting access to

the negotiating record of the Anti-Ballistic Missile (ABM) Treaty, and to several, specific related documents, on behalf of myself, as Democratic Leader, and for members of the appropriate Senate committees. I received the attached letter of June 16, 1986, from your Acting Assistant Secretary of Legislative Affairs.

Frankly, I must state that your Department's response is inadequate, and I am concerned that your assistants have failed to understand the importance of both the institutional and Strategic Defense Initiative (SDI)-specific issues I discussed in my initial request. I will not repeat those issues in this letter, because my original letter clearly expresses them and their implications. I did not write such a letter, and make such a request, lightly, and I do not believe the response I received serves the best interests of either the Executive Branch or the Senate.

Therefore, I renew my request. The Senate will consider the annual Defense Authorization Act in early July, and since arms control and funding issues related to SDI are expected to be a major subject of debate, your early response would be most appreciated. I am confident that a satisfactory access arrangement can be established if we approach the matter in a cooperative manner.

Sincerely,

ROBERT C. BYRD.

Mr. BYRD. I yield the floor.

ADJOURNMENT UNTIL MONDAY, JULY 28, 1986

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 12 noon on Monday next.

Thereupon, at 1:52 p.m., the Senate adjourned until Monday, July 28, 1986, at 12 noon.