UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of Amazon.com, Inc., Respondent.	CPSC Docket No. 21-2 Hon. Carol Fox Foelak Presiding Officer

DECLARATION OF NICHOLAS GRIEPSMA
IN SUPPORT OF AMAZON'S MOTION FOR SUMMARY DECISION

I, Nicholas Griepsma, hereby declare:

1. I am an attorney for Respondent Amazon.com, Inc. ("Amazon") in the above-captioned matter.

2. I am over the age of 18 and I am competent to make this declaration.

3. As used in this Declaration, "CPSC" refers to the U.S. Consumer Product Safety Commission.

4. For ease of reference, Amazon has continued its exhibit numbering from its September 23, 2022 Motion for Summary Decision and October 21, 2022 Opposition to Complaint Counsel's Motion for Summary Decision. Amazon Exhibits 1–106 are attached to the September 23, 2022 Declaration of Joshua González filed in support of Amazon's Motion. Amazon Exhibits 107–122 are attached to the October 21, 2022 Declaration of Nicholas Griepsma filed in support of Amazon's Opposition to Complaint Counsel's Motion for Summary Decision. Amazon Exhibits 123–129 are attached to this Declaration filed in support of Amazon's Reply Memorandum in Support of Amazon's Motion for Summary Decision.

5. Attached as Exhibit 123 is a true and correct copy of the article by Robert S. Adler titled "From 'Model Agency' to Basket Case—Can the Consumer Product Safety Commission be Redeemed?" and published in Volume 41, Issue 1 of the Administrative Law Review in 1989.

6. Attached as Exhibit 124 is a true and correct copy of the congressional record from the Hearing Before the Subcommittee on the Consumer of the Committee on Commerce, Science, and Transportation of the United States Senate, held during the First Session on the Reauthorization of the Consumer Product Safety Commission of the 100th Congress on May 13, 1987.

7. Attached as Exhibit 125 is a true and correct copy of the CPSC report titled "Cost-Benefit Analysis of Continuing the Interim DINP Prohibition in the Final Rule: 16 CFR Part 1307 "Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates"" and published in February 2022.

8. Attached as Exhibit 126 is a true and correct copy of the U.S. Senate "Report of the Committee on Commerce, Science, and Transportation on S. 605," submitted to the United States Senate during the First Session of the 101st Congress and ordered to be printed on May 25, 1989.

9. Attached as Exhibit 127 is a true and correct copy of the congressional record from the Hearing Before the Subcommittee on the Consumer of the Committee on Commerce, Science, and Transportation of the United States Senate, held during the First Session of the 101st Congress on March 19, 1989.

10. Attached as Exhibit 128 is a true and correct copy of the Office of Management and Budget bulletin titled "Final Bulletin for Agency Good Guidance Practices" and published in pages 3432–3440 of Volume 72, No. 16 of the Federal Register on January 25, 2008.

11. Attached as Exhibit 129 is the article titled "Attention Capture and Maintenance" authored by Michael S. Wogalter and S. David Leonard and printed as Chapter Seven in the book "Warnings and Risk Communication" that was edited by Michael S. Wogalter, Dave DeJoy, and Kenneth R. Laughery and published on September 9, 1999.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2022.

Nicholas Griepsma

Nicholas Griepsma

CERTIFICATE OF SERVICE

I hereby certify that, on November 21, 2022, a true and correct copy of the foregoing documents were, pursuant to the Order Following Prehearing Conference entered by the Presiding Officer on October 19, 2021:

- filed by email with the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills at amills@cpsc.gov, with a copy to the Presiding Officer at alj@sec.gov and to all counsel of record; and
- served to Complaint Counsel by email at jeustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.

Nicholas Griepsma

Nicholas Griepsma

Exhibit 123

FROM "MODEL AGENCY" TO BASKET CASE— CAN THE CONSUMER PRODUCT SAFETY COMMISSION BE REDEEMED?

Robert S. Adler*

The Consumer Product Safety Commission (CPSC) is the newest[1] and smallest[2] of the federal health and safety regulatory

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This article expands upon a chapter written by the author for a report by the Democracy Project entitled *Blueprints for America: Transition '89*. The views expressed herein are solely those of the author.

[1]Established in 1972 by the Consumer Product Safety Act (CPSA), Pub. L. No. 92–573, 86 Stat. 1207 (codified as amended at 15 U.S.C. §§ 2051–83 (1982 & Supp. IV 1986)), the CPSC was the first independent commission since the days of the New Deal created "for the purpose of imposing federal regulation on an established area of commercial activity." Scalia & Goodman, *Procedural Aspects of the Consumer Product Safety Act*, 20 U.C.L.A. L. REV. 899, (1973).

[2]For Fiscal Year 1989, the CPSC requested a budget of $32.9 million and 532 staff. *Current Report*, 16 *Prod. Safety & Liab. Rep. (BNA)* 203 (February 26, 1988). This is roughly half the budget of the Federal Trade Commission, the next smallest federal regulatory agency. *See Consumer Product Safety Commission Reauthorization: Hearings Before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 99th Cong., 1st Sess. 83 (1985) [hereinafter *1985 House Reauthorization Hearings*] (printed in *Health and the Environment Miscellaneous (Part 1): Hearings Before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce*, 99th Cong., 1st Sess. 1–271 (1986)). In 1985, the Subcommittee on Health and the Environment of the House Energy and Commerce Committee listed relative budget sizes for the major federal health and safety agencies:

Agency	*FY 1986 Budget*
Environmental Protection Agency	$2,268 million
Occupational Safety and Health Administration	213 million
Food and Drug Administration	409 million
Federal Trade Commission	64 million

agencies. When the Consumer Product Safety Act (CPSA) established the agency in 1972, the act was hailed as "landmark legislation"[3] "loaded with regulatory innovations"[4] that set up the " 'most powerful Federal regulatory agency ever created.' "[5] Unfortunately, the CPSC has never lived up to these initial billings and, according to its consumer critics, currently operates incompetently[6] and as a "lackey of industry."[7]

To say the least, the CPSC has had a turbulent, albeit short, history. In part, the turmoil arose from specific management and policy judgments (and misjudgments) at the agency. In part, it stemmed from rapidly shifting national views about regulation and deregulation. This article reviews the factors that led to the CPSC's present state of disrepute. In doing so, it examines the forces that created the CPSC; discusses the agency's implementation of its statutory mandate; explores the critical issues that the CPSC faces currently; and makes recommendations with respect to future agency direction.

I. OVERVIEW

A. In the Beginning: Great Expectations

Between the mid-sixties and the mid-seventies, Congress enacted a large number of consumer protection laws,[8] leading some observers

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National Highway Traffic Safety Administration	246 million
Consumer Product Safety Commission	34 million

Id. These relative sizes remain current.

[3]*See Consumer Product Safety Commission Oversight: Hearings Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, 93rd Cong., 2d Sess. 1 (1974) [hereinafter *1974 House Oversight Hearings*] (remarks of Representative Bob Eckhardt).

[4]*Consumer Product Safety Commission Oversight: Hearings on S. 664 and S. 1000 Before the Subcomm. for Consumers of the Senate Comm. on Commerce*, 94th Cong., 1st Sess. 1 (1975) (remarks of Subcommittee Chairman Frank E. Moss) [hereinafter *1975 Senate Oversight Hearings*].

[5]Schwartz, *The Consumer Product Safety Commission: A Flawed Product of the Consumer Decade*, 51 GEO. WASH. L. REV. 32, 43–44 (1982) (quoting Swit, *An Overview of Public Law 92–573*, PROCEEDINGS OF THE BRIEFING CONFERENCE ON THE CONSUMER PRODUCT SAFETY ACT 7 (1973) (sponsored by the Product Safety Letter, Inc.) (citing similar claims by agency observers)). In testimony before the Senate, Richard O. Simpson, the first CPSC Chairman stated, "[i]t has been said that [the CPSC] has more power than any other agency, and I personally believe that to be true." *1975 Senate Oversight Hearings*, *supra* note 4, at 190.

[6]Kriz, *Leashed Watchdog*, 1987 NATL J. 2663 (citing a number of criticisms by consumer groups).

[7]Klein, *Commission Gives Consumer Safety Short Shrift, Critics Say*, Winston-Salem J., July 5, 1987, at F2, col. 1.

[8]Of 47 federal consumer protection laws enacted between 1891 and 1972, fewer than half, or 21 statutes, were enacted in the first 75 years; the remaining 26 were enacted in the years from 1966–1972. Schwartz, *supra* note 5, at 34 n.2. *See also* S. BREYER,

to call this period the "consumer decade."[9] During this period, Congress established or statutorily strengthened a number of agencies.[10] This legislative activity arose from Congress' perception that unfettered market outcomes had produced inadequate levels of consumer protection.[11] Expectations about the ability of expanded federal regulatory authority to improve consumers' lives ran high during this period. Nowhere were expectations higher than with the Consumer Product Safety Commission,[12] which embodied the "most advanced congressional thinking on the techniques of Federal regulation."[13]

In the case of the CPSC, feelings about the need for a product safety agency arose from the report of a study commission—National Commission on Product Safety (NCPS)—established in 1967 by a joint resolution of Congress[14] and appointed by President Lyndon Johnson in 1968.[15] In very dramatic fashion, the NCPS Report indicated that the United States faced a serious product safety problem. Among other things, it found that:

> Twenty million Americans were injured each year in the home as a result of incidents connected with consumer products. Of these, 110,000 were permanently disabled and 30,000 were killed. The

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REGULATION AND ITS REFORM 1 (1982) (discussing the number of federal regulatory laws enacted during this period).

[9]Schwartz, *supra* note 5, at 34 n.2.

[10]For example, besides passing the CPSA, Congress also enacted the National Traffic and Motor Safety Act of 1966, Pub. L. No. 89–563, 80 Stat. 718 (codified as amended at 15 U.S.C. §§ 1381–1431) (1982 & Supp. IV 1986), the Occupational Safety and Health Act of 1970, Pub. L. No. 91–596, 84 Stat. 1207 (codified as amended at 29 U.S.C. §§ 651–678) (1982 & Supp. IV 1986), the Truth in Lending Act, Pub. L. No. 90–321 (Title I), 82 Stat. 146 (codified as amended at 15 U.S.C. §§ 1601–1677) (1982 & Supp. IV 1986), the Fair Credit Reporting Act, Pub. L. No. 90–321 (Title VI), 84 Stat. 1128 (codified as amended at 15 U.S.C. §§ 1681–1681t) (1982 & Supp. IV 1986).

[11]*See generally* SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS OF THE HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, FEDERAL REGULATION AND REGULATORY REFORM, H.R. REP. NO. 134, 94th Cong., 2d Sess. (1976) [hereinafter 1976 HOUSE REPORT ON REGULATORY REFORM]; *Symposium—Regulatory Myths: Hearing Before the Subcomm. for Consumers and the Subcomm. on the Environment of the Senate Comm. on Commerce*, 94th Cong., 1st Sess. (1975) [hereinafter *1975 Senate Symposium on Regulatory Myths*].

[12]The agency encouraged this thinking. According to the agency's first Chairman, Richard O. Simpson, "[t]he Nation has a right to view the Commission with great expectations." *1974 House Oversight Hearings*, *supra* note 3, at 87. *See also* Schwartz, *supra* note 5, at 43–44.

[13]1976 REPORT ON REGULATORY REFORM, *supra* note 11, at 195. Because of these "techniques," the CPSC was viewed as a "model agency." *See infra* notes 51–63 and accompanying text.

[14]S.J. Res. 33, Pub. L. No. 90–146, 81 Stat. 466 (1967) (establishing a National Commission on Product Safety).

[15]Elkind, *Forward* to NATIONAL COMMISSION ON PRODUCT SAFETY, FINAL REPORT (1970) [hereinafter NCPS FINAL REPORT].

annual cost to the country of product-related injuries exceeded $5.5 billion.[16]

"The exposure of consumers to unreasonable consumer product hazards [was] excessive by any standard of measurement."[17]

"Federal authority to curb hazards in consumer products [was] virtually nonexistent. Federal product safety legislation consist[ed] . . . of isolated acts treating specific hazards in narrow product categories."[18]

State and local laws showed a "hodgepodge of tragedy-inspired responses to challenges that cannot be met by restricted geographical entities."[19]

Product liability litigation was primarily concerned with postinjury remedies, not prospective enforcement of product safety. "Despite its humanitarian adaptations to meet the challenge of product-caused injuries, the common law puts no reliable restraint upon product hazards."[20]

Industry self-regulation, in particular consensus voluntary safety standards, was "legally unenforceable and patently inadequate."[21]

Given these findings, the NCPS recommended the establishment of broad responsibility for the safety of consumer products to be vested in a "conspicuously independent Federal regulatory agency, a Con-

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[16]*Id.* at 1. In recent years, the CPSC has revised these estimates somewhat due to more accurate injury surveys. Current estimates are that consumer products are involved in an estimated 32 million injuries and 28,000 deaths, costing an estimated $10 billion in emergency room treatment alone. *See* CONSUMER PRODUCT SAFETY COMMISSION, ANNUAL REPORT FOR FISCAL YEAR 1986 [hereinafter 1986 ANNUAL REPORT].

[17]NCPS FINAL REPORT, *supra* note 15, at 1. The NCPS cited with approval Professor Corwin Edwards' definition of "unreasonable hazard":

> Risks of bodily harm to users are not unreasonable when consumers understand that risks exist, can appraise their probability and severity, know how to cope with them, and voluntarily accept them to get benefits that could not be obtained in less risky ways. When there is a risk of this character, consumers have reasonable opportunity to protect themselves; and public authorities should hesitate to substitute their value judgments about the desirability of the risk for those of the consumers who choose to incur it. But preventable risk is not reasonable (a) when consumers do not know that it exists; or (b) when, though aware of it, consumers are unable to estimate its frequency and severity; or (c) when consumers do not know how to cope with it, and hence are likely to incur harm unnecessarily in . . . that it could be reduced or eliminated at a cost in money or in the performance of the product that consumers would willingly incur if they knew the facts and were given the choice. Risks that are unreasonable by this definition of unreasonableness seem . . . to be common.

Id. at 11.

[18]*Id.* at 2. Some of the acts transferred to the CPSC in its original legislation fit in this category, *e.g.*, the Refrigerator Safety and the original Flammable Fabrics Act. *See infra* notes 25–90 and accompanying text.

[19]*Id.*

[20]*Id.* at 3.

[21]*Id.* at 2. *See infra* notes 177–247 and accompanying text.

sumer Product Safety Commission (CPSC), appointed by the President and confirmed by the Senate."[22] Within two years, Congress established the CPSC[23] as a bipartisan, independent regulatory commission patterned substantially along the lines recommended by the NCPS.[24]

In the CPSA, Congress directed the Commission to enforce four existing statutes then administered by other agencies. These acts, commonly referred to as the "transferred acts,"[25] are the Federal Hazardous Substances Labeling Act (FHSA),[26] the Flammable Fabrics Act (FFA),[27] the Poison Prevention Packaging Act of 1970 (PPPA),[28] and the Refrigerator Safety Act (RSA).[29]

As established, the CPSC's jurisdictional sweep is extremely broad.[30] Estimates of the number of products under the agency's

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[22] *Id.* at 5 (footnote omitted).

[23] For a thorough review of the differing approaches to establishing a product safety agency undertaken by the Senate and the House, the legislative history of the CPSA, and the organizational structure of the agency, see BNA THE CONSUMER PRODUCT SAFETY ACT (1973); Brodsky & Cohen, *"Uncle Sam," The Product Safety Man: Consumer Product Safety Standards in the Marketplace and in the Courts*, 2 HOFSTRA L. REV. 619 (1974); Elkind, *Product Safety—"The Violent Sanctuary,"* 42 PA. B.A.Q. 50 (1970); Givens, *Product Safety Standard-making Powers Under the Consumer Product Safety Act*, 18 ANTITRUST BULL. 243 (1973); Patton & Butler, *The Consumer Product Safety Act—Its Impact on Manufacturers and on the Relationship Between Seller and Consumer*, 28 BUS. LAW. 725 (1973); Schwartz, *supra* note 5, at 35–45; Note, *The Consumer Product Safety Act: A Federal Commitment to Product Safety*, 48 ST. JOHN'S L. REV. 126 (1973); Note, *The Consumer Product Safety Act—Front-end Protection for the Consumer Creates an Increased Burden of Care for the Consumer Product Industry*, 3 MEM. ST. U. L. REV. 344 (1973); Note, *The Consumer Product Safety Act—Placebo or Panacea?*, 10 SAN DIEGO L. REV. 814 (1973); Note, *The Consumer Product Safety Commission: An Agency Manual*, 43 GEO. WASH. L. REV. 1077 (1975).

[24] A report issued by a congressional oversight subcommittee concluded that the only major difference between the CPSC as constituted by Congress and the recommendation of the NCPS was the omission of an independent consumer safety advocate. Section 4 of the NCPS draft provided that the proposed Commission have an independent safety advocate appointed by the President to a term of seven years. Congress considered, but did not accept this recommendation. 1976 HOUSE REPORT ON REGULATORY REFORM, *supra* note 11, at 198 & n. 16. *See also* SENATE COMM. ON COMMERCE, CONSUMER SAFETY ACT OF 1972, S. REP. No. 749, 92d Cong., 2d Sess. 19 (1972).

[25] *See* Schwartz & Adler, *Product Recalls: A Remedy in Need of Repair*, 34 CASE W. RES. L. REV. 401, 427 (1984).

[26] Pub. L. No. 86–613, 74 Stat. 372 (1960) (codified as amended at 15 U.S.C. §§ 1261–1276) (1982 & Supp. IV 1986)).

[27] Ch. 164, 67 Stat. 111 (1953) (codified as amended at 15 U.S.C. §§ 1191–1204 (1982)).

[28] Pub. L. No. 91–601, 84 Stat. 1670 (1970) (codified as amended at 15 U.S.C. §§ 1471–1474, 1476 (1982)).

[29] Ch. 890, 70 Stat. 953 (1956) (codified as amended at 15 U.S.C. §§ 1211–1214 (1982)).

[30] One way to visualize the agency's authority is to think of the types of products found in a large shopping mall. With the exception of the pharmacy and grocery stores (and even some items there), virtually everything in the mall falls within CPSC jurisdiction. Congress did specifically exempt certain products from CPSC jurisdiction, such as food, drugs (except for child-resistant closure requirements), cosmetics, automobiles, tobacco products, aircraft, boats, and pesticides. *See* 15 U.S.C. §§ 2052(a)(1)(A)-(I) (1982 & Supp. IV 1986). Most of these products are regulated by other federal agencies.

jurisdiction range from 10,000 to 15,000.[31] The number of businesses producing and distributing these products is well over a million.[32]

Under the CPSA, the Commission has four purposes: "(1) to protect the public against unreasonable risks of injury . . . ; (2) to assist consumers in evaluating the comparative safety of consumer products; (3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and (4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses and injuries."[33]

Congress provided the CPSC with an array of authority to carry out the purposes of the act. Among other things, the Commission can:

promulgate mandatory safety standards for products,[34]

ban products,[35]

issue administrative "recall" orders to compel repair, replacement or refunds for products that present substantial risks of injury,[36]

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[31]The CPSC's first Chairman, Richard O. Simpson, estimated that the agency had jurisdiction over roughly 10,000 products. *See 1974 House Oversight Hearings*, *supra* note 3, at 88 (Remarks of Richard O. Simpson). The Commission currently estimates that approximately 15,000 types of consumer products come under its jurisdiction. Earlier estimates ranged from 10,000 to 15,000. 1986 ANNUAL REPORT, *supra* note 16, at 1. Also see Schwartz, *supra* note 5, at 43 n. 66.

[32]*Consumer Product Safety Commission Reauthorization: Hearings Before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 97th Cong., 1st Sess. 38 (1981) [hereinafter *1981 House Reauthorization Hearings*] (testimony of Susan B. King, former Chairman of the CPSC).

[33]15 U.S.C. § 2051(b) (1982).

[34]15 U.S.C. § 2056 (1982) (CPSA); 15 U.S.C. § 1193 (1982) (FFA), 15 U.S.C. § 1472 (1982) (PPPA); 15 U.S.C. § 1213 (1982) (RSA). Although the FHSA contains no explicit authority for promulgating safety standards, the CPSC uses its banning authority to set what are, in effect, safety standards. *See* Forester v. Consumer Prod. Safety Comm'n, 559 F.2d 774 (D.C. Cir. 1977) (upholding a CPSC "standard" for bicycles issued under the FHSA).

[35]15 U.S.C. § 2057 (1982) (CPSA); 15 U.S.C. § 1261(q) (1982) (FHSA). Although the Commission lacks explicit banning authority under the FFA, RSA and PPPA, no regulatory gap exists because (i) the agency is always free to use the CPSA's regulatory authority when it lacks adequate authority under a "transferred act," *see* 15 U.S.C. § 2079(d) (1982), and (ii) a comprehensive standard generally can serve, in effect, as a product ban. *See, e.g.*, Standard for the Flammability of Children's Sleepwear, 16 C.F.R. § 1615.1–1615.5 (1988) (standard effectively bars the use of untreated cotton material for children's sleepwear).

[36]15 U.S.C. § 2064 (1982) (CPSA); 15 U.S.C. § 1202 (1982) (FHSA). No explicit recall authority exists under the PPPA, FFA, or RSA. For a number of years, the Commission maintained that the FFA implicitly authorized recalls as part of the injunctive relief available under the FFA to restrain ongoing violations of the Act. In *Congoleum Indus., Inc. v. Consumer Prod. Safety Comm'n*, 602 F.2d 220 (9th Cir. 1979), however, the United States Court of Appeals for the Ninth Circuit ruled that absent specific authorization, no recalls could be ordered under the FFA. Notwithstanding this ruling, CPSC staff takes the position that section 15 of the CPSA empowers the Commission to order the recall of dangerously flammable products. Telephone interview with Alan Schoem, Director of Division of Administrative Litigation of the CPSC Directorate for Compliance and Administrative Litigation (August 24, 1988).

seek court orders to require the recall of imminently hazardous products.[37]

In addition to providing these powers, Congress imposed, under section 15(b) of the CPSA,[38] a requirement that businesses under CPSC jurisdiction report to the agency all instances in which they obtain information indicating that their products[39] contain defects which "could create" substantial product hazards.[40] These so-called "15(b) reports" rapidly assumed, and continue to play, a major role in the agency's regulatory activities.[41]

Congress imposed one major non-regulatory responsibility on the CPSC: the establishment of an "Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data and information. . . ."[42] One of the major mechanisms for doing this is the CPSC's National Electronic Injury Surveillance System (NEISS), which is a statistically selected set of hospital emergency rooms whose reports of product-related injuries are used as the basis for national projections.[43] In addition to NEISS, the agency gathers reports on

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With respect to the PPPA and RSA, the staff generally takes the same view. *Id;* Schwartz & Adler, *supra* note 25, at 428.

[37]15 U.S.C. § 2061 (1982) (CPSA). For products falling under the FHSA, the Commission may declare a product to be an imminent hazard administratively. 15 U.S.C. §§ 1261(q)(2) and 1262(e)(2) (1982). No explicit imminent hazard authority exists under the PPPA, RSA, or FFA. Although no imminent hazard action has ever been brought under these acts, presumably the Commission would turn to the CPSA to bring such an action if an imminent hazard situation ever arose. 15 U.S.C. § 2079(d) (1982) (establishing the Commission's authority to use the CPSA when a risk of injury cannot be eliminated or adequately reduced under the "transferred acts").

[38]15 U.S.C. § 2064(b) (1982).

[39]The Commission takes the position that the reporting requirements of section 15(b) apply to all of the "transferred acts." 16 C.F.R. §§ 1115.2(d) (1988) (requiring Substantial Product Hazard Reports to be filed).

[40]Section 15(b) also requires reports of failures to comply with applicable consumer product safety rules that create a substantial risk of injury to the public. 15 U.S.C. § 2064(a)(1), (b) (1982).

[41]From the outset, section 15 recalls proved to be critical to the agency's regulatory activities. At a hearing in 1976, Richard O. Simpson, the first CPSC chairman, stated "[w]ere I to single out one activity . . . which, in terms of public protection, could be cited as a 'success story,' it would, of necessity, be the implementation of section 15 of the Consumer Product Safety Act." *Regulatory Reform—Volume IV: Consumer Product Safety Commission, National Highway Traffic Safety Administration, Federal Trade Commission: Hearings Before the Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce,* 94th Cong., 2d Sess. 5 (1976) [hereinafter *1976 House Regulatory Reform Hearings*]. Similarly, in 1981, Susan King, CPSC chairman from 1978–80, pointed to the Commission's participation in over 2,500 recall actions involving an estimated 100 million products and stressed that these actions did not require costly, time-consuming mandatory standards. *1981 House Reauthorization Hearings, supra* note 32, at 15. *See also infra* notes 317–83 and accompanying text.

[42]15 U.S.C. § 2054(a) (1982).

[43]1986 ANNUAL REPORT, *supra* note 16, at 5. Approximately 200,000 injury reports involving roughly 800 categories of consumer products were collected through NEISS during FY 1986. The Commission conducted follow-up telephone investigations in approximately 1,200 of these cases and on-site investigations in more than 300 others.

deaths associated with consumer products from medical examiners and coroners through a system called MECAP[44] and uses a variety of other data sources to fulfill its information dissemination duties.[45] Although one would imagine that injury data collection and dissemination would constitute relatively noncontroversial parts of the agency's function,[46] in fact, the dissemination of product-specific information has proven to be among the most controversial roles played by the agency.[47]

B. The "Model" Agency

In order to make the CPSC a model of regulatory reform, Congress wanted the agency to have strong regulatory authority, generous funding, broad public participation (especially by consumers) in decisionmaking, widespread openness, and substantial independence from White House influence.[48] With these features, the CPSC—its supporters hoped—would quickly establish a vast system of consumer product safety standards through open, democratic, efficient procedures.[49]

In its early years, the CPSC tried hard to be a "model" agency. At the outset, the agency adopted an openness policy, often referred to as its "goldfish bowl" approach,[50] that required virtually all meetings between Commission employees and outside parties to be scheduled

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Id. For a debate over the adequacy of NEISS to assess product hazards see Heiden, Pittaway & O'Connor, *Utility of the U.S. Consumer Product Safety Commission's Injury Data System as a Basis for Product Hazard Assessment,* 5 J. PROD. LIAB. 295 (1982) (criticizing the NEISS system's methodology) and Waksberg, *CPSC's Hazard Data System: Response to Critique,* 6 J. PROD. LIAB. 201 (1983) (defending the NEISS system).

[44]The Medical Examiners and Coroners Alert Project. The Commission received approximately 1,200 MECAP reports during FY 1986. 1986 ANNUAL REPORT, *supra* note 16, at 5.

[45]For example, the Commission uses data on fire losses and casualties from the U.S. Fire Administration's National Fire Incident Reporting System (NFIRS), the National Fire Protection Association (NFPA) and various fire departments. *Id.*

[46]Even the harshest critics of government regulation tend to endorse the notion that it is appropriate for government to collect and disseminate product hazard information. *See, e.g.,* M. FRIEDMAN & R. FRIEDMAN, FREE TO CHOOSE: A PERSONAL STATEMENT 227 (1980) (arguing that government should provide health and safety information but leave citizens "free to choose what chances we take with our lives"); Weidenbaum, *Reforming Government Regulation,* REG. Nov.–Dec. 1980, at 15 ("The traditional notion that . . . market failure is adequate justification for government intervention badly needs to be revisited. . . . For some regulatory programs . . . the provision of better public information may enable consumers themselves to make more sensible trade-offs (for example, between safety and price) than any standards set in Washington.").

[47]See *infra* notes 248–308 and accompanying text.

[48]See generally 1976 HOUSE REPORT ON REGULATORY REFORM, *supra* note 11; Schwartz, *supra* note 5.

[49]*Id. See also* R. Pittle, *CPSC: A Look Forward,* Remarks at the Eastern Consumer Conference of the Council of Consumer Organizations in Carlisle, Pa. (September 26, 1982) (reflecting on early assumptions about CPSC rulemaking capabilities).

[50]*1974 House Oversight Hearings, supra* note 3, at 91 (remarks of Richard O. Simpson, CPSC Chairman).

in advance, listed in a public calendar (circulated free throughout the United States), and open to the public.[51] Under the openness policy, the Commissioners held weekly informal "brown bag" luncheon press conferences, often referred to as "munchies."[52]

In pursuing openness, the Commission adopted procedures pursuant to the Freedom of Information Act (FOIA)[53] that went far beyond anything required under the FOIA. Essentially, the agency released any document in its possession except those which contained proprietary or trade secret information, or which would invade an individual's privacy.[54] This meant that even memoranda from the agency's legal staff discussing legal weaknesses of agency rulemaking strategies were released.[55]

The CPSC adopted similar policies regarding public participation. Consistent with its efforts to be a "model" agency, the Commission read the requirements for public participation broadly, especially with respect to including consumer participation.[56] In particular, regarding CPSC rulemaking, viewed as the "heart of the CPSA"[57] in its early years, the agency devoted a substantial portion of its budget to encouraging consumer groups to assist in drafting safety standards.[58]

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[51]Procedural Policy on Meetings, Prior Public Notice, and Records of Proceedings, 16 C.F.R. § 1001.60 (1973), *reprinted in 1974 House Oversight Hearings, supra* note 3, at 129–31. Interestingly, the Commissioners conducted all of their meetings in private, without staff, until passage of the Government in the Sunshine Act, Pub. L. No. 94–409, 90 Stat. 1241 (1976) (codified as amended at 5 U.S.C. § 552b (1982 & Supp. IV 1986). *See also* Government in the Sunshine Act, Rules for Commission Meetings, 16 C.F.R. §§ 1013.1–1013.6 (1988). In the author's opinion, the quality of Commission decisionmaking improved dramatically when staff began to attend meetings. Staff often are able to point out overlooked or misunderstood points in briefing materials.

[52]*1974 House Oversight Hearings, supra* note 3, at 91 (remarks of Richard O. Simpson, CPSC Chairman).

[53]5 U.S.C. § 552 (1982 & Supp. IV 1986).

[54]*See 1975 Senate Oversight Hearings, supra* note 4, at 270 (remarks of Richard O. Simpson, Chairman CPSC).

[55]*Id.* at 269. The policy of releasing legal memoranda proved controversial almost from the outset. *See infra* note 66 and accompanying text.

[56]*See* Page, *Consumer Involvement and the Consumer Product Safety Act*, 2 HOFSTRA L. REV. 605 (1974) (the notion that consumers should actively participate in the administration and enforcement of a federal statute designed to protect them from unreasonable risks is a distinguishing feature of the CPSA). Among the original CPSA sections that promoted consumer participation were section 7 (15 U.S.C. § 2056) (consumers encouraged to participate in rulemaking activities, including CPSC funding for their participation), section 10 (15 U.S.C. § 2059) *repealed by* Omnibus Budget Reconciliation Act of 1981, Pub. Law No. 97–35, § 1210, 95 Stat. 357, 721 (consumers could petition the agency to commence rulemaking, with agency required either to grant or deny petitions within 120 days of receiving them), and section 24 (15 U.S.C. § 2073) (consumers could seek to act as "private attorneys general" to enforce CPSC rules and orders). *See also* 1976 HOUSE REPORT ON REGULATORY REFORM, *supra* note 11, at 201–03 (discussing the congressional emphasis on consumer participation).

[57]Scalia & Goodman, *supra* note 1, at 906.

[58]*See* Schwartz, *supra* note 5, at 63–64.

Conventional wisdom in the early 1970s held that the CPSC was the most powerful regulatory agency ever created.[59] At one Commissioner's confirmation hearing, a senator remarked that the agency's authority was so great that "an honest man wouldn't want [it] and a dishonest man shouldn't have [it]."[60]

C. The Luster Fades

Four or five years later as the Carter administration settled in, conventional wisdom had taken a 180-degree turn. The new image of the CPSC was of an awkward, incompetent body that gave good intentions a bad name.[61] Above all, the agency's founders had expected the CPSC to draft large numbers of consumer product safety standards in fairly rapid fashion.[62] The agency's first chairman had encouraged these expectations by proposing a plan to address in ten years 75 percent of all preventable product-related injuries through the establishment of 100 safety standards.[63] Yet, as of 1977, the agency had promulgated only one consumer product safety standard under the CPSA—and that was for the relatively trivial hazards associated with swimming pool slides.[64]

Moreover, nothing seemed to work well at the CPSC. Criticism rained on the agency from Congress, consumer and industry groups. Among the charges leveled at the agency: it focused on minor hazards, lacked a meaningful system of priorities, demonstrated incompetence with respect to the regulation of chronic hazards, required excessive recordkeeping for its safety standards, harassed

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[59] *Id.* at 43–44.

[60] *See Nominations—September–December: Hearing on Nomination of R. David Pittle to Be a Member of the Consumer Product Safety Commission Before the Senate Commerce Comm.*, 93rd Cong., 1st Sess. 10 (September 25, 1973) [hereinafter *1973 Pittle Confirmation Hearings*] (remarks of Senator Marlow Cook).

[61] *See Consumer Product Safety Commission—Oversight: Hearings Before the Subcomm. on Oversight and Investigations and the Subcomm. on Consumer Protection and Finance of the House Comm. on Interstate and Foreign Commerce*, 95th Cong., 1st Sess. 1 (1977) [hereinafter *1977 CPSC House Oversight Hearings*] (According to Subcommittee Chairman John Moss, "the Commission's performance to date falls well below the mark set by Congress."); *Implementation of the Consumer Product Safety Act: Hearings Before the Subcomm. for Consumers of the Senate Comm. on Commerce, Science, and Transportation*, 95th Cong., 1st Sess. (1977) [hereinafter *1977 Senate Oversight Hearings*]; Congressional Quarterly, *Controversy Threatens Independence of Consumer Product Safety Commission* in REGULATION: PROCESS AND POLITICS 52 (1982) [hereinafter CQ REPORT ON REGULATION] (agency severely criticized by consumer, industry, and environmental groups).

[62] *See* Schwartz, *supra* note 5 at 44. *See generally* NCPS FINAL REPORT, *supra* note 15.

[63] *1976 House Regulatory Reform Hearings, supra* note 42, at 5 (testimony of Richard O. Simpson, CPSC Chairman).

[64] *Implementation of the Consumer Product Safety Act: Hearings Before the Subcomm. on Consumers of the Senate Comm. on Commerce, Science, and Transportation*, 95th Cong., 1st Sess. 31 (1977) (testimony of Linda Hudak, Legislative Director of Consumer Federation of America: "Swimming pool slides are not only a product used by a limited segment of the population, but are nowhere near one of the most dangerous products purchased by consumers.").

small business, failed to meet statutory deadlines in processing petitions for rulemaking, and generally acted with excessive timidity.[65] Even the agency's policies on openness, which had earned it such praise from consumer groups at the outset, came under attack from them. They accused the agency of confusing "openness with nakedness."[66]

Responding to what it perceived as the agency's poor performance, the Office of Management and Budget (OMB) seriously considered recommending to President Carter the abolition of the agency.[67] Strong congressional objections led to the abandonment of this proposal.[68]

The rise and fall of the agency's reputation in many respects was undeserved. It arose more from misperceptions and unreasonable expectations than from agency incompetence. Contrary to the views of many observers, the agency was hardly the most powerful regulatory agency in Washington. Although it possessed the power to set safety standards, ban products and require the recall of hazardous products, so did most other health and safety agencies.[69] Moreover, the CPSC's rulemaking authority under the Consumer Product Safety Act was heavily weighted with procedural requirements that made it virtually impossible to set standards at other than a snail's pace.[70]

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[65]*See generally 1977 CPSC House Oversight Hearings, supra* note 61; *1977 Senate Oversight Hearings, supra* note 61.

[66]*1975 Senate Oversight Hearings, supra* note 4 at 150 (Statement of Professor Joseph Page and students, Georgetown University Law Center). Prompting this criticism was the agency's insistence on releasing internal legal memoranda detailing potential legal weaknesses in agency regulatory approaches prepared by its general counsel's office. According to Professor Page and his students, the agency had put several regulations at risk in the courts by releasing these memoranda.

[67]NATIONAL JOURNAL, March 4, 1978, at 359.

[68]*See infra* note 82 and accompanying text.

[69]These powers are shared in large part by agencies such as the National Highway Traffic Safety Administration (NHTSA), the Food and Drug Administration (FDA) and the Occupational Safety and Health Administration (OSHA). In some cases, these agencies lack specific statutory powers granted to the CPSC. Nevertheless, the lack of such authority hardly deters these agencies from taking effective remedial action. For example, FDA has no statutory recall authority, yet is able to push companies into undertaking recalls, when necessary, by threatening to take actions, such as nationwide seizures, that produce tremendous negative publicity. Few companies will resist recalls when requested to do so by FDA. *See* Schwartz and Adler, *supra* note 25, at 446–64. Moreover, unlike agencies such as FDA and the Federal Aviation Administration (FAA), the CPSC never has had authority to make premarket approvals.

[70]When Congress wrote the CPSA, it imposed a set of requirements called the "offeror" process on the agency. Under the "offeror" process, the CPSC was generally barred from drafting standards itself. Instead, it had to invite persons outside of the Commission to develop and draft standards for the agency. These persons, called "offerors," could be any interested member of the public, including industry or consumer groups. Only after an offeror had completely drafted a standard and submitted it to the CPSC could the agency, if it believed the draft standard to be inadequate, alter it. Once the offeror had completed a draft standard and the CPSC had reviewed and revised it, the CPSC then could propose and promulgate the

Furthermore, the agency's rulemaking record was much better than the handful of standards produced under the CPSA. CPSC critics usually failed to note or acknowledge that the Consumer Product Safety Act directed it to regulate under its "transferred" acts rather than under the CPSA.[71] Under these "transferred" acts, which imposed fewer procedural requirements, the agency had promulgated over a dozen standards in its first five years.[72] Moreover, the

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standard in accordance with procedures under section 9 of the CPSA, 15 U.S.C. § 2058 (1982), that were similar to the informal rulemaking authority contained in the Administrative Procedure Act, 5 U.S.C. § 553. Thus, the offeror process was, in effect, "pre-rulemaking rulemaking." *See* Scalia & Goodman, *supra* note 1, at 908. In the agency's first five years, it managed to promulgate only three standards using these cumbersome procedures. In 1981, exasperated by the slow progress of standards-setting under the offeror process, Congress abolished it. Pub. L. No. 97–35, § 1202, 95 Stat. 357, 703 (1981) (codified at 15 U.S.C. § 2056 (1982).

For a comprehensive analysis of the "offeror" process see Tobias, *Early Alternative Dispute Resolution in a Federal Administrative Agency Context: Experimentation with the Offeror Process at the Consumer Product Safety Commission*, 44 WASH. & LEE L. REV. 409 (1987) (arguing that although the offeror process did not work particularly well at the CPSC, it did "afford numerous valuable insights for successful, future experimentation with the successors of the offeror procedure which appears to be promising mechanisms for enhancing decisional processes. . . . ") One promising approach that seeks to build upon the mistakes of the offeror process is "negotiated regulations." *See* Harter, *Negotiating Regulations: A Cure for Malaise*, 71 GEO. L.J. 1 (1982) and Perritt, *Negotiated Rulemaking Before Federal Agencies: Evaluation of Recommendations by the Administrative Conference of the United States*, 74 GEO. L.J. 1625 (1986).

[71]Section 30(d) of the CPSA, 15 U.S.C. 2079(d) (Supp. III 1974), as originally enacted, stated:

> A risk of injury which is associated with consumer products and which could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those Acts.

[72]As of 1978, the CPSC had promulgated the following regulations under these acts:

Federal Hazardous Substances Act

Full-size cribs—16 C.F.R. §§ 1508.1–1508.11 (1988).
Bicycles—16 C.R. §§ 1512.1–1512.20 (1988).
Aerosol Products Containing Vinyl Chloride—16 C.F.R. § 1500.17(a)(10) (1988).
Fireworks—16 C.F.R. § 1500.17(a)(3) (1988).
Non-full-size Cribs—16 C.F.R. §§ 1509.01–1509.13 (1988).
Use and Abuse Regulations for Toy Testing—16 C.F.R. §§ 1500.50–1500.53 (1988).
Sharp Point Regulations for Toy Testing—16 C.F.R. § 1500.48 (1988).
Sharp Edge Regulations for Toy Testing—16 C.F.R. § 1500.49 (1988).
Ban of the Flame Retardant Tris—not published in C.F.R. __ Fed. Reg. __
Pacifiers—16 C.F.R. §§ 1511.1–1511.8 (1988).

Poison Prevention Packaging Act

Products Containing Ethylene Glycol—16 C.F.R. § 1700.14(a)(11) (1988).
Liquid Paint Solvents—16 C.F.R. § 1700.14(a)(15) (1988).
Drugs Containing Iron—16 C.F.R. § 1700.14(a)(12) (1988).

Flammable Fabrics Act

Children's Sleepwear Sizes 7–14—16 C.F.R. §§ 1616.1–1616.65 (1988).

agency had effectively used its less encumbered authority under the CPSA to ban products and require warning labels.[73]

Also overlooked was the lack of agency resources. Throughout its years the CPSC remained a tiny agency with only a fraction of the funding and staff of other regulatory agencies. Finally, and perhaps most important, the national mood towards regulation had shifted dramatically. Comprehensive safety regulation had been viewed as necessary to protect helpless consumers; suddenly it became perceived as overbearing, intrusive and unwelcome.[74]

D. A Short Recovery

From the low days at the beginning of the Carter administration to the arrival of the Reagan administration, the agency regained much of its lost reputation.[75] It did so not by churning out greater numbers of safety rules—to the contrary, under Chairman Susan King, the agency promulgated only eight regulations in three and one-half years, fewer than under either of her Republican predecessors[76]—but by successfully redefining the agency's role. The redefinition involved convincing the agency's critics in the Congress, the White House and the press that (i) successful regulation depended more on the quality

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[73]Under the CPSA, the agency as of 1978 had taken the following non-standards setting actions:

Ban unstable refuse bins—16 C.F.R. §§ 1301.1–1301.8 (1988).
Ban paint containing lead—16 C.F.R. §§ 1303.1–1303.5 (1988).
Ban consumer patching compounds containing asbestos—16 C.F.R. §§ 1304.1–1304.5 (1988).
Ban artificial fireplace ash containing asbestos—16 C.F.R. §§ 1305.1–1305.5 (1988).
Ban extremely flammmable contact adhesives—16 C.F.R. §§ 1302.1–1302.6 (1988).
Require labels for aerosol products containing CFCs—16 C.F.R. §§ 1401.1–1401.6 (1988).

[74]*See* CQ REPORT ON REGULATION, *supra* note 61, at 3 (noting that by the late 1970s, "the federal regulatory system was under attack"); Cutler & Johnson, *Regulation and the Political Process,* 84 YALE L.J. 1395 (1975). According to Cutler & Johnson:

> Almost all agencies have been viewed as more vigorous and successful in their early years, and less effective as they grow older. This perceived success of young agencies may result less from their youth than from their role in pursuing substantive goals that our political institutions have just recently proclaimed and continue to support. The politically determined social and economic priorities that are reflected during the process of creating a new agency change with the passage of time. The phenomenon of agency aging could have less to do with the symptoms of staff arthritis than with growing distance and alienation from the current political process.

Id. at 1408 (footnote omitted).

[75]*See, e.g., Boon to Consumers and Business Too,* NEWSWEEK, February 11, 1980, at 76. ("In the past year, the commission has won grudging respect from businessmen and legislators alike for a new approach to regulation."); CQ REPORT ON REGULATION, *supra* note 61, at 53 ("In the three years following the 1978 reauthorization CPSC won increasing respect from industry and Congress."); Crock, *Safety Commission Has Avoided War on Regulation,* Wall St. J., Feb. 6, 1980, at 26, col. 1 (editorial page).

[76]For example, under S. John Byington, Chairman King's immediate predecessor, the agency promulgated sixteen safety rules in a period of roughly two and one-half years.

of regulations than quantity, (ii) some alternatives to mandatory standards—such as product recalls—presented results equal, if not superior, to standards, and (iii) within its limited resources, the agency operated fairly efficiently and effectively.[77]

Perhaps the most significant change in agency outlook and operation during the Chairmanship of Susan King was the shift in focus with respect to mandatory safety standards. During her tenure, the agency began a number of initiatives to stimulate industry groups to upgrade voluntary standards rather than to write the mandatory standards itself.[78] Although this shift clearly represented a deviation from the intentions of those who established the CPSC,[79] it accommodated the growing national disenchantment with mandatory standards.[80]

E. Tough Times Under the Reagan Administration

The arrival of the Reagan administration heralded tough times for the CPSC. Almost immediately, the administration sought to abolish the agency.[81] Rebuffed by Congress,[82] the administration then successfully promoted legislation dramatically cutting the agency's budget and staff. In one year, the CPSC lost over 25 percent of its funding and staff.[83] This was by far the largest budget and staff cut imposed by the Reagan administration on any of the federal health and safety

[77] *See supra* note 75 and accompanying text.

[78] During CPSC reauthorization hearings in 1981, Susan King, now a former Chairman, declared: "CPSC . . . has also sought to examine alternatives to mandatory standards which may be less costly and less time-consuming and less burdensome to the industry. This has included working with the industry to improve voluntary standards." *1981 House Reauthorization Hearings, supra* note 32, at 15. *See also supra* note 75 and accompanying text.

[79] *See supra* text accompanying note 21 and notes 177–247 and accompanying text.

[80] *See supra* note 74 and accompanying text.

[81] Letter from David A. Stockman, Director, Office of Management and Budget, to Senator Robert W. Kasten, Chairman, Consumer Subcommittee of the Senate Committee on Commerce, Science, and Transportation (May 8, 1981). On another occasion, Director Stockman was quoted as expressing strong dislike both for the Federal Trade Commission and the CPSC: "They've created this whole facade of consumer protection in order to seize power in our society. I think part of the mission of this administration is to unmask and discredit that false ideology." Klein, *supra* note 7.

[82] House Comm. on Energy and Commerce, Consumer Product Safety Amendments of 1985, H.R. REP. No. 377, 99th Cong., 1st Sess. 7 (1985) ("Congress has always rejected OMB's attempts to abolish the CPSC."); *Consumer Product Safety Amendments of 1983: Hearings on H.R. 2367 Before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 98th Cong., 1st Sess. 1 (1983) [hereinafter *1983 House Reauthorization Hearings*] (Statement of Henry A. Waxman, Chairman of the Subcomm. on Health and the Environment noting that in 1981 Congress had "fought off" an attempt by the Reagan administration to abolish the CPSC or bury it in the Department of Commerce).

[83] The agency's budget for FY 1981 was $42.1 million and its staff level was 891 Full Time Equivalents (FTEs). When it first submitted its FY 1982 budget, the CPSC requested a budget level of $44.5 million and a staff level of 942 FTEs. The Reagan administration directed the agency to withdraw its budget submission and request a budget level of $32.9 million—a reduction of $11.6 million—and staff levels of 697

agencies.[84] According to the Director of the Office of Management and Budget, these cuts were imposed not for budgetary reasons, but to redirect regulatory policy.[85] The administration insisted that its notion of "redirected" policy was a benign one.[86] But, a congressional observer insisted that the administration, thwarted in its efforts to abolish the CPSC directly, was using the budget and staff cuts as "a more direct, but no less determined, method—death by starvation to abolish the CPSC."[87]

Although the administration has never been able to convince Congress to impose funding and staff cuts of the magnitude in 1981, it has continued to seek funding and staff cuts.[88] Over the years, these cuts have forced the agency to postpone or drop work on numerous alleged hazards,[89] to close most of its area offices,[90] to reduce its

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FTEs—a reduction of 245 FTEs—from its original request. CONSUMER PRODUCT SAFETY COMMISSION, 1982 BUDGET REQUEST (March 1981) [hereinafter 1982 CPSC BUDGET REQUEST]. Although the agency was required by law to follow OMB's instructions, it noted in its budget request that OMB's cuts constituted a "massive decrease" in its budget request. *Id.* at 1.

[84]House Comm. on Energy and Commerce, Consumer Product Safety Amendments of 1983, H.R. Rep. No. 114, 98th Cong., 1st Sess. 6–7 (1983). ("Despite its small size, CPSC has sustained greater cuts in the past 2 years in resources than any other health and safety agency in the Federal Government.").

[85]*See Consumer Product Safety Commission Reauthorization: Hearings Before the Subcomm. for Consumers of the Senate Comm. on Commerce, Science, and Transportation*, 97th Cong., 1st Sess. 238 (1981) [hereinafter *1981 Senate Reauthorization Hearings*] (question put to and answer given by Dr. James C. Miller, III, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget).

[86]*See Id.* at 233–34 (According to James Miller, Administrator, Officer of Information and Regulatory Affairs, Office of Management and Budget, redirecting CPSC policy meant limiting the agency's funds to prevent it from embarking "on activities beyond its statutory mandate, or where other agencies of the Government could accomplish these tasks more efficiently." Miller provided no examples of instances in which the agency had acted beyond its statutory mandate.)

[87]*1985 House Reauthorization Hearings, supra* note 2, at 2 (statement of Henry A. Waxman, Chairman, Subcomm. on Health and the Environment).

[88]*See id.* at 1–2. The CPSC budget request imposed by OMB, $34 million and 550 FTEs, constitutes a 53 percent drop in constant dollars from the agency's first budget in FY 1974 and a 40 percent drop in staff from 1981. *Id.* at 1, 32–33.

[89]Among the alleged hazards on which the CPSC has postponed or dropped action are disposable butane lighters, swimming pool covers, indoor air quality, *Consumer Product Safety Commission Reauthorization: Hearings Before the Subcomm. on Commerce, Consumer Protection, and Competitiveness of the House Comm. on Energy and Commerce*, 100th Cong., 1st Sess. 155, 156, 158–60 (1987) [hereinafter *1987 House Reauthorization Hearings*] (testimony of Mary Ellen Fise, Product Safety Director, Consumer Federation of America), flammable adult sleepwear, *id.* at 164–78, swimming pools, spas and hot tubs, airborne microbes, flexible gas connectors, residential sprinklers, circuit breakers, automatic garage door openers, toluene, chlorinated benzenes, microelectric and computer chip hazards, electric deep-fat fryers, textile finishes and flame retardants, and formaldehyde emissions from particleboard and fiberboard. *See 1985 House Reauthorization Hearings, supra* note 2, at 46–52 (prepared statement of Stuart Statler, CPSC Commissioner). In addition, the Reagan administration appointed many "reluctant regulators." *See infra* note 93 and accompanying text.

[90]In 1973, the Commission operated fourteen area offices in the following cities: Atlanta, Boston, New York City, Chicago, Cleveland, Dallas, Denver, Kansas City, Los

injury data-gathering capabilities,[91] and to slash its compliance investigations and inspections.[92]

Compounding the agency's losses from budget and staff cuts is the appointment by the Reagan administration of commissioners who many believe are "reluctant regulators," i.e., individuals who view regulation with distaste and who consider their primary mission as repealing rather than promulgating regulations.[93] Chief among those who have espoused a deregulatory agenda is the current CPSC Chairman, Terrence Scanlon.[94] Scanlon's views have provoked sharp criticism from Congress,[95] consumer groups,[96] and some former CPSC Commissioners.[97] On the other hand, Scanlon has been vigorously defended by conservative observers.[98]

Angeles, Minneapolis-St. Paul, New Orleans, Philadelphia, San Francisco and Seattle. UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION, FIRST ANNUAL REPORT 7 (1973) [hereinafter 1973 CPSC ANNUAL REPORT]. As of the agency's FY 1988 appropriation hearings, the CPSC was forced to cut its remaining five area offices from five to three. *Department of Housing and Urban Development—Independent Agencies Appropriations for 1988: Hearings Before A Subcomm. of the House Comm. on Appropriations*, 100th Cong., 1st Sess. 113–14 (February 3, 1987) [hereinafter *1988 House Appropriations Hearings*] (testimony of Terrence Scanlon, CPSC Chairman).

[91] *Decrease in Data Gathering Capability Seen Slowing Down Projects at Safety Agency*, 16 Prod. Safety & Liab. Rep. (BNA) 91 (January 22, 1988) (Because of budget reductions, the Commission's main product-related injury data collection system, the National Electronic Injury Surveillance System (NEISS), has been cut in half. Agency staff indicate that it now takes them twice the time to collect enough information on specific product-related injuries.).

[92] *1983 House Reauthorization Hearings, supra* note 82, at 1 (statement of Henry A. Waxman, Subcomm. Chairman).

[93] *See* Adler, *Of Ketchup, Ozone, and Airline Delays: A Regulatory Legacy*, Legal Times, Apr. 11, 1988, at 18, col. 1.

[94] *See BNA Interview With CPSC Chairman Terrence M. Scanlon [January 17, 1985]*, 13 Prod. Safety & Liab. Rep. 65 (1985) ("I am a deregulator. . . . [B]efore I vote for government interference I want to be sure that it's necessary and that it will do what it's supposed to do in protecting the public.").

[95] *E.g.*, Funky, *One Flew Into the Cuckoo's Nest*, AM. SPECTATOR (April 1988) 26 (Members of Congress have called Scanlon among other things "a wimp, brain-dead, and a conspirator with the Japanese 'death machine' industry."); McAllister, *Angry Lawmakers Aim to Disempower CPSC Chief*, Wash. Post, September 24, 1987, at 18, col. 1. (The Chairman of the Subcommittee on Commerce, Consumer Protection, and Competitiveness of the House Energy and Commerce Committee called Scanlon "the James Watt of consumer protection.").

[96] *E.g.*, CONSUMER FEDERATION OF AMERICA, THE CPSC: GUIDING OR HIDING FROM PRODUCT SAFETY?, May 1987 [hereinafter CFA REPORT].

[97] *1987 House Reauthorization Hearings, supra* note 89, at 87–91, 111–13, 119–21 (statements of former CPSC Commissioners R. David Pittle and Nancy Harvey Steorts).

[98] *E.g.*, *The fight Over CPSC's Next Chairman*, Wash. Times, Dec. 11, 1984, at __, col. __ (endorsing Scanlon to be CPSC Chairman); *Scanlon 2, Claybrook 0*, Wall St. J., July 10, 1986, at 18, col. __ (defending Scanlon against "a witch hunt" by a consumer leader); *The Scapegoating of Terry Scanlon*, Human Events, Nov. 7, 1987, at 945. ("Scanlon is not the anti-business zealot that Naderites have come to expect at the CPSC. . . . ").

II. MAJOR ISSUES

As the CPSC finishes its fifteenth year of existence and it prepares to undergo scrutiny from a new administration, it seems appropriate to raise a number of fundamental issues that face the agency. There are at least five: (i) whether the CPSC should be abolished, (ii) whether the agency should be retained as an independent collegial body or transformed into a single administrator agency, (iii) what role voluntary standards and mandatory standards should play in CPSC activities, (iv) whether the many restrictions on the release of product safety information under which CPSC currently operates should be retained, and (v) whether the CPSC recall program—its most frequently used regulatory activity—operates effectively.

A. Should the CPSC Be Abolished?

In its short life, the CPSC has faced extinction twice.[99] Although the agency has survived, it has been stripped of resources to the point where it constitutes more of a regulatory speck than a meaningful market presence. Given the challenges to the agency's right to exist, it seems appropriate to see whether agency critics have a convincing case for abolition.

Interestingly, the CPSC receives high ratings from the public despite its low regard in the eyes of the Reagan administration. According to a national survey conducted for ARCO by Louis Harris and Associates in 1982, the public believed that the CPSC had done a better job of protecting the American consumer than Ralph Nader, the Federal Trade Commission, the Reagan administration and the U.S. Congress.[100]

Notwithstanding its popularity, which arguably may simply stem from an appealing name, deeper questions must be answered to justify the CPSC's existence. One immediate question: why is the market incapable of protecting consumers? After all, consumers are not forced to purchase unsafe products.

One response to this question is that the market fails to provide consumers with the information necessary to make meaningful product choices.[101] Although some observers would limit government's

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[99]*See supra* notes 67, 84–5, and accompanying text.

[100]LOUIS HARRIS AND ASSOCIATES, INC., CONSUMERISM IN THE EIGHTIES 20 (1982) (Study No. 822047 conducted for Atlantic Richfield Co.). [hereinafter 1982 LOU HARRIS STUDY]. In fact, of those on the list, the CPSC was the only one that received a favorable rating. The CPSC was outranked only by Consumers Union, which publishes *Consumer Reports* magazine, and the Better Business Bureau.

[101]The failure of the market to provide meaningful information is perhaps the most commonly cited reason to justify safety regulation. W. VISCUSI, REGULATING CONSUMER PRODUCT SAFETY 2–6 (1984) ("The linchpin of the perfectly functioning market is that consumers and producers be fully cognizant of the risks their choices entail.").

role exclusively to providing information,[102] others believe that it is often difficult, if not impossible, to convey product safety information in a meaningful enough fashion to provide acceptable levels of safety.[103] On this point, the National Commission on Product Safety offered numerous examples of products that presented risks not easily reduced simply by providing information. Among them: easily shattered architectural glass that consumers, especially children, accidentally crashed into; TV sets that spontaneously ignited without warning; fireworks that misfired because of inadequate quality controls; glass bottles that unexpectedly shattered or exploded; unstable and easily shattered hot water vaporizers; and ill-designed and dangerous children's toys. Based on these and many other examples, the NCPS concluded that government's regulatory role should extend beyond that of providing information.[104]

The NCPS and other advocates of broad regulatory authority argue that some risks are so "hidden," i.e., consumers are exposed to them unknowingly or unintentionally or the risks are such that consumers cannot fully appreciate them, that society has the right to expect manufacturers to modify them rather than stick useless warning labels on them.[105] Furthermore, many observers believe that certain risks are so great that warnings are simply insufficient to provide adequate consumer protection.[106]

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[102] *See* Friedman & Friedman, *supra* note 46; Weidenbaum, *supra* note 46. *See also* W. VISCUSI, *supra* note 101, at 108–10 (recommending that the CPSC's recall and rulemaking authority, as well as all of its bans and standards, be repealed to be replaced by a "safety information" approach.).

[103] McLoughlin, Vince, Lee & Crawford, *Project Burn Prevention: Outcome and Implication*, 72 AM. J. PUB. HEALTH 241, 246 (1982) (Based on generally successful results in promoting burn prevention through education measures, the authors conclude that regulatory measures to "automatically" protect the community from injuries are more effective in the prevention of injuries than educational measures that depend on persistent behavior change.). *See also 1981 House Reauthorization Hearings, supra* note 32, at 16. (According to former CPSC Chairman, Susan King, relying exclusively on information and education to protect consumers "is an elitist concept that is addressed to an upper class, highly educated, largely white population. It simply does not take into account the fact that many people don't have a choice to make when it comes to products and product safety."); and Adler & Pittle, *Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?*, 1 YALE J. ON R. 159 (1984).

[104] *See* NCPS FINAL REPORT, *supra* note 15, at 12–36 (listing examples of products that the NCPS felt presented unreasonable risk of injury). The NCPS concluded that many of these products could be redesigned at minimal cost to provide substantially increased safety.

[105] For example, chain saws pose a hazard known as "kickback," which arises when a saw strikes a knot or other particularly hard object not readily seen by the user and rears back. Urea-formaldehyde foam insulation emits formaldehyde gas that may cause cancer, irritation of the eyes, skin and breathing passages. There is no way of knowing which batch of UFFI might present a serious problem of off-gassing. For examples of other "hidden" hazards cited by the CPSC see *1981 House Reauthorization Hearings, supra* note 32, at 421–22.

[106] Consistent with this reasoning is section 2(q)(1) of the Federal Hazardous Substances Labeling Act which authorizes the CPSC to ban hazardous substances by

One alleged alternative to product safety regulation that has received substantial public attention recently is product liability litigation.[107] Under the theory of this alternative approach, if a product presents an unreasonable risk that results in an injury (or death) to a consumer, he or she can sue for damages. Once a company has had a judgment assessed against it, the company will remove the dangerous product from the marketplace and perhaps take precautions against other unreasonable risks appearing in other products.

One is entitled to entertain misgivings about this approach. The National Commission on Product Safety expressed substantial skepticism that product liability litigation adequately promoted safety because it was a postinjury mechanism and carried insufficient prospective impact.[108] Two recent studies reached the same conclusion, even though they noted that liability litigation produces enormous—indeed, sometimes devastating—effects on manufacturers.[109]

Several reasons suggest the difficulty of relying on product liability law for product safety.[110] First, there is usually a very long time, measured in years, between when a dangerous product reaches the market and when a judgment as to its hazards is reached in court. Second, in certain instances manufacturers may find it unnecessary or less expensive to pay damages to victims of hazardous products than to produce safer products. This seems especially true for carcinogens

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regulation based on a finding that "notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved . . . is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance . . . out of the channels of interstate commerce. . . . " 15 U.S.C. § 1261(q)(1) (1982). Under this authority, the following products have been banned: extremely flammable water-repellent treatments, carbon tetrachloride, fireworks such as cherry bombs, liquid drain cleaners with high concentrations of sodium hydroxide and certain dangerous toys. 16 C.F.R. § 1500.17 (1988).

[107]The literature on the recent liability "crisis" is too voluminous to capture easily in an article on the CPSC. For a representative set of materials see note 328 *infra*. Product liability crises tend to arise when liability insurance becomes unavailable. *Sorry, America, Your Insurance Has Been Cancelled,* TIME, Mar. 24, 1986, at 16–26. The roots of insurance unavailability are complex and controversial. *See Liability Insurance Crisis (Parts 1 & 2): Hearings Before the Subcomm. on Economic Stabilization of the House Comm. on Banking, Finance and Urban Affairs,* 99th Cong., 2d Sess. (1986) [hereinafter *Liability Insurance Crisis Hearings*].

[108]*See supra* note 20 and accompanying text.

[109]*See* EADS & REUTER, DESIGNING SAFER PRODUCTS: CORPORATE RESPONSES TO PRODUCT LIABILITY LAW AND REGULATION (Institute for Civil Justice #R-3022-ICJ) ("Although product liability exerts a powerful influence on product design decisions, it sends an extremely vague signal. Because the linkage between good design and a firm's liability exposure remains tenuous, the signal says only: 'Be careful or you will be sued.' Unfortunately, it does not say how to be careful, or, more important, how careful to be."). *See also* UNITED STATES JUSTICE DEPT. TORT POLICY WORKING GROUP, REPORT ON THE CAUSES, EXTENT, AND POLICY IMPLICATIONS OF THE CURRENT CRISIS IN INSURANCE AVAILABILITY AND AFFORDABILITY (1986) [hereinafter TORT POLICY WORKING GROUP REPORT].

[110]For an extended discussion of these points, see Pittle & Adler, *Commentary on "Product Liability: An Interaction of Law and Technology,"* 12 DUQ. L. REV. 487, 490–91 (1974).

where a long latency period renders causation difficult to prove in court.[111] Third, product liability lawsuits generally deal with the interaction of one person with one product at a specific point in time. Their results cannot always be easily generalized. Fourth, litigants in lawsuits generally cannot muster the resources available to a government agency—even one as small as the CPSC—for conducting in-depth studies of product-related injuries and determining appropriate corrective actions.[112] Fifth, there is no systematic follow-up after a lawsuit to determine whether the defect that caused an injury or death has been corrected.

Of course, to conclude that product liability litigation cannot always substitute for product safety regulation is not to say that the two systems play antagonist roles. To the contrary, product safety and product liability tend to reinforce each other.[113]

If one accepts the proposition that market inadequacies justify a product safety agency, the question still remains whether the CPSC should be that agency. One measure should be whether the Commission has significantly reduced unreasonable risks associated with consumer products.

Unfortunately, reaching a conclusive determination is not easy. Because there are few detailed studies of the impact of CPSC actions,

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[111] *See generally* HARTER, THE DILEMMA OF CAUSATION IN TOXIC TORTS (undated) (Monograph #101 prepared for the Institute for Health Policy Analysis).

[112] *See* TORT POLICY WORKING GROUP REPORT, *supra* note 109, at 63. According to this report by the Reagan Justice Department, "greater deference must be paid to government agencies . . . that have devoted decades of attention and millions of dollars to researching and trying to assess the value of medical and scientific developments. . . . Other legal mechanisms, such as rulemaking and licensing proceedings, generally are far superior in making credible determinations involving complicated issues of science and medicine." This observation seems richly ironic coming from a department of an administration that so eagerly sought to abolish the CPSC.

[113] Under the CPSA, any person injured "by reason of a knowing . . . violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue" the violator in federal court and collect attorneys' fees as well as expert witnesses' fees. 15 U.S.C. § 2072(a) (1982). Some courts have held that failure to report a substantial product hazard may subject a company to liability in a private suit. *See, e.g.*, Payne v. A.O. Smith Corp., 578 F. Supp. 733 (S.D. Ohio 1983); Young v. Robertshaw Controls, 560 F. Supp. 288 (N.D.N.Y. 1983); Wahba v. H&N Prescription Center, 539 F. Supp. 352 (E.D.N.Y. 1982); Butcher v. Robertshaw Controls, 550 F. Supp. 692 (D. Md. 1981). On the other hand, "compliance with consumer product safety rules or other rules or orders under the [CPSA will] not relieve any person from liability at common law or under State . . . law. . . ." 15 U.S.C. § 2074(a) (1982). *See, e.g.*, Gryc v. Dayton-Hudson, 297 N.W.2d 727 (Minn.), *cert. denied sub. nom.* Reigel Textile v. Gryc, 449 U.S. 921 (1980) (compliance with flammability regulation under FFA does not bar either compensatory or punitive damages). For a discussion of the product liability implications of complying with government regulations or state laws, see PRACTISING LAW INSTITUTE, CONSUMER PRODUCTS: GOVERNMENT REGULATION AND PRODUCT LIABILITY (1984) (PLI No. H4–4960); Hoffman & Hoffman, *Use of Standards in Products Liability Litigation*, 30 DRAKE L. REV. 283 (1980–81); Safir, *FDA Regulations and Product Liability*, 36 FOOD DRUG COSM. L.J. 478 (1981); and Comment, *The Consumer Product Safety Act & Private Causes of Action for Personal Injury: What Does a Consumer Gain?*, 30 BAYLOR L. REV. 115 (1977).

it is impossible to provide a definitive answer to this question.[114] The CPSC has conducted several analyses of its actions and claims to save thousands of deaths and avoid a million injuries annually.[115] One critic of the CPSC, Viscusi, asserts that available data do not justify the CPSC conclusions[116] and that even generally acclaimed activities such as those under the agency's poison prevention packaging program cannot be demonstrated to have been successful.[117] Other observers, however, dispute Viscusi's analysis[118] and argue that the agency, while not as successful as some of its supporters state,[119] has been effective in reducing accidental home deaths.[120]

Although no definitive answer is possible, one is entitled to conclude that, within its limited resources the CPSC has effectively reduced death and injury.[121] Unfortunately, early advocates of a product safety agency, perhaps unwittingly, led some observers to expect the agency to perform at impossible levels—eliminating all 20

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[114]*See* Zick, Mayer & Snow, *Does the U.S. Consumer Product Safety Commission Make a Difference? An Assessment of Its First Decade*, 6 J. Consumer Pol'y 25, 26 (1986).

[115]In 1981, when the Commission was under severe attack, Acting Chairman Stuart Statler directed CPSC staff to calculate the number of lives saved and injuries avoided by the CPSC. According to staff computation, the agency's track record was a good one:

> "over one million possible injuries may have been averted and hundreds of thousands of potential lethal products removed from consumers' hands" through the use of CPSC recalls;
>
> *1981 House Reauthorization Hearings, supra* note 32, at 412–14.
>
> child resistant safety packaging prevents 65,000 accidental child poisonings and 40 deaths each year;
>
> crib deaths and strangulations have been reduced by half since the agency's crib standard became effective;
>
> safety glazing requirements (e.g., for windows in buildings) prevent 50,000 to 60,000 injuries each year;
>
> flammability standards for children's sleepwear prevent 60 deaths and 1,600 serious burns each year; and
>
> the CPSC power mower standard prevents 22,400 injuries each year.

Id. at 21–22 (testimony of Susan King, former CPSC Chairman).

[116]W. Viscusi, *supra* note 101, at 71–88.

[117]*Id.* at 76–80. *See infra* note 121 and accompanying text.

[118]Zick, Mayer & Snow, *supra* note 114, at 28. ("While Viscusi did not claim that his analysis was definitive, its shortcomings are substantial enough to question his conclusion about the CPSC's ineffectiveness.").

[119]Consumer Federation of America, On the Safe Track: Deaths and Injuries Before and After the Consumer Product Safety Commission (1983) (Based on data from the National Safety Council showing that accidental home deaths and injuries declined at a rate two-and-one-half times faster after the CPSC began operating, CFA concluded that the CPSC had been effective in protecting the American consumer.).

[120]*See* Zick, Mayer & Snow, *supra* note 114, at 36. (According to the authors, their study showed that the CPSC had saved roughly 18,000 lives over ten years.).

[121]In fact, even Viscusi does not contest that fewer children poison themselves when they encounter products containing child-resistant closures. Rather, he argues that the "use of protective caps has made parents more lax about their children's access to hazardous products." W. Viscusi, *supra* note 101, at 78. He bases this argument on the fact poisonings from unregulated products have not dropped at the same rate as those from regulated products. The author finds this unconvincing.

million injuries and 30,000 deaths annually associated with consumer products.[122] This led to the inevitable disappointment with the CPSC.

Moreover, the logic of abolishing the Commission on the basis of its inability to precisely quantify the number of lives saved and injuries prevented would place every other federal health and safety agency in jeopardy. None of them has the ability to pinpoint its exact contribution to public health any better than the CPSC. For example, although the National Highway Traffic Safety Administration (NHTSA) can track the number of lives lost and injuries sustained in fairly accurate fashion from year to year, finding a *causal* link between agency action and accidents remains difficult. Variables such as the number of drivers, changing speed limits, enforcement of drunk driver laws, changing demographics of the driver population, quality of roads, urban versus rural driving, and a host of other factors make precise calculations of NHTSA's contribution to highway safety as cloudy as the CPSC's input to product safety.

On balance, the CPSC should be retained. As discussed in the following sections, it should also be reformed.

B. Should the CPSC Remain an Independent, Collegial Body or Be Transformed Into a Single Administrator Agency?

Perhaps the most persistent debate that has swirled around the CPSC over the years is whether the Commission should be an independent,[123] collegial body or a single administrator agency. Beginning

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[122]Only a fraction of these injuries and deaths could be dealt with by regulatory actions. *1976 House Regulatory Reform Hearings, supra* note 63, at 4 (According to CPSC Chairman Richard O. Simpson, "[m]ost experts place the product-caused, or 'standards-preventable' portion at somewhere between 15 per cent and 25 per cent of the total product-associated injury figure."); Miller & Parasuraman, *Advising Consumers on Safer Product Use: The Information Role of the New Consumer Product Safety Commission*, 36 AM. MKTG. ASS'N PROC. 372, 373 (1974) ("The fact that at least 80 percent of the consumer product-related injuries may not be caused by defective or unsafe products suggests that consumer education has a very large untapped potential for reducing such injuries."). The fact that only a fraction, albeit a large one, of consumer product-associated injuries is susceptible to regulatory initiatives still represents a substantial challenge.

[123]As used here, the term refers to an agency whose head or heads serve for a fixed term and who cannot be removed except for cause. An agency is made independent to insulate it from direct control by the President and other members of the executive branch. *See* Froomkin, *In Defense of Administrative Agency Autonomy*, 96 YALE L.J. 787 (1987) (arguing that it is both legal and appropriate for Congress to shield executive departments from presidential control when there is reason to fear presidential influence over implementation of the agency's mandate). Under this definition, an agency like the Environmental Protection Agency, which is not affiliated with a larger department, but whose head can be readily removed by the President would not be considered "independent." The author refers to agencies like EPA as "unaffiliated."

Congress attempted to make "independence" a strong feature of the CPSC by, among other things, permitting CPSC Commissioners to elect their own Vice-Chairman; requiring the CPSC to submit all budget and legislative proposals to Congress as well as the Office of Management and Budget; providing authority for the CPSC to litigate cases even when the Department of Justice refuses to do so; and

with the national Commission on Product Safety,[124] extending through the drafting of the Consumer Product Safety Act[125] and continuing to the present,[126] the debate over the agency's structure has involved Congress,[127] CPSC Commissioners,[128] OMB, [129] and the General Accounting Office,[130] to name a few of the interested parties.

The debate is not unique to the CPSC. A number of studies over the past fifty years have focused on and debated the relative merits of independent, collegial bodies versus single administrators.[131] As

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barring the political clearance of Commission employees by the White House. 1976 HOUSE REPORT ON REGULATORY REFORM, *supra* note 11, at 203–5.

[124]*See* NCPS FINAL REPORT, *supra* note 15, at 5. The NCPS strongly argued that a product safety agency should be independent from direct control by the President. Such a status would, according to the NCPS, be more visible, more vigorous and more effective than an agency subject to the control of the executive.

[125]Probably no other single issue received as much congressional attention during the drafting of the CPSA as the executive versus independent agency dispute, involving as it did a political tug-of-war between the Democratic Congress and the Republican President. The Nixon administration favored the establishment of a Consumer Safety Administration within the Department of Health, Education and Welfare. Both Houses of Congress ultimately adopted the independent agency structure. Under the Senate approach, the agency would have been headed by a single administrator; the House created a five-member collegial body. The House version ultimately was adopted. *See* Schwartz, *supra* note 5, at 42 n.64.

[126]Virtually every authorization hearing and appropriation hearing that the CPSC has undergone since its inception has involved an exploration and heated debate on whether the agency's structure should be changed. *See, e.g., 1976 House Regulatory Reform Hearings, supra* note 63, at 16 (According to Chairman Richard O. Simpson, "if you must manage and make decisions by committee then the committee should have an odd number of members and three is too many."); *Id.* at 33–45 (testimony of other Commissioners). *See also 1981 House Reauthorization Hearings, supra* note 32; *1981 Senate Reauthorization Hearings, supra* note 85; *1983 House Reauthorization Hearings, supra* note 82; *Consumer Product Safety Commission Reauthorization: Hearing Before the Subcomm. on Consumers of the Senate Comm. on Commerce, Science, and Transportation,* 98th Cong., 1st Sess. (1983)[hereinafter *1983 Senate Reauthorization Hearings*]; *1985 House Reauthorization Hearings, supra* note 2; *1987 House Reauthorization Hearings, supra* note 89; *CPSC Authorization: Hearing Before the Subcomm. on the Consumer of the Senate Comm. on Commerce, Science, and Transportation,* 100th Cong., 1st Sess. (1987)[hereinafter *1987 Senate Reauthorization Hearings*]; *Consumer Product Safety Commission: Hearings Before the Subcomm. on HUD–Independent Agencies of the House Comm. on Appropriations,* 100th Cong., 1st Sess. (1988).

[127]*See* note 126 *supra.*

[128] *Id.*

[129]*See 1981 Senate Reauthorization Hearings, supra* note 85, at 233–41 (According to James Miller, Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, a "single-head agency is one that can operate more effectively. . . . ").

[130]At the request of Congressman Henry A. Waxman, Chairman of the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce, the General Accounting Office reviewed the CPSC's administrative structure and concluded that "CPSC could benefit by changing to a single administrator." COMPTROLLER GENERAL OF THE UNITED STATES, GENERAL ACCOUNTING OFFICE, CONSUMER PRODUCT SAFETY COMMISSION: ADMINISTRATIVE STRUCTURE COULD BENEFIT FROM CHANGE (1987) [hereinafter GAO REPORT ON CPSC STRUCTURE].

[131]For a listing of studies and a summary of their recommendations, *see id.*, at 22–25 (Appendix IV).

evidenced by the varying structures of regulatory agencies created over the years, no clear consensus has emerged from the debate.[132]

Those who advocate transforming the Commission into a single administrator agency argue that the CPSC would operate more cheaply,[133] efficiently and expeditiously if it were reorganized.[134] In an interesting study on this point, the GAO interviewed former CPSC Chairpersons and agency executive directors and found a consensus that Commission decisions are not prompt, CPSC Commissioners often do not understand the technical issues that the staff has to deal with in its work, CPSC Commissioners "compete" over agency resources, the collegial structure is more appropriate for an agency with significant adjudication function (which the CPSC does rarely), and that the Commissioners tend to "micromanage" the day-to-day operations of the agency. All of those polled felt strongly that the agency should be placed under a single administrator.[135]

Of course, it is hardly surprising that the agency's top managers would reach such a conclusion about agency structure: extra Commissioners inevitably mean extra work and less power within the

[132]The major federal health and safety agencies are organized as follows:

Agency	*Organizational Status*	*Year Est'd*
Consumer Product Safety Commission	Independent, Collegial	1972
Environmental Protection Agency	Unaffiliated, Single Administrator	1970
Federal Aviation Administration	Department of Transportation, Single Administrator	1958
Food and Drug Administration	Department of Health and Human Services, Single Administrator	1931
Food Safety and Inspection Service	Department of Agriculture, Single Administrator	1953
Mine Safety and Health Administration	Department of Labor, Single Administrator	1977
National Highway Traffic Safety Administration	Department of Transportation, Single Administrator	1970
Nuclear Regulatory Commission	Independent, Collegial	1974
Occupational Health and Safety Administration	Department of Labor, Single Administrator	1970

See GAO REPORT ON CPSC STRUCTURE, *supra* note 130, at 21 (Appendix II).

[133]According to the GAO, about 3 percent of the agency's 1986 budget was spent on the salary, supporting staff and other associated costs for four Commissioners other than the Chairman. *Id.* at 6. Because the CPSC currently operates with three rather than five Commissioners, and because the agency recently consolidated its offices in Bethesda, the figure is presumably less than 3 percent. *Id.*

[134]*See, e.g.,* Statler, *Two Views on Structure of Regulatory Commissions,* Legal Times of Washington, May 25, 1981 at 33, col. 1 (debate between Commissioner Statler and Commissioner Pittle about the merits of independent, collegial agencies). *See also* GAO REPORT ON CPSC STRUCTURE, *supra* note 130, at 5–7.

[135]*See* GAO REPORT ON CPSC STRUCTURE, *supra* note 130, at 6.

agency for the managers. Nevertheless, the existence of such unanimity certainly suggests that a careful rethinking of the issue be undertaken.

On the other hand, although managerial problems with the Commissioners have troubled the agency's chief administrators over the years, it is difficult to see that all of the difficulties they cite stem from the agency's collegial structure. For example, the lack of understanding by the Commissioners of technical issues has little to do with agency structure.[136] Similarly, while it may be true that Commission decisions are not prompt, it is hard to point to any single administrator agency that acts more quickly.[137] Furthermore, why a collegial structure is more appropriate for adjudications than for other regulatory decisions is not immediately apparent.[138]

It is troubling that CPSC Commissioners are viewed as competing for scarce resources and involving themselves excessively in Commission management.[139] These charges are particularly disturbing given

[136]Presumably the argument would run that less competent individuals tend to get appointed to collegial agencies than to single administrator bodies. There seems to be no evidence to substantiate this view. When a congressional committee investigated the quality of regulators of both collegial and single administrator agencies, it concluded with respect to both types of agencies, it could find "little significant progress in improving the quality of appointees or the criteria and process of selection of candidates." 1976 HOUSE REPORT ON REGULATORY REFORM, *supra* note 11, at 443. *See also* Pittle, *Two Views of Regulatory Commissions*, *supra* note 134, at 46, col. 3.

[137] Indeed, one of the reasons most often cited for establishing the CPSC as an independent, collegial agency rather than placing it within the Department of Health, Education and Welfare was Congress' dissatisfaction with the pace of regulatory action by the Food and Drug Administration, a single administrator agency. *See, e.g.*, H.R. REP. NO. 1153, 92d Cong., 2d Sess. 25 (1972) (citing a number of critical studies of FDA). *See also* 1976 HOUSE REPORT ON REGULATORY REFORM, *supra* note 11, at 322 (criticizing FDA for "inordinate delays in processing evidence of drug hazards [that] prevented the agency from acting expeditiously to avert further exposure of the public to potential harm.").

[138]Viscusi draws the "adjudicatory versus non-adjudicatory" distinction also. He asserts that "[t]he present quasi-judicial structure of the commission is ill suited to addressing the issue of whether there are positive net benefits from regulating a product. Because the major policy choices hinge on economic issues rather than simple interpretations of the law, the commission format is inappropriate." *Viscusi*, *supra* note 101, at 106.

This assertion advances a conclusion without reasons. Why legal decisionmaking is more suited to collegial bodies than economic decisionmaking is simply not explained. In fact, both types require the weighing of complex data and the resolution of factual and theoretical issues. Both may produce profound impacts on the lives of a country's citizens. There is no inherent reason for one to justify a collegial setting and the other not to.

[139]Most collegial agencies have managed to avoid this problem. According to a study of seven collegial regulatory agencies done for the U.S. Administrative Conference by Professor David Welborn of the University of Tennessee, "I found that over a period of 15 years or so which I was focusing on, that by and large agency chairmen managed the agency with very little interference or, indeed, involvement on the part of other Commission members." *1981 House Reauthorization Hearings*, *supra* note 32, at 286. *See also* D. WELBORN, GOVERNANCE OF FEDERAL REGULATORY AGENCIES (1977).

the Commission's tiny funding levels[140] and its need for efficient operations. If such actions do not justify changing the agency's structure,[141] at a minimum they illustrate the need for greater restraint by the Commissioners, stronger management by the Chairperson and Executive Director, and, perhaps, a more precise delineation of the Commissioners' authority and duties by Congress.[142]

In addition to concluding that a collegial CPSC costs more to operate,[143] the GAO relied on two additional arguments to support its

[140]Having served as an attorney-adviser to two Commissioners during the years 1973–82, the author had ample opportunity to observe this behavior. In an effort to establish personal records of achievement, Commissioners would tout certain causes, e.g., safety for children, women or minorities. To promote these causes, the Commissioners would try to get the staff to undertake studies, publish reports, conduct seminars or do similar work. Although many of these projects may have been laudable, they diverted resources from agency priority projects. *See* Policy on Establishing Priorities for Commission Action, 16 C.F.R. § 1009.8 (1988).

[141]Although standing alone, they may not justify changing the agency's structure, they provide one additional reason for doing so. *See infra* note 171 and accompanying text.

[142]In a fashion similar to most other collegial regulatory bodies, the CPSC Chairman, under 15 U.S.C. § 2053(f)(1) (1982), is the principal executive officer of the Commission and exercises all of its executive and administrative functions, including the appointment and supervision of personnel, distribution of business among the units of the Commission and the use of funds. On the other hand, this grant of authority is greatly qualified by section 2053(f)(2), which states that in the exercise of the Chairman's functions, the Chairman must be governed by the "general policies of the Commission." According to Scalia & Goodman, "any question before the agency could be one of general policy if the members of the agency choose to make it so." Scalia & Goodman, *supra* note 1, at 906.

A recent illustration of the "micro-managing" charges is the battle over the proper interpretation of this section that broke out when the Commissioners sought to impose "general policies" that, among other things, would authorize Commissioners to participate in the evaluation of the job performance of key agency staff, bar the Chairperson of the agency from appointing "acting" staff for periods greater than 90 days, permit a majority of Commissioners to censure key agency staff, require Commission approval for any appointment to a key staff position that "substantially impacts on the formulation or implementation of Commission policy," require Commission approval for any major reorganization that "could substantially impact the ability of the Commission to formulate or implement policy" and establish operating guidelines for the Commission's executive director. *See 1988 House Appropriations Hearings, supra* note 90, at 130–40. *See also 1987 Senate Reauthorization Hearings, supra* note 126, at 21–22.

The Commissioners felt that personnel and other abuses by CPSC Chairman Scanlon provoked their move to impose these "general policies." *See, e.g.*, McAllister, *CPSC Enforcement Official Stripped of Authority*, Wash. Post, August 27, 1987, at A17, col. 1 (Chairman Scanlon replaced the attorney in charge of the CPSC enforcement division with a nonlawyer formerly in charge of monitoring industry voluntary standards) and Havemann, *CPSC Enforcement Chief's Timely Return*, Wash. Post, October 26, 1987, at A11, col. 1 (On the eve of CPSC reauthorization hearings before a congressional committee critical of Chairman Scanlon's replacement of the CPSC enforcement chief, Scanlon reinstated the enforcement chief.). Nonetheless, this action substantially undermines the original statutory structure of the agency and weakens the "strong" chairman organization of the agency. Battles like this should not occur. Congress should draw the lines of authority more precisely.

[143]*See supra* note 133 and accompanying text.

recommendation to reorganize the CPSC. First, the GAO noted that there is a high turnover rate among CPSC Chairpersons and executive directors, which indicates a lack of stability among agency leadership.[144] Second, the votes of the Commissioners were in high accord in a large number of cases, raising the question of why there should be more than one Commissioner if there is so little disagreement.[145]

These two points are terribly unconvincing. The high turnover rate among CPSC Chairpersons and executive directors would seem to affirm the wisdom of having a collegial body since other Commissioners with experience and institutional memories would guarantee continuity at the agency.[146] Moreover, the degree of unanimity at the CPSC is similar to other agencies[147] and provides no insight into those matters on which the Commissioners disagreed. In fact, many of the unanimous votes of the Commission occur on trivial matters.[148] Moreover, the degree of unanimous voting is not always an accurate measure of disagreement since oppos ing positions often get worked out in advance of Commission votes.[149]

Those who advocate retaining the CPSC's collegial structure argue that the structure promotes more thoughtful decisions,[150] greater

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[144]*See* GAO REPORT ON CPSC STRUCTURE, *supra* note 130, at 9–10.

[145]The GAO found that the Commission voted unanimously 73 percent of the time during the period 1982–86. *Id.* at 5.

[146]Interestingly, one of the harshest critics of collegiality, former Commissioner Stuart Statler, freely concedes that a collegial body provides greater continuity and certainty than a single administrator agency. In fact, continuity is what troubles him since it constitutes "resistance to change." *1981 House Reauthorization Hearings*, *supra* note 32, at 386–87.

[147]*See* GAO REPORT ON CPSC STRUCTURE, *supra* note 130, at 5.

[148]*See 1981 House Reauthorization Hearings*, *supra* note 32, at 389 (statement of Commissioner Stuart Statler). *See also* GAO REPORT ON CPSC STRUCTURE, *supra* note 130, at 30. According to Commissioner Graham:

> With regard to the relative unanimity of votes on matters before the Commission, it should be noted that the collegial debate may contribute to consensus, and in most cases—as with other independent agencies—the issues before this Commission are relatively noncontroversial. However, there are times when the subject matter is significantly substantive and/or controversial. It is precisely in those cases which are complicated, sensitive and/or divisive, that the benefits of debate and the exchange of ideas among a collegial body enhance sound judgment and decision-making, and ensure accountability . . .

Id.

[149]As a participant in hundreds of staff meetings to work out differences among Commissioners, the author would estimate that only a small fraction—certainly less than 50 percent—of major regulatory issues facing the Commission were resolved without significant policy differences among agency members.

[150]*See* GAO REPORT ON CPSC STRUCTURE, *supra* note 130 at 6. *See also id.* at 29–30 (statement of Commissioner Graham) and Pittle, *supra* note 134, at 45, col. 1.

staff objectivity,[151] continuity,[152] diversity[153] and openness.[154] One former Commissioner has argued that setting national safety policy is a function uniquely suited for a collegial body because decisionmaking does not involve true or false answers so much as it addresses "complex judgments about scientific data, engineering analyses, injury information, and economic calculations as well as the agency's legislative mandate. . . ."[155] These types of decisions benefit from the input of differing policy perspectives.[156]

Compounding the difficulty of resolving the question of single administrator versus collegial body is the issue of independence. Assuming that there are no insurmountable constitutional problems with independence,[157] one must still decide whether it constitutes good public policy.

Independence is a relative concept. Compared to federal judges, CPSC Commissioners are not terribly independent. Commissioners do not receive appointments for life, nor can they, for example, invalidate acts of Congress. As one observer put it, independent agencies "are buffeted about by all types of political actors: the courts, Congress, the President, interest groups, and bureaucratic agencies. . . ."[158] Among the controls that a President can bring to bear, for example, are budget recommendations, agency appointments, Justice Department supervision of agency litigation and cajolery.

On the other hand, compared to administrators of regulatory agencies in executive departments, CPSC Commissioners do have a meaningful measure of independence since a President or member of

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[151] *Id.* According to former Commissioner Pittle, "[c]ollegial bodies usually avoid slanted staff reports because documents favoring one commissioner's views are likely to be challenged by a commissioner with an opposing view. Under a single administrator, this may not be so—why explore an option, however promising, that the agency head won't buy?" *Id.* But, *cf. 1981 House Reauthorization Hearings*, *supra* note 32, at 389 (In response to this argument, Commissioner Statler stated, "As a general rule, there may be some evidence for that. But a strong administrator will seek out dynamic advisors who won't hesitate to differ or to express diverse views. . . . ")

[152] *See* GAO REPORT ON CPSC STRUCTURE, *supra* note 130, at 6.

[153] *Id.*

[154] The Government in the Sunshine Act, Pub. L. No. 94–409, 90 Stat. 1241, 5 U.S.C. §§ 551, 552, 552(b), 556, 557, App. § 10 and 39 U.S.C. § 410 (1982), requires that collegial bodies open their decisionmaking meetings to the public. Single administrators are exempt. *See* R. BERG & S. KLITZMAN, AN INTERPRETIVE GUIDE TO THE GOVERNMENT IN THE SUNSHINE ACT (1978) at 1 (prepared for the Administrative Conference of the United States of America).

[155] *1981 House Reauthorization Hearings, supra* note 32, at 359 (statement of Commissioner Pittle).

[156] *Id.* On this point and others, see the strong disagreement voiced by Commissioner Statler. *Id.* at 381–91.

[157] *See* Froomkin, *supra* note 123 and accompanying text.

[158] *See* Hibbing, *Congress & the Presidency* (1985) 57–68 (cited in GAO REPORT ON CPSC STRUCTURE, *supra* note 130 at 4). *See also* CQ REPORT, *supra* note 61, at 57–60 (discussing the ways that outside forces, such as the President, can influence independent agencies).

his administration cannot directly overrule an agency decision nor fire a Commissioner for making an unpopular decision. This prevents the "instant rewrite" of agency regulations for political reasons, which the Reagan administration has been repeatedly accused of doing.[159]

Of course, by itself, the fact that a President disagrees with the direction taken by a regulatory agency is no indication that the President is wrong and the agency is right. Were this so, independence would be easy to defend. In fact, independence presents an essential dilemma: insulating a regulatory agency from a "bad" President,[160] or even from the occasional bad acts of a "good" President, unavoidably insulates a "bad" agency from accountability.[161]

A measure of independence for the CPSC seems justified.[162] Most outside intervention, congressional or presidential, at the CPSC has been for the purpose of weakening or killing pending regulations for fairly dubious political[163] reasons.[164]

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[159]*See* S. TOLCHIN & M. TOLCHIN, DISMANTLING AMERICA (1983) (arguing that the Reagan administration acting through the Office of Management and Budget and hostile regulators has caused decreased protection to American consumers through invalidation of proposed regulations, and instant rewrites and "watering down" of others). *See also* OMB WATCH, OMB CONTROL OF RULEMAKING: THE END OF PUBLIC ACCESS (1985).

[160]When Congress wrote the CPSA, President Nixon was viewed in this light. *See supra* note 125 and accompanying text.

[161]It also insulates the agency from congressional accountability. In light of the Supreme Court's invalidation of the congressional veto in Immigration and Naturalization Serv. v. Chadha, 462 U.S. 919 (1983), the only recourse for Congress in the face of a runaway agency would be to pass a law overruling the agency's action. For a fascinating and revealing analysis of the *Chadha* case, *see* B. CRAIG, CHADHA: THE STORY OF AN EPIC CONSTITUTIONAL STRUGGLE (1988).

[162]Although the current CPSC Chairman, Terrence Scanlon, strongly favors changing the CPSC into a single administrator agency, he, nevertheless, favors retaining its independence. *See 1987 Senate Reauthorization Hearings, supra* note 126, at 41.

[163]The term "dubious" should be stressed since not every political intervention is necessarily wrong. *See* Statler, *supra* note 134, at 37, col. 1. ("[Intervention], even if politically motivated, may be soundly based.") For a well-reasoned analysis of when Congress involves itself in regulatory agency activities—and whether it should, *see* Florio, *Congress as Reluctant Regulator: Hazardous Waste Policy in the 1980's* 3 YALE J. ON REG. 351 (1986). Although defending the need for congressional intervention, Congressman Florio states:

> Congress is also an overtly political institution which does not pretend to have the scientific or technical expertise of agencies established to perform regulatory functions. When issues are brought before Congress, disagreements quickly become political, and sensible environmental policy may be lost in the process. Technical judgments arrived at through political compromise may lack a sound scientific foundation, with results that neither side can anticipate. Science becomes a political tool rather than a key to difficult technical judgments about how best to protect the environment. Even when Congress can summon the necessary expertise for effective decisionmaking on technical issues, it is questionable whether such expertise, once summoned, can survive the political process of legislating.

Id. at 379.

[164]The author's years as a staff member of a congressional committee confirm this view. A typical situation arises when an industry, having failed to convince the agency

Depending on the degree of independence granted to the CPSC, it becomes harder to justify transforming the agency into a single administrator. There are currently no independent single administrator agencies,[165] obviously reflecting Congress' reluctance to grant excessive authority to one individual.[166] This is not to say that a single administrator cannot enjoy any independence, only that it must be limited and carefully drawn.

Given the competing considerations that apply to a decision regarding a proper organizational structure for the CPSC, it is obvious that an approach in one direction, such as independence, necessarily involves trade-offs in the opposite direction, such as loss of accountability.

On balance, the case for transforming the CPSC to a single administrator with a small measure of independence seems to be the more convincing one, although not by a wide margin.[167] In fact, the margin is small enough that it would be hard to justify urging a change if the political capital involved in implementing this reform were large.[168]

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to relax or kill a regulation, complains either to a local congressman or to a friend in the administration about the "misguided" agency. The picture painted of the agency's proposed action is often exaggerated and the agency's views are rarely sought by the congressman or administration official before pressure is brought to bear on the agency to change course. *See* Pittle, *Two Views of Regulatory Commissions, supra* note 134, at 33, col. 4 (expressing reservations about political intervention in CPSC decisionmaking).

According to Martin and Susan Tolchin, political intervention became virtually formalized under the Vice-President's Task Force on Regulatory Relief. They cite a speech to the Chamber of Commerce by Boyden Gray, Counsel to the Vice-President, in which he

> told businessmen not to be discouraged if they failed to get satisfaction from the regulatory agencies. That is what the White House is there for, he told them: "If you go to the agency first, don't be too pessimistic if they can't solve the problem there. . . . That's what the task force is for.
>
> We had an example of that not too long ago. . . . We told the lawyers representing the individual companies and the trade associations involved to come back to us if they had a problem.
>
> To weeks later they showed up and I asked if they had a problem. They said they did, and we made a couple of phone calls and straightened it out. We alerted the top people at the agency that there was a little hanky-panky going on at the bottom of the agency, and it was cleared up very rapidly. The system does work if you use it as sort of an appeal. You can use it as sort of an appeal. You can act as a double-check on the agency that you might encounter problems with."

TOLCHIN & TOLCHIN, *supra* note 159, at 58–59.

[165] *See supra* note 132 and accompanying text.

[166] Even as strong an advocate as Statler has stated that "[m]aintaining independence requires the commission form, since no one would advocate an independent single administrator." *See* Statler, *supra* note 134 at 38, col. 4.

[167] Such a transformation, in fact, could lessen the quality of deliberations behind regulatory decisions, reduce agency openness, undermine regulatory continuity, and open the agency to possible harm from an abusive regulatory "czar." Most of these negatives could be avoided by a President committed to the agency's mission who chose a high-quality administrator and who helped seek more resources for the agency.

[168] A new administration should not conclude that changing the agency's structure is all that is necessary to reform the CPSC. As discussed in this article, several other reforms, such as freeing the release of information, are as important, if not more so, than converting the agency into a single administrator.

Changing the CPSC's structure makes sense because the CPSC is such a small agency that it cannot afford the luxury of a top-heavy management. Moreover, given its small size and consequent light regulatory work load, the Commissioners inevitably will involve themselves in management issues[169] as well as policy matters to the ultimate detriment of the agency.[170] Finally, the agency cannot afford the competition for resources—competition that seems unlikely to abate[171]—by the Commissioners. For these reasons, the structure should be changed.

A restructured CPSC should not be folded into a larger department, such as the Department of Commerce[172] or the Department of Health and Human Services.[173] Placing the agency in a larger

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[169]All CPSC Commissioners are guilty on this point. Even Commissioner Statler, a strong advocate of a single administrator, noted that "I am as much a part of the problem as [the other commissioners] are." *1981 House Reauthorization Hearings, supra* note 32, at 380.

[170]In fairness, the management abuses that led to the recent involvement by the Commissioners arguably might, indeed, justify the Commissioners' actions. *See supra* note 140 and accompanying text. But, the policies that they imposed on the current Chairman will likely endure after his departure. In the author's judgment, these policies, because they intrude so deeply into the management arena, are clearly unwise and possibly illegal.

[171]In fact, as the years have passed, the CPSC Chairman's authority has been circumscribed more and more. Each time the Commissioners exercise their right to determine general policies and limit the Chairman's authority, they have done so to curb alleged abuses by the Chairman. Yet, the net effect has been to weaken unduly the authority of this office.

[172]This department would present too hostile an environment. A body, such as the CPSC, that *regulates* commerce should not be directed by one that *promotes* commerce. According to Commissioner Statler, a strong proponent of making the CPSC a single administrator:

> I would like to make clear . . . the conditions in which I favor a single administrator for consumer product safety. Of the possible structures, the worst possible idea is to bury the position in an executive department. And of all the executive departments, the worst possible department would be the Commerce Department. I say that because the mandate of that department and the mandate of consumer safety are at odds. Virtually every major study on regulatory organization has concluded that the promotion of business and the regulation of business should be structurally separate.

1981 House Reauthorization Hearings, supra note 32, at 378.

[173]After trying unsuccessfully to abolish the CPSC and to fold it into the Department of Commerce, the Reagan administration, in 1987, proposed to place the CPSC within the Public Health Service of the Department of Health and Human Services. The stated reasons for doing this were: "First, to coordinate public health and safety activities of the Commission with those of the Public Health Service; and secondly, to improve management of the agency through proper executive oversight." *1987 Senate Reauthorization Hearings, supra* note 126, at 74–79 (testimony of S. Anthony McCann, Assistant Secretary for Management and Budget, Department of Health and Human Services).

In response, Senator Albert Gore expressed "some skepticism about this particular proposal." *Id.* at 77. Senator Gore noted that with respect to a non-independent agency like FDA, "we have seen a new—and what would have been in past years unthinkable—encroachment on FDA's independent judgment in the current administration." *Id.*

structure would unduly diminish its visibility, which should remain high.[174] Also, it would compromise the CPSC's independence, which should be retained, at least to some degree.

Perhaps the best approach would be to recreate the CPSC somewhat, but not precisely, in the image of the Environmental Protection Agency. That is, it would not be affiliated with any other department or agency, but would not be a completely independent agency. One useful approach to independence would be to have the administrator serve a set term coterminous with that of the President. The President should not be able to remove the administrator except for cause.[175] To avoid placing excessive power in the administrator's hands, however, a revised law should permit the President, by publishing an Executive Order, after notice and an opportunity for comment and subject to judicial review, to overrule the administrator. Because a presidential veto would have to be taken in a very public and visible fashion, the President would be unlikely to resort to it unless he or she felt that it could be justified on substantive, as opposed to purely political, grounds.[176]

Unfortunately, there is no "perfect" organizational structure for the CPSC—or any other agency. Nevertheless, assuming that the agency could be transformed into a single-administrator agency with a minimum of controversy, this new form should be tried.

C. What Role Should Standards Play at the CPSC?

As the CPSC has moved further and further away from the use of mandatory standards, it is essential to examine the agency's increased

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[174]During the debate over the CPSC, Secretary of Health, Education and Welfare, Elliot Richardson, voiced a strong dissent on this point: "I doubt that these observations hold true over the long run. As examples, actions of the Federal Trade Commission or Interstate Commerce Commission have never seemed to me to be more 'visible' than an action of the Food and Drug Administration, even though they are independent agencies." *Part 3 Consumer Product Safety Act: Hearings on H.R. 1110, H.R. 8157, H.R. 260 (and identical bills) and H.R. 3813 (and identical bills) Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, 92d Cong., 1st & 2d Sess. 973 (1972). *See also* L. KOHLMEIER, THE REGULATORS (1969).

Secretary Richardson is probably correct that the FDA is a visible agency, but the author would argue that that is because consumers and the media are extremely concerned about the products it regulates. Were FDA an independent agency, it likely would be even more visible since it would not be under the wings of a large, occasionally intrusive, department.

[175]On this point, the author disagrees with Commissioner Statler. According to him, "Under any [single administrator] setup, the administrator should serve at the pleasure of the President." *1981 Senate Reauthorization Hearings*, *supra* note 85, at 291.

[176]The idea of providing the President with an executive veto over the decisions of regulatory agencies was advanced by Cutler and Johnson in the mid-1970s as a way of returning regulation to the political process. This idea made sense to them because "[t]he President is the only nationally elected officer, and thus, at least arguably, our most politically accountable official. He is uniquely situated to intervene (at least in a limited number of critical instances) in order to expedite, coordinate, and, if necessary, reverse agency decisions." Cutler & Johnson, *supra* note 74, at 1411.

reliance on voluntary standards and to determine whether this reliance is warranted. In addition, it seems essential to consider when the agency should continue standards, mandatory or voluntary, as useful strategies to deal with product hazards.

Each year, hundreds of organizations write tens of thousands of "nongovernmental," or so-called "voluntary" standards.[177] Although not all of these standards address consumer product safety concerns,[178] a substantial number do.[179]

Standards writing (especially safety standards) by the private sector did not impress the National Commission on Product Safety (NCPS). One of the compelling reasons that led the NCPS to recommend the establishment of a product safety agency was its perception that voluntary self-regulation by industry was inadequate.[180] Congress strongly seconded this view.[181] The perception was that industry too often failed to develop necessary safety standards, or developed standards that either weakly addressed risks or produced insufficient compliance, or both.[182]

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[177]Hamilton estimates that the total number of nongovernmental standards in use range from 20,000 to 60,000 plus. *See* Hamilton, *The Role of Nongovernmental Standards in the Development of Mandatory Standards Affecting Safety or Health*, 56 TEX. L. REV. 1329, 1332 (1978).

[178]Some simply create a common definition, such as what a "chelating agent" is for soaps and detergents. *Id.* Others provide a standard method of classifying products; for example, diesel fuel is divided into three grades, based on properties such as flash point, viscosity and sulphur content. *Id.*

[179]The National Bureau of Standards published a booklet in 1977 listing over 1,000 product areas and over 2,000 standards covering products found around the home, excluding foods, beverages and drugs. *See* NATIONAL BUREAU OF STANDARDS, U.S. DEP'T OF COMMERCE, TABULATION OF VOLUNTARY STANDARDS AND CERTIFICATION PROGRAMS FOR CONSUMER PRODUCTS (1977) (NBS Technical Note No. 948) (cited in Hamilton, *supra* note 177, at 1400).

[180]*See* NCPS REPORT, *supra* note 15, at 47–62. The NCPS looked at more than 1,000 industry standards drafted by 48 separate standards writing groups that addressed safety characteristics of roughly 350 product categories. According to the NCPS:

> the standards are chronically inadequate, both in scope and permissible levels of risk. They do not usually address themselves to all significant foreseeable hazards. They give insufficient consideration to human factors such as predictable risktaking, juvenile behavior, illiteracy, or inexperience. The levels of allowed exposure to electrical, thermal, and mechanical and other energy exchanges are frequently too high.

Id. at 48. This view was strongly disputed by the managing director of the American Society for Testing and Materials (ASTM), the world's largest standards writing body. *See* Cavanaugh, *Standards the Hard Way*, ASTM STANDARDIZATION NEWS, February 1973, (cited in Brodsky & Cohen, *supra* note 223, at 629–31).

[181]*See* H.R. REP. No. 1153, 92d Cong., 2d Sess. 23 (1972), and S. REP. No. 835, 92d Cong., 2d Sess. 7 (1972). *See also* SUBCOMM. NO. 5 OF THE HOUSE SELECT COMMITTEE ON SMALL BUSINESS, THE EFFECT UPON SMALL BUSINESS OF VOLUNTARY INDUSTRIAL STANDARDS, H.R. Rep. No. 1981, 90th Cong., 2d Sess. 75 (1968).

[182]*See* Klayman, *Standard Setting Under the Consumer Product Safety Amendments of 1981—A Shift in Regulatory Philosophy*, 51 GEO. WASH. L. REV. 96 (1982) (criticizing the 1981 amendments to the Consumer Product Safety Act). "The reasons for industry's failure [to enact adequate voluntary standards] still exist today—industry participants

Notwithstanding its negative view of voluntary standards, the NCPS recommended that a newly created product safety agency work with voluntary standards organizations by supplying them with technical information about product safety[183] and providing agency input to voluntary standards committees.[184] Congress incorporated this recommendation,[185] but otherwise did little in the Consumer Product Safety Act to demonstrate enthusiasm for voluntary standards.[186] In similar fashion, the Commission in its early years often expressed strong reservations about voluntary standards, even though it established a liaison office with the voluntary standards community[187] and maintained cordial relations. For example, in a 1974 interview, Commissioner Lawrence Kushner, when asked if he thought the Commission would adopt many of the existing voluntary standards as mandatory standards, responded:

> In my view, it's very unlikely that an existing voluntary standard would be appropriately made mandatory.
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> . . . First of all, if the standard was developed by a consensus method, its principal feature was that it was acceptable to everybody, not that it reflected the best that was available, even within the existing state of the art. And for us to make such a standard a matter of law seems to me not to be a good practice. . . .[188]

These views, of course, were hardly unique to the CPSC.[189]

As the years passed, the Commission's view of voluntary standards shifted somewhat. Congress had originally hoped that the CPSC

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may simply ignore voluntary standards, and even if industry develops and adheres to voluntary standards, those standards may not adequately reduce product risk." *Id.* at 99–100.

[183]*See* NCPS FINAL REPORT, *supra* note 15, at 62.

[184]*Id.* at 117.

[185]*See* section 5(b)(3) of the CPSA (codified at 15 U.S.C. § 2054(b)(3) (1980)). In 1981, this section was expanded to require the agency, to the extent practicable, to assist groups in developing voluntary standards. 15 U.S.C. § 2054(a)(3)–(4) (1982 & Supp. IV 1986).

[186]*See* Hamilton, *supra* note 177, at 1401.

[187]Relations between the CPSC and the voluntary standards community were conducted through the CPSC's Office of Standards Coordination and Appraisal (OSCA), which also had the responsibility for the development of mandatory standards. Brodsky and Cohen felt that this dual responsibility placed members of this office in a potential conflict of interest because the staff who evaluated the adequacy of voluntary standards was the same staff that participated in the development of voluntary standards. *See* Brodsky & Cohen, *supra* note 23, at 639 n.53.

[188]2 Prod. Safety and Liab. Rep. (BNA) 7 (Jan. 4, 1974), *cited in* Brodsky & Cohen, *supra* note 23, at 638. *See also* Hamilton, *supra* note 177, at 1402.

[189]In 1978, Hamilton wrote:

> Since 1970, Congress has produced a stream of legislation that to a greater or lesser extent contemplates the limited use of voluntary standards by federal agencies. The legislative histories of these statutes repeatedly express the concerns that the process is industry-dominated and that procedures followed may not be fair and open. Such skepticism about the quality of voluntary standards is still widely shared by persons active in the consumer movement and others.

Hamilton, *supra* note 177, at 1372.

would be able to draft mandatory standards faster than industry developed voluntary standards.[190] Almost immediately it became clear that this hope was illusory. Although voluntary standards might take a long time to develop,[191] mandatory standards took longer.[192] For one thing, voluntary standards groups did not have to follow the cumbersome procedures of the offeror process[193] nor, more importantly, did they have to develop the extensive technical documentation that the courts required of the CPSC.[194]

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[190]According to one of the authors of the CPSA, in order to avoid the "long, protracted [voluntary standards] process," Congress set specific time frames that "may have been arbitrary in trying to compress everything into a given mold of time." *1975 Senate Hearings*, *supra* note 4, at 77 (statement of Senator Frank E. Moss). Under the CPSA, the time frame for developing a standard beginning with the publication of a notice for the development of a standard to the promulgation of the standard was 270 days. *See* 15 U.S.C. §§ 2056(f) and 2058(a) (1970 & Supp. II 1972). In fact, the CPSC never promulgated a safety standard within the 270-day period.

[191]Because voluntary standards require consensus, they necessarily require fairly long periods of time simply to circulate drafts. Another reason, according to Richard Goodemote, National Director, Merchandise Development and Testing Laboratory, Sears, Roebuck & Co., "that the private sector takes a long time to develop standards is simply that it is not a full-time job for the people involved. They are working in the private sector. They come to meetings, get their assignments and go back and do some work and typically it takes a couple of years to develop a standard." *1975 Senate Oversight Hearings*, *supra* note 4, at 77.

[192][A]s of 1978, the CPSC had participated in or monitored the development of forty-nine different voluntary standards, including aspects of television sets, bicycles, snowmobiles, butane lighters, ladders, ranges and ovens, hedge trimmers, and other products." Memorandum from D. R. Mackay, Director, Voluntary Standards, to Michael Brown, Executive Director, Consumer Product Safety Commission (Apr. 3, 1978, *cited in* Hamilton, *supra* note 177, at 1403. Hamilton notes that many of the products under voluntary standards development were more widely used and probably presented a greater potential hazard for the consumer than the products for which mandatory standards had been completed. *Id.*

The shorter development time for voluntary standards is a point that Chairman Scanlon has repeatedly stressed as a reason for preferring voluntary standards. *See, e.g.*, Remarks of Terrence Scanlon, Chairman, U.S. Consumer Product Safety Commission at the Annual Meeting of the American Bar Association in San Francisco, California (Aug. 11, 1987). But Scanlon's method of calculating time periods is hardly convincing. At one point he stated that a voluntary standard for chain saws was developed in "little over a year." Remarks of Terrence Scanlon Before the Society of Consumer Affairs Specialists (SOCAP) in San Francisco, California (November 28, 1984). On another occasion, he stated that the chain saw voluntary standard was developed in three years. *See 1985 House Reauthorization Hearings*, *supra* note 2, at 145. In fact, the voluntary standard took roughly seven years to develop. *Id. See also infra* note 226 and accompanying text, and *1981 House Reauthorization Hearings*, *supra* note 32, at 35. According to former Chairman Susan King, "[v]oluntary standard work is very staff intensive. . . . It is no less time-consuming than writing a mandatory standard." Moreover, if time was the only criterion, one would probably be more successful using the agency's recall authority to promote product safety. *See infra* notes 308–88 and accompanying text.

[193]*See supra* note 70 and accompanying text. Moreover, when the offeror process was repealed, Congress added new rulemaking procedures that presented even more potential for delay. *See infra* note 239 and accompanying text. *See also infra* note 362 and accompanying text.

[194]Under the Administrative Procedure Act, 5 U.S.C. § 706 (1982), most agency rulemaking will be upheld unless it is "arbitrary" or "capricious," a relatively easy

In addition to realizing that mandatory standards took a long time and consumed a large amount of agency resources, the CPSC also concluded that voluntary standards organizations, reacting to criticism from groups like the National Commission on Product Safety, had "made progress" towards involving consumers and imposing greater procedural safeguards in their activities.[195] In recognition of these realities, the agency, in 1977, issued a statement of policy regarding its involvement in voluntary standards activities that indicated a new, more favorable, attitude towards voluntary standards.[196] But the agency still expressed a strong degree of caution. Under the policy, the CPSC saw voluntary standards as "complementary to and

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burden to meet. Congress, however, imposed a heavier burden on the CPSC. Under section 11(c) of the CPSA, 15 U.S.C. § 2060(c) (1982), agency rules cannot be affirmed unless supported by "substantial evidence on the record taken as a whole."

In its early years, the CPSC had a number of safety standards invalidated by courts that concluded that the agency had not developed adequate "substantial evidence." See Aqua Slide 'N' Dive Corp. v. Consumer Prod. Safety Comm'n, 569 F.2d 831 (5th Cir. 1978) (swimming pool slide standard), and D.D. Bean and Sons v. Consumer Prod. Safety Comm'n, 574 F.2d 643 (1st Cir. 1978) (matchbook standard).

These early losses gave rise to the notion—a quite incorrect one—that industry always challenged CPSC rules and won. The current CPSC Chairman testified in 1987 that "every mandatory standard that the Agency has promulgated has been litigated. . . . [a]nd the fact of the matter . . . is that we have lost most of those, once they have been challenged."*1987 House Reauthorization Hearings, supra* note 89, at 63 (testimony of Chairman Terrence Scanlon).

In fact, when challenged on this point, Chairman Scanlon conceded that thirty-nine of fifty CPSC rules were never challenged and, of the eleven that were, "[t]wo were set aside entirely; two were largely set aside; three were largely upheld and partially set aside; and four were upheld in their entirety." *Id.* This 92 percent success rate provoked an angry response from Congressman James F. Florio, Chairman of the Subcommittee on Commerce, Consumer Protection, and Competitiveness, who wrote Scanlon that Florio was "startled at the discrepancies between your oral testimony and the written responses." Letter from Chairman Florio to Chairman Terrence Scanlon (August 5, 1987).

[195]*See* Commission Involvement in Voluntary Standards Activities, 42 Fed. Reg. 58726 (1977), [hereinafter CPSC Voluntary Standards Policy](codified as amended at 16 C.F.R. §§ 1032.1–1032.7 (1988). In July 1978, section 1031.5(b) of the policy was revised to permit certain CPSC staff to be involved in particular voluntary standards activities. *See* 43 Fed. Reg. 30796 (1978).

[196]The CPSC policy established three levels of involvement by the agency in voluntary standards activities generally:

> (1) *Liaison.* Liaison involves responding to requests from voluntary standards organizations, standards development committees, trade associations and consumer organizations, by providing information concerning the risks of injury associated with certain products . . . ; discussing Commission goals and objectives with regard to voluntary standards . . . ; and initiating contacts with voluntary standards organization to discuss cooperative voluntary standards activities. . .
>
> (2) *Monitoring.* Monitoring involves maintaining an awareness of the voluntary standards development process through oral and written inquiries, receiving and reviewing minutes of meetings [by voluntary standards organizations] . . . , and attending meetings for the purpose of observing and commenting during the standards development process.
>
> (3) *Participating.* Participating involves regularly attending meetings of the standards development committee or group and taking an active part in the discussions of the committee and in developing the standard. . .

CPSC Voluntary Standards Policy, *supra* note 195, at 58762.

not a substitute for mandatory standards."[197] In particular, the agency stressed that it did not give up the option to promulgate mandatory standards when it concluded that voluntary standards activities were inadequate.[198]

Under the new policy, the CPSC decided to work with voluntary standards organizations on several hazards that in previous years undoubtedly would have been addressed by mandatory standards. For example, the CPSC chose to abandon development of both a flammability standard for upholstered furniture, the product associated with more consumer deaths from fire per year than any other product under CPSC jurisdiction,[199] and a consumer product safety standard for chain saw kickback, a hazard described by one commissioner as "what may be the most unreasonable risk of injury the Commission has ever addressed."[200]

Notwithstanding these actions by the CPSC in the late 1970s in support of voluntary standards, and a certain amount of praise for doing so,[201] the Reagan administration, upon assuming office, accused the agency of being too quick to invoke its mandatory authority rather than relying on industry voluntary efforts and providing consumer information.[202] In the face of these strong attacks,[203] and unsettled by the loss of many liberal, pro-CPSC congressmen in the

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With respect to "participating," "[u]nder certain conditions the Commission will contribute to the deliberations of the committee by expending resources to provide technical assistance, including research, engineering support, and information and education programs which would support the development and implementation of voluntary standards."

[197]*Id.*

[198]*Id.*

[199]*See 1977 CPSC House Oversight Hearings, supra* note 61 at 209 (testimony of James Winger, Center for Fire Research, National Bureau of Standards).

[200]*In Re Petition CP 77–10,* (April 27, 1978) Pittle, Commissioner, dissenting [hereinafter Pittle dissent] (available from the Office of the Secretary, U.S. Consumer Product Safety Commission). In this case, the majority agreed with Commissioner Pittle that chain saws presented an extremely serious hazard. They justified their decision to work to develop a voluntary standard on the basis that a voluntary standard could be developed more quickly than a mandatory standard.

[201]*See supra* note 75 and accompanying text.

[202]*See 1981 Senate Reauthorization Hearings, supra* note 85, at 233–40 (testimony of Dr. James C. Miller III, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget).

[203]Manufacturers were quick to join in the angry chorus. *See, e.g., 1981 Senate Reauthorization Hearings, supra* note 85. According to Bernard Falk, president of the National Electrical Manufacturers Association, Congress should "require the Commission to rely on voluntary standards by rescinding the Commission's authority to promulgate mandatory consumer product safety standards," *Id.* at 92, because the CPSC had "shown a scorn for the private sector." *Id.* at 90. According to Dennis Dix, Executive Director, Outdoor Power Equipment Institute, the CPSA "should be amended to ensure that the CPSC gives priority to the use of voluntary standards." *Id.* at 108.

In passing the 1981 amendments, Congress specifically noted and endorsed this criticism. *See* S. REP. NO. 102, 97th Cong., 1st Sess. 2 (1981) [hereinafter 1981 SENATE REPORT].

election of 1980, Congress sensed a national mood in favor of deregulation and imposed a number of restrictions on the CPSC in 1981.[204]

Among these restrictions there were several that affected the Commission's ability to promulgate mandatory standards. The 1981 amendments required the agency to assist in the development of voluntary standards and, rather than promulgate mandatory standards, rely on voluntary standards whenever compliance with them would eliminate or adequately reduce the risk of injury addressed and the agency concluded that there would be substantial compliance.[205]

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[204] *See supra* note 70. In addition to imposing restrictions on the CPSC with respect to voluntary standards, *infra* note 205, Congress:

> tightened restrictions on the ability of the Commission to release information from which the identity of a consumer product manufacturer could be identified (15 U.S.C. § 2055(b)) (1982);
>
> imposed a virtual ban on the release of "15(b) reports" from manufacturers containing information about possible product hazards (15 U.S.C. § 2055(b)(5)) (1982);
>
> established an advisory panel on chronic hazards that must be convened and consulted before the agency could begin rulemaking with respect to products presenting a risk of cancer, birth defects, or gene mutations (15 U.S.C. § 2077) (1982);
>
> removed CPSC jurisdiction over amusement rides affixed to permanent sites (15 U.S.C. § 2052(a)(1)(I)) (1982);
>
> eliminated the Commission's authority to promulgate consumer product safety standards containing design standards (abolishing part of 15 U.S.C. § 2056(a)(1)) (1982).

Professor Klayman has voiced strong disagreement with Congress' removal of the agency's authority to promulgate standards containing design requirements. *See* Klayman, *supra* note 182 at 104–08. He argues that the loss of this authority, which the CPSC admittedly invoked rarely, may expose consumers to more products for which no feasible consumer product safety standards are available, leaving the agency with no choice but to ban products.

Although such a result may be theoretically possible, in fact, the House Committee Report suggests that the agency will "have little difficulty in promulgating safety standards with performance requirements." H.R. REP. No. 158 (Volume II accompanying the Omnibus Reconciliation Act of 1981), 97th Cong., 1st Sess. 397 [hereinafter 1981 HOUSE REPORT]. The report cites several cases in which courts adopted extremely expansive interpretations of what constitutes a "performance standard." *See* Southland Mower Co. v. Consumer Prod. Safety Comm'n, 619 F.2d 499 (5th Cir. 1980); Pacific Legal Found. v. Department of Transp., 539 F.2d 1335 (D.C. Cir.), *cert. denied*, 429 U.S. 999 (1979); and Paccar, Inc. v. National Highway Traffic Safety Admin., 573 F.2d 632 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978); Chrysler Corp. v. Department of Transp., 472 F.2d 659 (6th Cir. 1972). The Senate Report seems to adopt the same view. *See* 1981 SENATE REPORT, *supra* note 203, at 13.

[205] 15 U.S.C. § 2056(b) (1982). To implement this mandate, the 1981 amendments required the agency, prior to promulgating a standard or ban, to publish an advance notice of proposed rulemaking (ANPRM) inviting the submission of any existing voluntary standard, 15 U.S.C. § 2058(a)(5) (1982), or the submission of a "statement of intention" to modify or develop a voluntary standard. 15 U.S.C. § 2058(a)(6) (1982). Once an ANPRM was published, the agency was required to assist voluntary standards

With only slight misgivings,[206] the CPSC supported these voluntary standards amendments.[207] In part, its position may have arisen from a lack of political leverage at the time.[208] But, it also stemmed from the agency's belief that it worked well with the voluntary standards sector[209] and that it already, more or less, followed the procedures set forth in the amendments.[210]

The agency's implementation of the 1981 amendments has been extremely controversial. Depending on the emphasis one gives different portions of the 1981 amendments, one reaches different conclusions about how to implement them. There is no dispute regarding the situation where a voluntary standards organization submits an *existing* voluntary standard that, according to a Commission determination, adequately addresses a risk of injury and com-

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organizations in the development of voluntary safety standards. 15 U.S.C. § 2054(a)(3) and (4) (1982 & Supp. IV 1986).

The amendments further required the Commission to determine whether any voluntary standard submitted to it in response to its invitation in the ANPRM was likely to result in the elimination or adequate reduction of the identified risk of injury and whether there was likely to be substantial compliance with it. If so, the agency was required to terminate its proceeding to promulgate a mandatory standard or ban. 15 U.S.C. § 2058(b)(2) (1982).

As part of any proposal to ban or draft a safety standard for a product, the CPSC was required to publish a preliminary regulatory analysis in which it discussed the reasons for the agency's preliminary determination that efforts proposed by those who submitted "statements of intention" to develop voluntary standards would not, within a reasonable time, be likely to result in the development of a voluntary consumer product safety standard that would eliminate or adequately reduce the risk of injury addressed by the proposed consumer product safety rule. 15 U.S.C. § 2058(c)(3) (1982).

Finally, the Commission was barred from promulgating any consumer product safety rule unless it specifically found that there was no voluntary consumer product safety standard that had been adopted and implemented that would adequately reduce the risk of injury and was adequately complied with. 15 U.S.C. § 2058(f)(3)(D) (1982).

[206]*See 1981 House Reauthorization Hearings, supra* note 32, at 319 (According to Acting Chairman Stuart Statler, the legislation would shift the burden of finding that a voluntary standard was inadequate from industry to the CPSC. Previously, the CPSC had asked industry to bear that burden.)

[207]According to Acting Chairman Statler, the Commission supported "the general thrust of the amendments proposed by Congressmen Broyhill and Madigan concerning voluntary standards and regulatory impact analysis." *Id.*

[208]After all, one of the main topics of the 1981 hearings was whether the agency should be abolished.

[209]The Commission's policy on voluntary standards contained provisions indicating that it would not promulgate mandatory standards where it had concluded that adequate voluntary standards existed. *See* CPSC Voluntary Standards Policy, *supra* note 195, at 16 C.F.R. § 1032.6(a) (1988).

Furthermore, Klayman, *supra* note 182 at 103, n.37 (citing 1 Consumer Prod. Safety Guide (CCH) ¶ 3017, at 3919–22 (1982), argues that the CPSC had shown "reasonable patience" with voluntary standards groups. He points to an article listing at least twenty-one instances in which the agency had denied petitions asking for mandatory standards based on a finding that effective voluntary standards already existed or potentially effective standards were being developed.

[210]*Id.*

mands substantial compliance.[211] The moment that the CPSC makes such a determination, it must terminate any rulemaking proceeding and rely on the voluntary standard.[212]

The more difficult, and much more frequent, situation arises when the CPSC encounters a product hazard that seems to present an unreasonable risk of injury and there is either no relevant industry voluntary standard or a clearly inadequate one. In such a case, opinions diverge dramatically. On one hand, nothing in the 1981 amendments *bars* the agency from publishing an Advance Notice of Proposed Rulemaking (ANPRM) and commencing development of a mandatory rule,[213] which is what the CPSC's critics wish the agency would do.[214] On the other, the CPSA does not *require* such an approach and clearly permits the agency instead to work with industry groups to develop voluntary standards.[215]

The CPSC voluntary standards policy fails to provide guidelines in this important area. The policy details when the agency will defer to an existing voluntary standard,[216] when it will defer development of a mandatory standard after it has evaluated an existing voluntary

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[211]Congress intended that the term "substantial compliance" be measured by the number of complying products rather than the number of complying manufacturers. *See* 1981 SENATE REPORT, *supra* note 203, at 17 and 1981 HOUSE REPORT, *supra* note 204, at 395.

[212]15 U.S.C. § 2058(b)(2) (1982).

[213]Although the Consumer Product Safety Act requires the CPSC to assist groups in the development of voluntary standards once the agency has published an ANPRM, *see* 15 U.S.C. § 2054(a)(3) (1982), nothing in this or any other section of the act bars the CPSC from proceeding to develop a mandatory safety standard when there is no *existing* voluntary standard that adequately reduces a risk of injury and is substantially complied with.

[214]In recent years, the CPSC has engaged in a practice of deferring to the voluntary sector even when no voluntary standards exist. According to the Consumer Federation of America:

> The difference between deferring to a voluntary standard that is both adequate and complied with and one which does not exist, but that the Commission "hopes" will be developed, is vast. The Commission's own regulations recognize this difference, 16 C.F.R. § 1032.6(b)(1) (1988), yet by *informally deferring* to the voluntary standards process, CPSC has avoided publishing ANPRMs. The result in many cases is that the agency ultimately ends up in a foolish position since the industry either totally ignores the Commission's informal deferral or "hope," or develops a standard that is inadequate.

CFA REPORT, *supra* note 96, at 21. One former CPSC Commissioner put it more bluntly: "Rather than pressing for adequate voluntary standards, the Commission accepts whatever action industry offers. It does not defer to voluntary standards, it grovels." *1987 House Reauthorization Hearings*, *supra* note 89, at 112 (testimony of former Commissioner R. David Pittle).

[215]*1985 House Reauthorization Hearings*, *supra* note 2, at 147 (testimony of Chairman Terrence Scanlon).

[216]The agency will defer to an existing voluntary standard when the standard adequately reduces a risk of injury and there is a sufficiently high degree of industry conformance. 16 C.F.R. § 1032.6(a)(1) and (2) (1988). This essentially tracks the language of the 1981 amendments.

standard,[217] and whether it will delay the commencement of a planned mandatory standards development proceeding in order to permit an outside party to develop a voluntary standard.[218] But, it is silent regarding the appropriate Commission response to situations where industry has failed to develop a voluntary standard for a serious risk and the Commission has not yet made a formal determination that the product presents an unreasonable risk. Logically, one would imagine that the agency, while perhaps obligated to provide technical and other assistance to industry to develop a voluntary standard,[219] would not delay its assessment of the degree of risk associated with the product in order to permit an industry group to develop a voluntary standard.[220] Yet, the CPSC has done this[221] and, more recently, has developed a practice of deferring virtually all efforts towards the development of mandatory standards upon the promise, however shaky, of industry groups to develop voluntary standards.[222]

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[217]In the event that the Commission has evaluated an existing voluntary standard and found it to be adequate in all but one or two areas, the Commission may defer the initiation of a mandatory rulemaking proceeding and request the standards develop-[ing] organizations to revise the standard to address the identified inadequacies expeditiously." 16 C.F.R. § 1032.6(4) (1988).

[218]Generally not. "The Commission believes that such a policy would simply encourage industries to delay work on voluntary standards until mandatory government action seemed likely." 16 C.F.R. § 1032.6(b)(1) (1988). The only exception to this policy is when there is "clear evidence to show that development of a voluntary standard . . . was commenced prior to a Commission determination that a product presents an unreasonable risk of injury . . . . " 16 C.F.R. § 1032.6(b)(2) (1988).

[219]The CPSC is required to do so only "to the extent practicable and appropriate" (taking into account the resources and priorities of the Commission). 15 U.S.C. § 2054(a)(4) (1982 & Supp. IV 1986). Given the agency's current resources, this might not add up to much.

[220]After all, if the agency would not delay a mandatory standards proceeding to permit an outside group to develop a standard, it would seem inconsistent to delay a proceeding to assess a product hazard.

[221]Perhaps the most dramatic example occurred with respect to chain saw hazards. In 1978, the Commission voted to enter into an agreement with the Chain Saw Manufacturers Association (CSMA) to support CSMA's effort, over the course of eighteen months, to develop a voluntary standard for chain saws. The agency did so by refusing to vote on whether chain saw kickback presented an unreasonable risk of injury. This provoked a strong disssent from Commissioner Pittle, who wrote:

> While [the Commission's voluntary standards policy] appears to take a strong position against dilatory efforts by voluntary standards bodies, the chain saw decision demonstrates that an enormous loophole exists. Technically, the Commission can avoid violating [§1032(6)(b)] simply by refusing to vote whether or not a product presents an unreasonable risk of injury (or by voting not to commence a section 7 proceeding).

See Pittle dissent, supra note 200, at 20–21.

[222]The Consumer Federation of America cites two recent examples of CPSC "reliance on non-existing voluntary standards." Example one is the agency's denial of a petition to promulgate a mandatory standard for swimming pool covers and to ban free-floating solar pool covers, which have allegedly been associated with 26 deaths in recent years, in order to work with an industry group to develop a voluntary standard. Example two is the agency's refusal to begin a proceeding to develop a mandatory

In recent years, the Commission has been cited for tolerating excessive delays by industry in the development of voluntary standards,[223] for deferring to inadequate voluntary standards,[224] for inadequately monitoring industry's compliance with voluntary standards,[225] and for generally being reluctant to promote product safety aggressively.[226] The unconvincing response of the Commission has been that it is actively monitoring industry's compliance with voluntary standards, and that voluntary standards should be strongly encouraged since they can be developed (and changed) more quickly and cheaply than mandatory standards.[227]

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standard for nitrosamines, known cancer-causing substances, in children's pacifiers and nipples and insistence on working with industry to develop a voluntary standard. In the latter instance, CFA alleges industry approached the hazard in a dilatory fashion. *See* CFA REPORT, *supra* note 96, at 21–27.

[223] *Id.* at 8–13.

[224] *Id.* at 13–16.

[225] Two recent decisions by the Commission illustrate what bothers the agency's critics. In 1986, the CPSC amended its procedures for monitoring conformance with voluntary standards to permit industry to be involved in establishing the agency's monitoring plans. According to CFA: [T]he Commission now is in a position where it could find itself deferring to a voluntary standard in reliance on industry's assurance that there is substantial compliance. Then later when attempting to monitor compliance, the Commission would be subject to a plan it negotiated with industry. *Id.* at 29.

Second, in 1987 the agency adopted a new policy requiring staff to get its permission before seeking warrants to gain admittance to premises of manufacturers who refuse to permit inspection for voluntary standards compliance. This latter action prompted a blast from members of a congressional oversight committee who wrote to the agency that such action "is a license to produce unsafe products. Violators of the voluntary standards will reasonably believe that they can endanger health and safety with little chance of expeditious action against them." Letter from John D. Dingell, Chairman of the House Committee on Energy and Commerce; James J. Florio, Chairman of the Subcommittee on Commerce, Consumer Protection and Competitiveness of the House Energy and Commerce Committee; Henry A. Waxman, Chairman of the Subcommittee on Health and the Environment of the House Energy and Commerce Committee; and Dennis E. Eckart, Member of the House Committee on Energy and Commerce to the Honorable Terrence Scanlon, Chairman, Consumer Product Safety Commission (April 1, 1987).

[226] For example, at a recent CPSC reauthorization hearing, the agency was criticized for regulatory timidity by former CPSC Commissioners from the Nixon, Ford and Reagan administrations. *See generally 1987 House Reauthorization Hearings, supra* note 89, and *1987 Senate Reauthorization Hearings, supra* note 129 (testimony of former Commissioners Barbara Franklin, Nancy Steorts and R. David Pittle). *See also Product Liability (Part 2): Hearings on the State Role in Consumer Protection Before the Subcomm. on Commerce, Consumer Protection, and Competitiveness of the House Comm. on Energy and Commerce*, 100th Cong., 1st Sess. 146 (July 23, 1987) [hereinafter *Hearings on State Role in Consumer Protection*] (testimony of Robert T. Abrams, Attorney General of New York) (criticizing the Commission for spending eight years working with the home playground industry and spending five years working with the swimming pool cover industry to develop "embarrassingly weak" voluntary standards).

[227] *See, e.g.*, Remarks by Chairman Terrence Scanlon to the American Bar Association, *supra* note 192. To some extent, Scanlon's answer is unresponsive since the agency's critics generally share his preference for voluntary standards and agree that, at least theoretically, they can be drafted more quickly than mandatory standards. *See, e.g., 1987 House Reauthorization Hearings, supra* note 89, at 188 (According to Mary Ellen Fise,

The Commission's expanded emphasis on voluntary standards obviously reflects the Reagan administration's view that the use of voluntary standards is a major aspect of deregulation.[228] Interestingly, despite industry's initial enthusiasm for federal deregulation,[229] it has grown increasingly distressed as the states have stepped up their regulatory efforts.[230] Some manufacturers have become particularly unhappy about CPSC-associated deregulation because the 1981 amendments to the Commission's laws place industry in a particular bind. In some cases, manufacturers have found conflicting state regulations so disruptive they have turned to the CPSC to promulgate a federal standard to preempt the state standards. To the manufacturers' chagrin, the CPSC has denied assistance to them on the grounds that the agency must defer to existing adequate voluntary standards.[231] Although the agency feels sympathy for industries

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Product Safety Director, Consumer Federation of America, "CFA supports voluntary standards. We think they are very good.") *See also supra* note 78 and accompanying text.

The objection to the Commission's current approach to voluntary standards is that it fails to react when a voluntary standards proceeding is not working and fails to do anything to promote high quality voluntary standards.

[228]*See* OFFICE OF MANAGEMENT AND BUDGET, CIRCULAR NO. A–119: FEDERAL PARTICIPATION IN THE DEVELOPMENT AND USE OF VOLUNTARY STANDARDS (1982) ("the adoption of voluntary standards, whenever practicable and appropriate, eliminates the cost to the Government of developing its own standards. Adoption of such standards also furthers the policy of reliance upon the private sector to supply Government needs for goods and services. . . . ")

[229]*See* CQ REPORT ON REGULATION, *supra* note 61, at 19. *See also* Millstein, *"Smart Regulation" Takes Hold as Reagan Revolution Wanes*, Legal Times of Washington, February 22, 1988, at 17, col. 1.

[230]*See* CQ REPORT ON REGULATION, *supra* note 61, at 69. *See also Hearings on State Role in Consumer Protection, supra* note 226, at 111–214 (attorneys general from the states of Missouri, Virginia, Minnesota and Kansas, and consumer department representatives from the states of South Carolina, Connecticut and Kentucky testified that the states have substantially increased their consumer protection activities in response to their perception that the federal government has failed to take adequate measures to protect consumers); 15 Prod. Safety and Liab. Rep. (BNA) 581 (August 14, 1987) (At the American Bar Association's Annual Meeting, attorney James T. O'Reilly, Corporation Counsel for Proctor & Gamble, decried the trend toward increased state regulation of product safety. If regulation of industry is to occur, "why not do it federally?") and Millstein, *supra* note 229, at 17, col. 4 ("As states have become more active in environmental regulation, industry has urged that [EPA] become more involved, in the interest of uniformity."). *See also* TOLCHIN & TOLCHIN, *supra* note 159, at 255. According to the Tolchins:

> Most ironic of all, it now appears that federal deregulation has not really stemmed the flow of regulations, as the states slowly step in to fill the void. In a one-year period, from 1980 to 1981, proposed state regulations doubled, from twenty-five thousand to fifty thousand. How does this square with the claims of the Reagan Administration that federal regulations have been reduced by half?

Id. at 255.

[231]According to testimony by the Art Supplies Labeling Coalition, a group of manufacturers, artists and consumers, "when we urged adoption of ASTM D–4236 as a mandatory standard to gain preemption, CPSC was unable to do so as it was required by statute to defer to an effective voluntary standard which has substantial compliance." *1987 House Reauthorization Hearing, supra* note 89, at 302–03. Similarly, after the CPSC participated extensively in the development of a voluntary standard for kerosene

caught in this plight, it has been unable to fashion a remedy for them.[232]

The CPSC has come full circle with respect to voluntary standards. Accused of ignoring them in its early years, it now is criticized for "groveling" to them.[233] A proper balance must be set and met.

First, the Commission must establish clearer guidelines governing when it will delay the commencement of mandatory standards in order to permit industry or other outside groups to develop voluntary standards. Unless there is a good reason[234] for the lack of a voluntary standard,[235] the CPSC generally should not delay commencing the development of a mandatory standard when it encounters a serious enough risk to warrant CPSC action.[236] This does not mean that the agency should promulgate a mandatory standard every time it finds a serious risk that industry has ignored.[237] It means that the agency must be credible when it asserts that industries that fail to take appropriate and timely voluntary action will find the CPSC taking mandatory action.[238]

Second, one way to improve the Commission's ability to stimulate the development of stringent and timely voluntary standards is to make the threat of mandatory standards more believable. To do that, the agency's rulemaking authority should be streamlined.[239] Ideally,

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heaters, the agency concluded that the 1981 amendments barred it from mandating the voluntary standard, and thus preempting conflicting state standards, because of the high degree of compliance with the voluntary standard. *See* Petition from National Kerosene Heaters Association Requesting Preemption for UL Standard 647, CP 87–1 (September 19, 1986) [hereinafter National Kerosene Heater Association Petition] at 8.

[232]*See* Remarks of Chairman Scanlon to the ABA, *supra* note 192, at 8.

[233]*See supra* note 214.

[234]As a matter of essential fairness, the CPSC should have a procedure for providing an opportunity to an affected industry to explain whether or not there are good reasons for the lack of a voluntary standard.

[235]For example, an industry might have just introduced a product to the market or substantially modified it without realizing the type or magnitude of risks associated with the product. Another reason might be that reliable injury data indicating the existence of a serious hazard were unavailable until recently. On the other hand, the fact that an industry is fragmented and poorly organized seems less convincing. It would be useful for the agency to develop a policy statement on this point.

[236]The point is not that the agency needs to *promulgate* a standard, but that it should *commence* development of one to demonstrate its determination.

[237]Before the CPSC can promulgate a mandatory standard, it must find that there is no existing voluntary standard that adequately reduces a risk of injury and is substantially complied with. 15 U.S.C. § 2058(f)(3)(D) (1982). This leaves open the very real possibility that an industry group might develop and implement a voluntary standard, but it avoids the Commission's current lack of credibility about developing mandatory standards in the face of an industry's unwillingness to take appropriate safety measures.

[238]Such an approach by the CPSC might mean that the agency will publish more ANPRMs than it currently does. If industry responds appropriately, the agency might not actually promulgate that many new mandatory standards.

[239]Although the 1981 amendments abolished the cumbersome "offeror" process, they substituted an equally clumsy procedure. *See generally* 15 U.S.C. § 2058 (1982). *See also* Schwartz, *supra* note 5, at 72 ("These elaborate provisions seem well-designed to discourage the Commission from developing mandatory standards.")

the law should be amended simply to conform to the requirements for informal rulemaking set forth under the Administrative Procedure Act.[240] But, assuming political realities prevent that,[241] it still remains essential to remove as much regulatory clutter as possible.[242]

Third, despite the appeal of giving the CPSC the authority[243] to preempt conflicting state and local laws when it determines that a voluntary standard adequately reduces a risk of injury and commands substantial compliance,[244] such an approach inevitably would invite

[240]5 U.S.C. § 553 (1982). Under the APA, an agency promulgates rules by publishing a notice of proposed rulemaking, provides an opportunity for interested persons to comment on the proposed rule, and then, if convinced of the need for the rule, promulgates it.

[241]The many trade associations that follow CPSC developments likely would object strenuously to any proposal that would make it easier for the CPSC to promulgate mandatory standards.

[242]Even if the many cumbersome findings imposed on the CPSC were removed, it is inconceivable that the agency would suddenly enter into a wild spree of mandatory standards setting or would abandon much of the comprehensive analysis presently mandated in the law. The essential point is that detailed rulemaking requirements are a trap for the unwary. A failure on the Commission's part to follow the precise technical requirements of the law might well lead to the invalidation of the regulation in court. Knowing this, industry lawyers are quick to raise endless objections based on these requirements every step of the way realizing that the agency will be forced to document in excruciating detail its compliance with the law. This "legal nitpicking" would be minimized were the CPSA streamlined.

[243]A petition filed by the National Kerosene Heater Association (NKHA) seeks to establish that the Commission has the authority to preempt state laws when the agency defers to a voluntary standard in accordance with 15 U.S.C. § 2058(b)(2) (1982). The NKHA worked with the CPSC to develop a voluntary standard for kerosene heaters and then, based on a CPSC decision not to commence a mandatory standard proceeding, sought to invalidate a ban on kerosene heaters by the Commonwealth of Massachusetts. In National Kerosene Heater Ass'n v. Massachusetts, 653 F. Supp. 1079 (1986), Judge Skinner ruled that an *informal* deferral by the CPSC to the NKHA voluntary standard did not satisfy the requirements under the CPSA for preemption. The judge, however, did not decide "whether a voluntary standard which is recognized as worthy of reliance under § 2056(b) pursuant to § 2058(b)(2) would be entitled to preemptive effect under § 2075(a)." *Id.* at 1088, n.4.

In its petition, NKHA requested the Commission to commence a rulemaking for kerosene heaters, to then defer to the association's voluntary standard, and to declare that the agency's deferral preempts conflicting state laws, such as Massachusetts' ban. *See* National Kerosene Heater Association Petition, *supra* note 231, at 1–2. The news of this petition prompted a strong response from the chairman of one of the agency's oversight committees. *See* Letter from Henry A. Waxman, Chairman of the Subcommittee on Health and the Environment of the House Energy and Commerce Committee to CPSC Chairman, Terrence Scanlon (July 31, 1986) ("As even the most cursory reading discloses, [the CPSA] provides preemptive effect only for consumer product safety standards. It does not provide preemption for *voluntary* standards.")

[244]In 1981, Congress considered and rejected an amendment providing such authority to the agency. *See* H.R. 3982, 97th Cong., 1st Sess. § 6394 (1981), *reprinted in* 1981 U.S. CODE CONG. & ADMIN. NEWS 1010, 1233, 1251. The House bill provided that whenever the CPSC terminated a proceeding to develop a mandatory standard based on a determination that a voluntary standard submitted to it was "likely to eliminate or adequately reduce" a hazard, the voluntary standard relied on by the Commission would automatically invalidate any state or local law dealing with the same risk of injury that was not "identical" to the requirements of the voluntary standard. *Id.*

abuse. The reason is simple: under a scheme that provided preemption for voluntary standards to which the CPSC had deferred rulemaking, the industries that would gain preemption would logically be those that had failed to develop or upgrade voluntary standards until prodded by the CPSC.[245] Recalcitrance would be rewarded and conscientiousness penalized.[246] Moreover, if the agency were to gain the power to confer preemption on voluntary standards, it would come under almost unbearable pressure to devote all of its attention to processing petitions for preemption.[247] This would seriously deter the agency from its other statutory requirements, such as conducting product recalls and providing consumer information.

D. Should the CPSC Be a National "Data Nanny?"

As previously stated, even the harshest critics of government regulation tend to agree that markets often operate imperfectly because they do not supply consumers with adequate information, and that it is appropriate for government to provide consumers with that information.[248] Although some would limit government solely to providing information,[249] none would bar an informational role for government. Product safety would seem to be among the most important types of information, since consumers would be unlikely to seek out products that might harm them unless the benefits substantially outweighed the risks.[250]

The National Commission on Product Safety, noting the "importance of gathering useful data about injuries linked to consumer products,"[251] concluded that a national data collection system was

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[245]After all, their products would be the ones that presented an unreasonable risk of injury. The Commission is only authorized to regulate unreasonable risks of injury. *See* 15 U.S.C. § 2058(f)(3)(A) (1982).

[246]To emphasize this point: a voluntary standards group that drafted a high-quality standard that was substantially complied with would not be producing or distributing a product that presented an unreasonable risk of injury. Thus, the Commission would have no reason (or statutory mandate) to involve itself with the group's product.

[247]Given the thousands of voluntary standards applicable to consumer products, if only a small fraction of the groups that have drafted such standards were to approach the agency, their petitions would overwhelm the agency. Preemption is so important to industry it is highly likely that many groups would file petitions. *See 1981 House Reauthorization Hearings, supra* note 29, at 535–40 (statement submitted by Richard Gimer for the U.S. Chamber of Commerce expressing the importance of preemption to industry).

[248]*See supra* notes 101–108 and accompanying text. *See also* CQ REPORT ON REGULATION, *supra* note 61, at 21–22; Asch, *Is Government Regulation Really Our Savior?*, 3 YALE J. ON REG. 383, 387 (1986). *See also* PRESIDENT'S COMMISSION FOR A NATIONAL AGENDA, GOVERNMENT AND THE REGULATION OF CORPORATE AND INDIVIDUALS DECISIONS IN THE EIGHTIES (1980).

[249]*See supra* note 102 and accompanying text.

[250]For example, most consumers know that driving presents a risk of death or serious injury, yet they continue to drive because the benefits of transportation by automobile are so great.

[251]NCPS REPORT, *supra* note 15, at 37.

essential and strongly advocated the establishment of one in legislation that set up the CPSC.[252] Congress, in response, sent mixed signals. On the one hand, it set as one of the main purposes of the CPSA "to assist consumers in evaluating the comparative safety of consumer products,"[253] and established an Injury Information Clearinghouse to gather and disseminate product safety information.[254]

On the other hand, in section 6(b) of the CPSA[255] Congress imposed a number of restrictions that increasingly have come to burden the agency and delay—and sometimes deny—public access to important safety information. These restrictions stemmed from Congress' ire over perceived abuses by the Federal Trade Commission, not the CPSC.[256] Ironically, Congress never imposed restrictions on information disclosure by the FTC, but instead made an example of the CPSC.[257] In fact, the CPSC is the *only* health and safety agency that operates with substantial restrictions on information disclosure.[258]

Section 6(b) operates as follows: before the Commission can release any information from which the public can readily ascertain[259] the

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[252]*Id.* at 37–45.

[253]15 U.S.C. § 2051(b)(2) (1982).

[254]15 U.S.C. § 2054(a)(1) (1982 & Supp. IV 1986).

[255]15 U.S.C. § 2055(b) (1982).

[256]In November 1970, FTC staff called a press conference to charge that the duPont Co., makers of an antifreeze, Zerex, had engaged in misleading advertising by implying that an auto radiator punctured with an ice pick would stop leaking almost immediately because of Zerex's "self-sealing" properties. FTC staff indicated that was not "self-sealing" and that Zerex actually damaged the automotive cooling system and had been inadequately tested. The staff further threatened to sue for the product's removal unless duPont removed it from the market. Officials at duPont were not informed that the FTC proposed to take action against Zerex before the press conference.

Subsequently, after months of investigation, the FTC staff determined that the ads were not misleading and dismissed the complaint against duPont. Although the FTC notified the media of its withdrawal of the complaint, fewer than the half the stories given to the filing of a complaint were published by the press. *See* Zollers, *The Implementation of the Consumer Product Safety Act Section 6(b) and the Conflict With Freedom of Information Act Policies,* 39 ADMIN. L. REV. 61 (1987) (describing the Zerex episode).

[257]*See id.* at 62.

[258]In 1983, a congressional subcommittee directed the Commission to compare restrictions upon CPSC regarding the public disclosure of information with those restrictions applicable to other health and safety agencies. In response, the agency compared itself with ten other major health and safety agencies: the Environmental Protection Agency, the Federal Trade Commission, the Food and Drug Administration, the National Highway Traffic Administration, the Occupational Health and Safety Administration, the United States Department of Agriculture, the Department of Housing and Urban Development, the Federal Aviation Administration, the Mine Safety and Health Administration and the Nuclear Regulatory Commission. None operated with restrictions other than the normal restrictions on releasing trade secret and confidential business information. *See 1983 House Reauthorization Hearings, supra* note 82, at 459.

[259]As interpreted by the Commission, the test of the public's ability to ascertain readily the identity of a manufacturer (or private labeler) is whether a "reasonable person receiving the information in the form in which it is to be disclosed and lacking

identity of a manufacturer,[260] the agency must submit the information to the manufacturer and permit the manufacturer at least thirty days to comment on the information.[261] Once the Commission has received a manufacturer's comments, it must take "reasonable steps" to assure: (i) that the information is accurate,[262] (ii) that disclosure of the information is fair under the circumstances,[263] and (iii) that disclosure of the information would effectuate the purposes of the Act.[264] Exceptions to these restrictions are extremely limited.[265]

As originally interpreted by the CPSC, section 6(b) applied only to instances in which the Commission itself *initiated* the disclosure of manufacturer-specific information. Where outside parties requested information pursuant to the Freedom of Information Act (FOIA),[266] the agency reasoned that it made little sense to follow 6(b) procedures since FOIA requesters would understand that the CPSC acted merely as a repository of the information, did not place its imprimatur on the information and did not vouch for its accuracy.[267] At one point, the Second Circuit Court of Appeals upheld the Commission's position,[268] while the Third Circuit Court of Appeals disagreed.[269] Ultimately, the United States Supreme Court upheld the Third Circuit.[270] According to the Supreme Court, section 6(b)

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specialized expertise can readily ascertain from the information itself the identity of the manufacturer or private labeler of a particular product." Information Disclosure Under Section 6(b) of the Consumer Product Safety Act Regulations, 16 C.F.R. § 1101.13 (1988).

[260]The act's restrictions also apply to information regarding "private labelers." 15 U.S.C. § 2055(a) (1982). For purposes of this discussion, whenever the term "manufacturer" is used, it includes "private labelers."

[261]15 U.S.C. § 2055(b)(1) (1982).

[262]*Id.*

[263]*Id.*

[264]*Id.*

[265]The only information excepted is information about a product with respect to which the Commission has filed a § 2061 action asserting that product presents an "imminent hazard" or which the Commission has reasonable cause to believe is in violation of § 2068 (relating to prohibited acts), 15 U.S.C. § 2055(b)(4) (1982), "information in the course of or concerning a rulemaking proceeding (which . . . commence[s] upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking), an adjudicatory proceeding (which . . . commence[s] upon the issuance of a complaint) or other administrative or judicial proceeding under the CPSA." *Id.* In addition, the Commission cannot disclose information submitted pursuant to 15 U.S.C. § 2064(b), respecting a consumer product with limited exceptions. *See infra* note 278. Because the Commission rarely invokes its formal rulemaking or adjudicatory authority, it almost never has occasion to rely on these exceptions.

[266]5 U.S.C. § 552 (1982).

[267]Zollers, *supra* note 256, at 64.

[268]Pierce & Stevens Chem. Corp. v. Consumer Prod. Safety Comm'n, 585 F.2d 1382 (2d Cir. 1978).

[269]GTE Sylvania, Inc. v. Consumer Prod. Safety Comm'n, 598 F.2d 790 (3d Cir. 1979), *aff'd*, 447 U.S. 102 (1980).

[270]GTE Sylvania, Inc. v. Consumer Prod. Safety Comm'n, 447 U.S. 102 (1980).

applied to FOIA requests as well as to affirmative disclosures by the CPSC.[271]

The Supreme Court's ruling constituted a disaster in terms of the agency's ability to release information either expeditiously[272] or, in some cases, at all.[273] It added substantial costs[274] and procedural cumbersomeness[275] to the CPSC at a time when it had suffered

[271]For a discussion of several legal theories which justify applying § 6(b) to FOIA requests as well as to affirmative disclosures by the CPSC, *see* Note, *The Consumer Product Safety Act as a Freedom of Information Withholding Statute*, 128 U. PA. L. REV. 1166 (1980) and Note, *The Impact of Restrictive Disclosure Provisions on Freedom of Information Act Requests: An Analysis of Section 6(b)(1) of the Consumer Product Safety Act*, 64 MINN. L. REV. 1021 (1980) (cited in Zollers, *supra* note 256, at 65 n.29.

[272]From 1973 to 1980—before the *GTE Sylvania* decision—the Commission received some 50,000 formal FOIA requests. Eighty-five percent of those were processed within the ten days required by the FOIA. The remaining 15 percent were handled within thirty days. Within three years after *GTE Sylvania*, the Commission developed a backlog of roughly 3,000 FOIA requests that were unanswered and the Commission was able to process only an estimated 25 percent of FOIA requests within the ten-day FOIA-required period. (These generally did not involve 6(b) requirements.) Most of the remaining 75 percent took between one to six months, although a significant number took years because of 6(b) concerns. *1983 House Reauthorization Hearings, supra* note 82, at 365 (testimony of CPSC Commissioner Stuart Statler). As of 1985, the Commission estimated that each "non-6(b) FOIA request averaged about two hours of staff work whereas each request that involved section 6(b) clearance took an average of 30 staff hours to process." *1985 House Reauthorization Hearings, supra* note 2, at 118 (response of the Commission to written questions submitted by the Subcommittee on Health and the Environment).

[273]*1985 House Reauthorization Hearings, supra* note 2, at 263 (statement submitted by Andrew Popper, Professor, American University Law School) (As of 1985, at least 1,000 requests for information have never been responded to since 1982 because of 6(b).).

As of May 1987, the Commission had a backlog of roughly 1,480 FOIA requests. (How many, if any, dated back to 1982 is not clear.) *1987 Senate Reauthorization Hearings, supra* note 126, at 23 (response of Chairman Scanlon to questions submitted by Senator Albert Gore, Subcommittee Chairman).

[274]As of 1985, the Commission was spending 13 staff years and $400,000 processing FOIA requests through 6(b) procedures. *1985 House Reauthorization Hearings, supra* note 2, at 118 (Commission response to questions submitted by the Subcommittee on Health and the Environment).

[275]In 1983, the Commission issued an interpretive rule implementing section 6(b) procedures. *See* 48 Fed. Reg. 57,406 (1983) (codified at 16 C.F.R. §§ 1101.1–1101.71 (1988)). Among other things, the rule establishes that "[t]he Commission will review each proposed disclosure of information which is susceptible of factual verification to assure that reasonable steps have been taken to assure accuracy. . . ." *Id.* at § 1101.32(b)(1). "Included within these steps is a requirement that every consumer who complains review and confirm the information to be disclosed, previously submitted by that consumer, is accurate to the best of the consumer's knowledge and belief." *Id.* at § 1101.32(a)(3). In addition, every proposed information disclosure must be reviewed to determine whether release would be fair in the circumstances, *id.* at § 1101.33, and that disclosure would effectuate the purposes of the CPSA, *id.* at § 1101.34.

To say the least, this procedure can become complicated. For example, in the case of an FOIA request for a document that lists fifty companies, copies of the document must be sent to each firm, but the copies must be purged of all references to any of the other forty-nine firms. Each of the firms' responses must then be evaluated and compared before the final document may be released. This cannot be done easily. H. REP. No. 114, 98th Cong., 1st Sess. 14–16 (1983) (Report accompanying H.R. 2668).

enormous cuts in funding and staff.[276] As noted by one observer, the court's ruling took "[w]hat was essentially a benign restriction on information disclosure" and transformed it into "a procedural matter that has taken on mammoth proportions in the agency. It cannot help but divert time, attention, and resources away from the substantive matters with which the Commission is charged."[277]

Shortly after the *GTE Sylvania* case, the Commission suffered an additional major setback in its ability to release information to the public. In 1981, Congress added yet another set of 6(b) restrictions.[278] This time the amendments, *inter alia,*[279] barred the release of reports of possible substantial product hazards by companies pursuant to section 15(b) of the CPSA.[280] The U.S. Chamber of Commerce was the major advocate of these restrictions, arguing that companies would be less inhibited about reporting possibly hazardous products if they knew that these reports would not be available to the public.[281] This argument proved incorrect. To the contrary, after passage of the restrictions, the number of "15(b) reports" *dropped* significantly.[282] Notwithstanding this, the restrictions have remained.

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[276]*Supra* note 83 and accompanying text.

[277]Zollers, *supra* note 256, at 75.

[278]15 U.S.C. § 2055(b)(5) (1982) (as amended by Consumer Product Safety Amendments of 1981, Pub. L. No. 97–35, 95 Stat. 703).

[279]The amendments also expanded the scope of information considered confidential and not releasable pursuant to FOIA requests, 15 U.S.C. § 2055(a)(1) (1982); required the CPSC to notify manufacturers of pending releases of information claimed by the manufacturer to be confidential business information, 15 U.S.C. § 2055(a)(4)–(5) (1982); and provided procedures enabling the manufacturers to challenge the agency's release of the information, 15 U.S.C. § 2055(a)(6) (1982). Further, the amendments provided administrative appeal and court rights for challenges to CPSC determinations under 6(b) and explicitly applied the 6(b) restrictions to individual commissioners as well as to the agency at large. 15 U.S.C. § 2055(d)(2) (1982).

[280]Consumer Product Safety Amendments of 1981, Pub. L. No. 97–35, 95 Stat 703, (codified as amended at 15 U.S.C. § 2064(b) (1982)). Under section 2064(b), manufacturers, distributors and retailers of consumer products must report to the Commission whenever they obtain information that reasonably supports the conclusion that one of their products "contains a defect which could create a substantial product hazard. . . . "

The only basis upon which these reports can be released is when the Commission has issued a complaint in an administrative proceeding under 15 U.S.C. § 2064(c)–(d) alleging that the product presents a substantial product hazard, or if the Commission has accepted in writing a remedial settlement in such a proceeding, or if the submitter of the information agrees to its disclosure. As required by 15 U.S.C. § 2055(b)(5)(B)–(C).

[281]*1981 Senate Reauthorization Hearings, supra* note 85, at 14 (testimony of attorney Aaron Locker on behalf of U.S. Chamber of Commerce) ("This provision would encourage business to report possible hazards to the agency and to develop corrective actions where necessary. This cooperation would be enhanced because of the submitters['] knowledge that such information would not be disclosed until after a formal legal process had been initiated by the Commission and the submitter had agreed on a corrective plan or another plan which would include information disclosure.") *See also 1981 House Reauthorization Hearings, supra* note 32, at 526 (similar testimony by attorney Richard Gimer on behalf of the U.S. Chamber of Commerce).

[282]From 1981 to 1982, the number of "15(b) reports" from companies dropped over 20 percent, from 121 to 96. Although the number of reports has risen somewhat

Since 1981, some members of Congress have tried to repeal the 6(b) restrictions.[283] But, to date, vigorous industry opposition has prevented repeal. In defense of the 6(b) restrictions, industry representatives have argued that the section "does not stop the Commission from releasing information; it merely requires the agency to [take] certain simple and straightforward precautions, such as consulting with the manufacturer before information is disclosed."[284] Moreover, according to the industry representatives, there is no rational basis for differentiating between affirmative disclosures by the Commission and information releases under the FOIA. Where a document has been prepared by CPSC staff, the public will be unable to distinguish between a CPSC-initiated information release (the agency places its imprimatur on the document) and an FOIA release (the agency does not).[285] If information in the Commission's files "is unreliable or misleading, its presence in the public domain will expose the manufacturer to harm regardless of how or why the information was released."[286]

To explain why the CPSC, alone among health and safety regulatory agencies, must labor under such restrictions, industry spokespersons argue that the CPSC has broader jurisdiction than other agencies and presents a "unique potential" for frightening consumers because "no other agency has the same power to shape consumer perceptions. . . ."[287] Finally, they cite instances of what they perceive to be

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since then, they have never equaled the high of 201 filed the year before the Reagan administration assumed office. *See* Schwartz & Adler, *supra* note 25, at 433 n. 221.

[283]*E.g.*, H.R. 2367, 98th Cong., 1st Sess. (1983) (introduced Mar. 24 by Congressman Henry A. Waxman), H.R. 2668, 98th Cong., 1st Sess. (1983) (introduced Apr. 26 by Congressman Henry A. Waxman) and H.R. 3343, 100th Cong., 1st Sess. (1987) (introduced Sept. 25 by Congressman James J. Florio). *See also 1983 House Reauthorization Hearings, supra* note 82, at 291–92 (testimony of Congressman Thomas Downey in support of amending 6(b) because of his concern that the 1981 amendments prevented the CPSC from warning the public about exploding gas valves that killed or injured several New York citizens).

[284]*See 1983 House Reauthorization Hearings, supra* note 82, at 40 (testimony of Robert Sussman, Covington & Burling, on behalf of the National Electrical Manufacturers Association) (These precautions do not include a requirement that there be "absolute proof of accuracy. All that is necessary is a 'reasonable' effort to confirm information before its release. The Commission can discharge this obligation by making the same effort to verify information that one would expect from any conscientious and responsible government agency.") *Id.* at 47.

[285]*Id.* at 41. (testimony of Robert Sussman).

[286]*Id. See also id.* at 249, 252–53. (testimony from attorney Richard Gimer on behalf of the National Association of Manufacturers).

[287]*1985 House Reauthorization Hearings, supra* note 2, at 250–52. (testimony of Robert Sussman on behalf of the U.S. Chamber of Commerce). *See also id.* at 270–71 (statement submitted by Ralph Engel, President, Chemical Specialties Manufacturers Association). *But see, infra* note 309 and accompanying text (testimony by Professor Andrew Popper disagreeing that the CPSC is unique in any way that would justify restrictions on information disclosure).

CPSC information disclosure abuses,[288] thereby implying, one assumes, that the CPSC requires greater restraints than other agencies.

Industry's argument that an inaccurate allegation about a product containing a defect can cause economic harm to a manufacturer seems beyond dispute.[289] After all, the whole purpose of supplying information to consumers is to enable them to make a choice about purchasing and using products. Consumers will tend to avoid purchasing products they view as unsafe.[290]

The issue is not resolved, however, by simply noting that inaccurate information release may have adverse consequences. The fundamental question is whether the benefits of restrictions that commendably seek to prevent the release of inaccurate information outweigh their costs. Most CPSC members claim that the benefits do not outweigh the costs,[291] a view echoed by injured consumers,[292] journalists,[293] and consumer groups.[294]

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[288] *1983 House Reauthorization Hearings, supra* note 82, at 71–74 ("Examples of Commission Actions in Violation of Section 6(b)" submitted by the National Electrical Manufacturers Association) (Among the examples cited: "[i]n 1974, the Commission announced that certain spray adhesives could cause birth defects," which it later rescinded; in 1980, the CPSC "staff sent a letter to a large number of firms that manufactured, distributed or sold electrical clamp lamps." The letter was broadly disseminated, causing harm to a number of companies; and "[i]n 1982, a senior Commission official made a speech to representatives of toy manufacturers in which the official described a major chemical used in plastics as 'carcinogenic.' " In fact, the evidence implicating the chemical was fragmentary and incomplete.). For an analysis of these and other examples, *see infra* note 296–98 and text.

[289] To return to an infamous example, the FTC's false allegation about Zerex led duPont to withdraw its antifreeze from the market. *See supra* notes 256–58 and accompanying text.

[290] *See* Adler & Pittle, *supra* note 103, at 163.

[291] In 1983, the entire Commission, including two Reagan appointees (Steorts and Scanlon), endorsed a request to Congress that section 6(b) be amended to permit the CPSC to release manufacturer-specific information in response to FOIA requests by attaching a disclaimer to the information indicating that the agency had not reviewed it for accuracy. *See 1983 House Reauthorization Hearings, supra* note 82, at 295, 304 (testimony by Chairman Steorts on behalf of the Commission). At the 1983 hearings, Commissioner Zagoria, referring to section 6(b), stated: "We sit before you as examples of overregulated regulators." *Id.* at 354. Subsequent to this hearing, Commissioner Scanlon, who had argued for amending 6(b) to allow the release of more information, *id.* at 400, shifted his position and opposed any changes to section 6(b). *See 1985 House Reauthorization Hearings, supra* note 2, at 66.

[292] *1983 House Reauthorization Hearings, supra* note 82 at 33–34 (testimony of Patrick Butcher who claimed that he was injured by an exploding gas valve that the manufacturer had notified the CPSC about, but which the agency had not warned the public about because of inadequate information and 6(b) restrictions imposed by Congress in 1981 on release of "15(b) reports").

[293] *Id.* at 78 (testimony of Steven Dornfield, national president of the Society of Professional Journalists, on behalf of the Society of Professional Journalists and on behalf of the American Society of Newspaper Editors) ("In our view, 6(b) runs counter to the mandate that Congress embodied in the Freedom of Information Act, requiring that administrative agencies be open and accountable to the public. It puts control of public information in the hands of regulated industry, and virtually prevents the agency from releasing any information to consumers, who are, after all, the agency's chief constituents.").

[294] *Id.* at 199–209, 276–85 (testimony of David Greenberg, Legislative Director, Consumer Federation of America and testimony of Janet Hathaway, staff attorney, Public Citizen Congress Watch).

In assessing section 6(b), it is useful to review the agency's history in implementing it before the *GTE Sylvania* case. During the seven year period before the Supreme Court ruled the practice invalid, the CPSC released information without following 6(b) procedures in roughly 50,000 instances when it received FOIA requests.[295] When pressed to cite instances of abuse during this period, industry advocates have offered only a limited and highly debatable set of examples.[296]

Briefly summarized, the examples are: (i) in 1974, the Commission announced that certain spray adhesives could cause birth defects and later retracted the announcement, (ii) in 1980, CPSC staff sent a letter to a number of "clamp lamp" manufacturers stating that the lamps contained hazards without consulting the manufacturers, (iii) in 1973, the CPSC tested toys and placed them on a list of hazardous toys under a protocol that was later invalidated by a court, (iv) in 1980, an unidentified CPSC employee allegedly leaked inaccurate information about certain thermostats, (v) in 1982, a senior CPSC staff member publicly described a chemical produced by a manufacturer as "carcinogenic" when the evidence allegedly was fragmentary and incomplete, and (vi) at an unspecified time, the agency released a report pursuant to an FOIA request that incorrectly identified some manufacturers as producing products containing allegedly carcinogenic products when, in fact, they did not produce the product.[297]

Several of these examples are inaccurate or unfair. For example, the CPSC consulted with the manufacturers of the spray adhesives before releasing any information about them. None of the manufacturers had done any testing to determine their products' potential for causing birth defects. In the face of strong allegations by a well-known doctor and epidemiologist that the products presented a severe hazard and no countervailing evidence, the Commission acted to stop the sale of the adhesives. It is hard, except from hindsight, to see how the agency acted improperly in this case.[298]

More important, of the six examples, five relate to CPSC-*initiated* information releases, which would remain covered by 6(b) procedures even under the reform measures offered by members of Congress. In the one example cited in which the agency released possibly inaccurate information in response to an FOIA request, there is no allegation that the release caused any adverse economic impact. In short, these examples are unconvincing.

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[295]*See supra* note 272.

[296]*1983 Reauthorization Hearings, supra* note 82, at 71–74, 163 (testimony of Robert Sussman, attorney for national Electrical Manufacturers Association and testimony of Ralph Engel, president of Chemical Specialties Manufacturers Association).

[297]*Id.*

[298]*See 1974 House Oversight Hearings, supra* note 3, at 149–51 (According to Subcommittee Chairman Moss, "I think that [the Commission has] precisely followed the requirements mandated by the act in [its] proceeding.").

Notwithstanding the insubstantiality of the evidence of CPSC abuses, there is obviously *some* potential for releasing inaccurate documents relating to product hazards. The response is that the government should not be the national "data nanny,"[299] deciding which information is fair and accurate and which is not. That is the public's responsibility— and right. This is especially so in an era of deregulation and at a point where the agency's resources are so limited that it cannot address many known product hazards. The choice is stark; between having the CPSC reduce risks or censor safety information, Congress should choose the former.

Moreover, as the U.S. Supreme Court has noted, free speech and the right to know are so valued in this country that "we protect some falsehood in order to protect speech that matters."[300] Information about product hazards obviously fits within the category of "speech that matters."

Industry's argument that section 6(b) does not bar the release of information,[301] although technically correct, is misleading. To paraphrase an old expression, "information release delayed is information release denied."[302] The reality is that any manufacturer willing to contest a pending release of information about its product can delay, and occasionally prevent, its release simply by threatening to litigate whether the agency followed 6(b) procedures.[303]

Perhaps the least defensible of the restrictions on information release is the bar on public access to "15(b) reports." The argument that manufacturers would file reports more frequently on the existence of possible product hazards if they knew that their reports would

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[299]The notion that a governmental information repository, as the CPSC is, should not release information that might be inaccurate leads inexorably to the chilling idea that public libraries should be forced to review the books on their shelves for truthfulness and fairness before letting readers check them out. *See 1985 House Reauthorization Hearings, supra* note 2, at 193.

[300] Gertz v. Robert Welch, Inc. 418 U.S. 323, 341 (1974), *cert. denied,* 459 U.S. 1226 (1983) (cited in *1985 House Reauthorization Hearings, supra* note 2, at 217).

[301]*See supra* note 284, at 40.

[302]Zollers, *supra* note 256, at 78. (Because of the immense resource demands involved in 6(b) processing, delay is inevitable in the process. "Sometimes delaying the release of information can be tantamount to withholding it. The need for the information passes and the requester must do without. That the agency finally responds to the request is irrelevant to anything except as a statistic that a request has been completed. . . . ")

[303]*See 1983 House Reauthorization Hearings, supra* note 82, at 372. (testimony of Commissioner Stuart Statler) ("[Section] 6(b) censorship has yet another negative impact. Because firms have the right to sue the Commission to enjoin disclosure . . . they can effectively delay our efforts to notify the public about a problem. As a result, our staff often must yield to a firm even on the wording of our own press releases to avoid further, possibly life-threatening delays that may result from a lawsuit. Such compromises too frequently lead to weakened safety warnings, which may be lost on the media and public."). *See also id.* at 409–11 (testimony of Commissioner Zagoria citing instances in which the Commission was unable to warn the public of dangerous cribs and rototillers because of section 6(b)).

not be available to the public has been soundly refuted in the years since section 6(b)(5)[304] was added to the CPSA.[305] Denial of public access to these reports means that there is no public scrutiny of whether the CPSC is acting vigorously or timidly.[306] In fact, any timidity in pursuing dramatic and timely warnings of product hazards may be directly traceable to 6(b). Because the agency cannot issue warnings unless it files a legal complaint or has the manufacturers' agreement to issue a warning, the agency has been forced on occasion to "tone down" its hazard warnings, thereby focusing less attention on the hazard and leaving consumers at risk.[307]

Reforming 6(b) presents a major challenge. Industry has come to view its rights under this section as an entitlement and resists any change no matter how minor.[308] Notwithstanding industry's objections, the CPSC should be restored to its role as an injury clearinghouse and removed as "data nanny."

One simple solution would be to repeal section 6(b) and place the CPSC on equal footing with the Food and Drug Administration, the National Highway Traffic Safety Administration, the Federal Trade Commission and similar agencies. The argument that the CPSC is unique in its ability to influence consumer perceptions and should be more restricted than these other agencies is hard to accept. The fact is that any one of these agencies could produce great economic harm to a company by releasing inaccurate information about it.[309] After all, it was the FTC, not the CPSC, that caused Zerex to be removed from the market.

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[304]15 U.S.C. § 2055(b)(5) (1982).

[305]*See supra* notes 278–83 and accompanying text.

[306]In sharp contrast, at NHTSA where manufacturers' reports and consumer complaints are readily available to the public, consumer groups and media often examine this data. Consumer groups, such as the Center for Auto Safety, often use this data as the basis for petitioning NHTSA to institute recalls.

[307]According to Commissioner Statler:

> There is a vast difference between the conceptual framework of this act and the practical application of it. When we are in negotiation with a company, we want to get notice out to the public to get that product corrected as soon as possible and out of homes and stores. We don't want to have to go through a lawsuit concerning that product or have to bring the complaint. We want to try to get these negotiations over as quickly as possible. We give some in the area that we can give—what we will say in that press release, or how we will identify the firm.

1983 House Reauthorization Hearings, supra note 82, at 409.

[308]In 1983, Congress sought to permit the CPSC to release information contained in "public documents," i.e., information already in the public domain, such as newspaper or magazine articles, without the necessity of following 6(b) procedures. H.R. 2367 98th Cong., 1st Sess. § 4(b) (Mar. 24, 1983). Even as mild a reform as this brought stiff industry objections. *1983 House Reauthorization Hearings, supra* note 82, at 62–63. (statement of attorney Robert Sussman on behalf of National Electrical Manufacturers Association arguing that release of public domain material in CPSC files pursuant to FOIA requests would result in the disclosure of one-sided and misleading information under the Commission's imprimatur).

[309]When questioned on this point during a congressional hearing, Professor Andrew Popper responded:

A less comprehensive reform would be to return the agency to its pre-*GTE Sylvania* information disclosure practices where the agency follows 6(b) procedures with respect to information that the Commission disseminates itself, but not with respect to information released pursuant to the FOIA. This is the approach adopted in most of the recent congressional reform measures.[310] As an added protection, the CPSC should place a disclaimer on all information released pursuant to the FOIA indicating that the agency had not reviewed it and did not vouch for its accuracy.

Another reform that places more of an administrative burden on the agency and continues much of the delay in the process, but which is preferable to the current situation, would be to continue to require the agency to send information about to be released pursuant to FOIA requests to manufacturers for their comments and include the comments with the information to be released. This would have the positive effect of letting the marketplace of ideas work since the FOIA requester would have information from both sides and could draw his or her own conclusions.

In the meantime, the CPSC seriously ought to consider imposing user fees upon manufacturers for processing information under section 6(b). Applicable law permits federal agencies to charge for services they render when the services confer a special benefit upon identifiable recipients.[311] Section 6(b) procedures clearly do confer

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CPSC is not unique. . . .

What does the FTC Act do? Its statute permits involvement in unfair methods of competition or unfair and deceptive acts and practices. That charge exceeds the breadth of the CPSA mandate.

Consider the FDA mandate: I can't imagine anything more personal and intimate than medicine and drugs. Consider NHTSA: its authority over automobile and highway safety involves situations of greater safety risk and greater cost variables than the CPSC. Consider OSHA: I can't imagine anything more immediate and direct and cost sensitive than "workplace safety."

It seems ridiculous to assert that CPSC has a more sensitive or delicate posture, justifying non-disclosure, because somehow products end up in people's homes. All the agencies affect people intimately.

See 1985 Reauthorization Hearings, supra note 2, at 258–59.

[310] *See supra* note 283 and accompanying text.

[311] Under Title V of the Independent Offices Appropriation Act (IOAA) of 1952, 31 U.S.C. § 9701 (1988) (formerly 31 U.S.C. § 483a), such fees may be charged. Specifically:

> It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use franchise, license, permit, certificate, registration or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by a Federal agency . . . to or for any person . . . shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe therefore such fee, charge, or price, if any, as he shall determine . . . to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient public policy or interests served, and other pertinent facts.

Congress enacted this legislation because of concern "that the Government is not

special benefits upon identifiable manufacturers.[312] Although manufacturers might argue that the benefits that accrue to them extend to the public at large—a proposition vigorously disputed by the critics of section 6(b)—that point, if true, would not impair the CPSC's right to charge user fees. The courts have held that the existence of a public benefit does not preclude the imposition of a user fee, provided that the service confers a distinct benefit upon identifiable beneficiaries.[313] Included in, but not limited to, the cost computation can be the agency's salaries, employee leave, cost of fee collection, travel, rent, postage, and the maintenance, operation and depreciation of buildings and equipment and personal costs other than direct salaries.[314] The CPSC ought to calculate its full costs of processing 6(b) and establish a system of assessing fees from the manufacturers that benefit from it.[315]

More important than gaining reimbursement for the CPSC's 6(b) work, however, is gaining for the public the right to see important hazard information in a timely fashion. The issue is more one of consumer protection than agency costs.

E. Does the CPSC Recall Program Operate Effectively?

If setting standards proved unexpectedly difficult at the CPSC,[316] its recall efforts,[317] in sharp contrast, were considered a great "success story"[318] from the very start. Over the years, the Commission's recall program has continued to flourish. Since it began operating in 1973, the CPSC has participated in roughly 1,900 recalls involving roughly

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receiving full return from many of the services which it renders to special beneficiaries." H. REP. 384, 82d Cong., 1st Sess. 2 (1952).

[312]Section 6(b) would not apply if the identity of specific manufacturers were not readily ascertainable. 15 U.S.C. § 2055(b)(1) (1982).

[313]National Cable Television Ass'n v. United States, 415 U.S. 336, 343 (1974); and Electronic Indus. Ass'n v. FCC, 554 F.2d 1109, 1113 (D.C. Cir. 1976); *See also In re* Customs Service Recovery of Preclearance (Including TECS) Cost Under User Charge Statute, 59 Comp. Gen. 389 (1980); (ruling by the Comptroller General of the United States that, under the User Charge Statute, an agency may recover from a special beneficiary the full costs it incurs in providing a service even if the service incidentally benefits the public.).

[314]OFFICE OF MANAGEMENT AND BUDGET, CIRCULAR A-25, POLICIES AND GUIDELINES FOR DEVELOPING AN EQUITABLE AND UNIFORM SYSTEM OF CHARGING FOR GOVERNMENT SERVICES UNDER THE IOAA (1959).

[315]One approach might be to transmit information proposed to be released to manufacturers and indicate that they will be assessed the agency's costs for processing information through 6(b) unless the manufacturers agree to waive their 6 (b) rights. If a manufacturer wishes the agency to process information through 6(b), it would be required to transmit payment for the agency's work with a signed commitment to reimburse the agency for any extra costs associated with particularly complicated analysis of the manufacturer's information.

[316]*See supra* notes 70–73 and accompanying text.

[317]The Commission's recall authority is described at *supra* notes 6–37 and accompanying text.

[318]*See supra* note 41 and accompanying text.

325 million product units.[319] According to the agency, these recalls have averted millions of injuries and thousands of deaths.[320]

The authority used most often for recalls by the Commission is section 15 of the CPSA.[321] It has become, beyond doubt, the Commission's favorite enforcement tool, far eclipsing the issuance of standards and bans.[322]

Section 15 authorizes the CPSC to seek the recall[323] of "substantial product hazards," i.e., products that create a "substantial risk of injury to the public" either because they fail to comply with a consumer product safety rule[324] or because they contain a defect.[325] Not every safety rule violation presents a substantial product hazard, nor does every product that contains a defect. To present a substantial product hazard, the defect must create a substantial risk of injury to the public because of the "pattern of the defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise."[326] "The Commission views these factors as disjunctive, only one need be demonstrated to prove a substantial product hazard. Thus, a product presenting the risk of minor injury with great frequency could pose a substantial product hazard, as could a product presenting a severe but infrequent hazard."[327]

Congress offered scant guidance as to what constitutes a "defect" under section 15 and no court has interpreted its meaning under the CPSA. In the product liability context, the term, although exceedingly

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[319]Telephone interview with Alan Schoem, Director of Administrative Litigation of the CPSC Directorate for Compliance and Administrative Litigation (September 28, 1988).

[320]*See, e.g., 1981 House Reauthorization Hearings, supra* note 32, at 21.

[321]15 U.S.C. § 2064 (1982).

[322]*See* Schwartz & Adler, *supra* note 25, at 430.

[323]To be precise, this section authorizes the agency to seek an order directing a respondent to elect one of three remedial actions: (i) repair the product, (ii) replace the product with a similar product, or (iii) to refund the purchase price (less a reasonable allowance for use). 15 U.S.C. § 2064(d)(1)–(3) (1982). For purposes of this article, these three remedies will be referred to as "recall" remedies.

[324]A consumer product safety rule is either a safety standard or product ban. 15 U.S.C. § 2052(a)(2) (1982 & Supp. IV 1986).

[325]15 U.S.C. § 2064(a) (1982).

[326]15 U.S.C. § 2064(a)(2) (1982). *See* U.S. Consumer Product Safety Commission, *Interpretive Rule Regarding Substantial Product Hazard Reports,* 16 C.F.R. §§ 1115.1–1115.21 (1988). Under section 1115.4, the "pattern of defect" refers to the source of the defect, i.e., the design, construction, packaging, warnings, etc., and the conditions under which the defect manifests itself. In the Commission's view, the "number of products distributed in commerce" can be minuscule—even one defective product—if injury is likely and/or serious. In judging the "severity of risk," the Commission considers the gravity and likelihood of injury, taking into account the number of reported injuries, the intended or reasonably foreseeable use of the product, and the population group exposed to the product (children, elderly, handicapped). *Id.*

[327]Schwartz & Adler, *supra* note 25, at 431.

difficult to define precisely,[328] has come to include at least three concepts: (1) a manufacturing mistake, (2) an improper design, and (3) a failure to warn (or to give an adequate warning), that results in harm to a consumer.[329] The Commission has spelled out its notion of "defect" in an interpretive regulation,[330] which clearly encompasses product liability concepts,[331] but extends further to include any "fault, flaw, or irregularity that causes weakness, failure, or inadequacy in form or function."[332] The CPSC interpretive rule lists several examples of "defects" to assist industry in deciding whether or not to report under section 15(b) of the CPSA.[333] Recently, the agency, after augmenting its list of examples in order to stimulate more industry reports, withdrew its expanded list in response to industry complaints.[334]

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[328]*See Model Uniform Product Liability Law,* 44 Fed. Reg. 62714 § 104 (Analysis), (October 31, 1979). ("No single product liability issue has generated more controversy than the question of defining the basic standards of responsibility to which product manufacturers are to be held."). *See also* __. ALLEE, PRODUCT LIABILITY § 2.05 at 2–33 (1988); R. EPSTEIN, MODERN PRODUCTS LIABILITY LAW (1980); A. MURPHY, K. SANTAGATA & F. GRAD, THE LAW OF PRODUCT LIABILITY, PROBLEMS AND POLICIES (1982); Birnbaum, *Unmasking the Test for Design Defect: From Negligence [to Warranty] to Strict Liability to Negligence,* 33 VAND. L. REV. 593 (1980); Epstein, *Products Liability: The Search for the Middle Ground,* 56 N.C.L. REV. 643 (1978); Henderson, *Manufacturers' Liability for Defective Product Design: A Proposed Statutory Reform,* 56 N.C.L. REV. 625 (1978); Keeton, *The Meaning of Defect in Products Liability Law—A Review of Basic Principles,* 45 MO. L. REV. 579 (1980); Phillips, *A Synopsis of the Developing Law of Products Liability,* 28 DRAKE L. REV. 317 (1978–79); Wade, *On the Nature of Strict Tort Liability for Products,* 44 MISS. L.J. 825 (1973); Wade, *On Product "Design Defects" and Their Actionability,* 33 VAND. L. REV. 551 (1980). *See generally, Hearings on S. 100 Before the Subcomm. on the Consumer of the Senate Comm. on Commerce, Science, and Transportation,* 99th Cong., 1st Sess. (1985) (Mar. 21); *Product Liability Amendments: Hearings Before the Subcomm. on the Consumer of the Senate Comm. on Commerce, Science, and Transportation,* 99th Cong., 1st Sess. (1985) (June 18 and 25); *Product Liability Voluntary Claims and Uniform Standards Act: Hearings on S. 1999 Before the Subcomm. on the Consumer of the Senate Comm. on Commerce, Science, and Transportation,* 99th Cong., 1st Sess. (1986) (Feb. 27, Mar. 11); *Product Liability (Part 2): Hearings Before the Subcomm. on Commerce, Consumer Protection, and Competitiveness of the House Comm. on Energy and Commerce,* 100th Cong., 1st Sess. (1987) (July 21, 23; Aug. 6; and Oct. 7).

[329]*See* J. ALLEE, PRODUCT LIABILITY § 2.05 at 2–33 (1988).

[330]16 C.F.R. § 1115.4 (1988).

[331]*Id.* (the concept of "defect" specifically includes manufacturing defects, failures to warn and design defects).

[332]*Id.* According to the current CPSC director of administrative litigation, the Commission's definition of "defect" is intended to be read as broadly as possible. Telephone interview with Alan Schoem, Director of Administrative Litigation of the CPSC Directorate for Compliance and Administrative Litigation (August 25, 1988) [hereinafter Schoem interview].

[333]*Id.* Section 15 requires all defects that "could create" a substantial product hazard to be reported, but requires the recall only of those that actually constitute substantial product hazards.

[334]*See* 51 Fed. Reg. 23,409 (1986). This action drew a sharp rebuke from Commissioner Stuart Statler, who stated, "responding to industry pressures, the Commission struck key segments of its Statement of Enforcement Policy on Substantial Product hazards and, in so doing, weakened that policy." *In re* Policy Guidelines for Industry in Notifying CPSC of Product Hazards. 1 (April 15, 1986) (Comm'r Statler, dissenting).

Over the years, the CPSC has interpreted its recall authority broadly. In case after case, the Commission has obtained recalls before a single injury has occurred.[335] It has also obtained recalls when the number of injuries is small but the type of potential injury is severe or widespread.[336] It has obtained recalls when neither the agency nor the manufacturer could pinpoint the injury-causing defect.[337] In virtually all cases, the agency has done so without the need to resort to litigation, working out a voluntary corrective action plan with the manufacturer instead.[338]

Although the CPSC recall program has functioned unexpectedly well over the years, certain concerns currently apply to it that must be addressed. First, the CPSC receives a completely inadequate number of section 15(b) reports about possible substantial product hazards. It seems inconceivable with agency jurisdiction over 10,000–15,000 different products distributed by over one million businesses[339] that only 100 to 200 instances arise nationwide that would lead a company to report a *possible* substantial product hazard. In sharp contrast, the Food and Drug Administration receives roughly 18,000 such reports[340] from medical device manufacturers under its medical device law.[341] In addition, consumers file roughly 60,000–70,000 product liability lawsuits[342] every year. Based on these statistics, one unavoidably must conclude that section 15(b) is being widely ignored. In part, the small number of reports probably reflects a perception by companies that the agency's limited resources prevent it from finding

[335]For examples of cases, *see* Schwartz & Adler, *supra* note 25, at 438 n.257 (1984).

[336]For examples of cases, see *id.* at n.258.

[337]For examples of cases, see *id.* at 439 n.256.

[338]In fact, although the CPSC has instituted a number of lawsuits seeking recall, it has never issued a recall order following an administrative hearing. *Id.* at 441 n.273.

[339]*See supra* notes 31–32 and accompanying text.

[340]*See* Medical Devices and Drug Issues: Hearings Before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce, 100th Cong., 1st Sess. 347 (1987). For an interesting discussion of the FDA's medical device reporting system see Basile, *Medical Device Reporting: The Good, the Bad, and the Ugly,* 42 FOOD DRUG COSM. L.J. 83 (1987).

[341]Medical Device Amendments of 1976, Pub. L. No. 94–295, 90 Stat. 539 (1976) (codified as amended in scattered sections of 21 U.S.C. between §§ 351–360k (1982 & Supp. IV 1986)). Section 360i authorizes the FDA to require manufacturers and distributors to submit reports to the agency. In 1984, the agency promulgated a mandatory reporting rule. Under this rule, manufacturers and importers must notify FDA whenever they obtain information that reasonably suggests that one of their marketed medical devices (i) may have caused or contributed to a death or serious injury or (ii) has malfunctioned and that the device would likely cause death or serious injury if the malfunction were to recur. 21 C.F.R. § 803.1. (1988).

[342]Birnbaum, *Legislative Reform or Retreat? A Response to the Product Liability Crisis,* 14 FORUM 251, 252 (1978) (noting that while some early estimates placed the number of product liability lawsuits at 1 million, the Federal Interagency Task Force on Product Liability estimated only about 60,000–70,000 such lawsuits).

violators.[343] In part, it may reflect some companies' concern that reporting a "defect" may open the companies up to product liability lawsuits.[344]

Underreporting occurs in another dimension. Not only does the CPSC receive an inadequate *number* of reports, with few exceptions, companies do not report *severe* hazards to the CPSC. Virtually all of the recalls involving seriously hazardous products have been unearthed by agency staff, not by reporting companies.[345] Clearly, something must be done to enhance the 15(b) reporting program, including better communication with industry regarding its obligations under this section[346] and enhanced investigative and enforcement resources for the CPSC.

Second, in recent years, the agency has not taken sufficient advantage of the enforcement possibilities of recalls, reflecting the extreme distaste of its chairman towards industry-wide recalls.[347] In certain cases, the Commission has found that products across an industry share the same or similar defects and has sought corrective action

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[343]In 1983, the Subcommittee for Consumers of the Senate Committee on Commerce, Science, and Transportation asked the agency whether there was a connection between the decrease in the agency budget and the decreasing number of section 15 reports. In response, the agency said:

> [W]e cannot help believing that companies, knowing that the agency has fewer investigative resources, have concluded that their chances of being detected with potentially hazardous products have lessened. Accordingly, many companies may have chosen not to report. It is clear that, concurrent with the drop in resources, the number of section 15 reports has also dropped.

1983 Senate Reauthorization Hearings, supra note 126, at 29.

[344]Schoem interview, *supra* note 332. There is some anecdotal evidence to indicate that product liability cases may be stimulated by publicity surrounding recalls. *See* Schwartz & Adler, *supra* note 25, at 417.

On the other hand, the Commission's regulations provide that firms reporting under section 15(b) of the CPSA "need not admit or may specifically deny that the information it submits reasonably supports the conclusion that its consumer product is noncomplying or contains a defect which could create a substantial product hazard within the meaning of section 15(b) of the CPSA." 16 C.F.R. § 1115.12(a) (1988). Given such a forgiving approach by the agency, manufacturers should not feel that they have somehow compromised themselves for purposes of product liability litigation.

[345]The CPSC classifies hazards according to a priority system that assigns a designation of "Class A" to the most severe hazards. *See id.* at 436 n. 236. Almost without exception, CPSC staff have discovered the products placed in Class A. Schoem interview, *supra* note 332.

[346]One approach that may need expansion, for example, is the mailing of what the agency calls "pre-section 15(b)" letters. These are letters that inform companies of injury or accident reports brought to the agency's attention. Each letter reminds the company of its reporting obligations under the CPSA. Schwartz & Adler, *supra* note 25, at 431 n. 209.

[347]*See, e.g.*, Scanlon & Rogowsky, *Back-Door Rulemaking: A View From the CPSC*, REG., July–Aug. 1984, at 27, 30 (arguing that "it would be a shame to abandon the virtues of broader public input by moving from a rulemaking process now reformed to an adjudicatory process that remains unreformed.").

through its section 15 authority.[348] These actions seem clearly legal.[349] After all, if the agency can establish that a product contains a design that presents a substantial product hazard,[350] it should be able to make the same argument with respect to all products that share the same design. There seems to be no reason why the agency could not do this in an adjudicative proceeding.

Agency action such as this raises a fundamental administrative issue: when should an agency use adjudication rather than rulemaking to establish broad administrative policies? Although the courts have often expressed a preference for rulemaking and shown a willingness to construe agency statutes to permit general rulemaking,[351] they have almost always deferred to agencies' judgments about using adjudication rather than rulemaking.[352]

The major objections to "rulemaking by adjudication" are that adjudication permits less public participation than rulemaking;[353] that rulemaking is prospective whereas adjudication can also be "retrospective—that is, it penalizes a firm for its conduct during a period before the agency acted, conduct that in many cases was legal at the time;"[354] that adjudication places more pressure on manufac-

[348]Typically, these are cases involving design defects. *See* Schoem interview, *supra* note 332.

[349]*See infra* note 352 and accompanying text.

[350]No one has seriously contended that a design defect, i.e., a defect that arises even though the product is manufactured exactly as designed, cannot constitute a substantial product hazard. The Commission has always maintained that a design defect may be a substantial product hazard. *See* 16 C.F.R. § 1115.4 (1988).

[351]*See, e.g.*, Mourning v. Family Publications Serv., 411 U.S. 356 (1973); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969); American Truckers Ass'n v. United States, 344 U.S. 298 (1953); National Petroleum Refiners Ass'n v. FTC, 482 F.2d 672 (D.C. Cir. 1973) *cert. denied*, 415 U.S. 951 (1974); Morgan Stanley & Co. v. SEC, 126 F.2d 325 (2d Cir. 1942).

[352]*See, e.g.*, NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974); SEC v. Chenery Corp., 332 U.S. 194 (1947); Saavedra v. Donovan, 700 F.2d 496, 499 (9th Cir. 1982), *cert. denied*, 464 U.S. 892 (1983); Montgomery Ward & Co. v. FTC, 691 F.2d 1322, 1329 (9th Cir. 1982). *But cf.* Ford Motor Co. v. FTC, 673 F.2d 1008 (9th Cir. 1981), *cert. denied*, 459 U.S. 999 (1982).

Chairman Scanlon, when asked whether his objection to "rulemaking by adjudication" stemmed more from legal or policy concerns, responded that agencies generally "have the discretion to proceed either by adjudication or by rulemaking . . . but only if their determinations do not amount to an abuse of discretion. . . . It is the tendency to rely upon adjudication in situations where general standards are suitable that makes for bad law and bad policy." *See 1985 House Reauthorization Hearings, supra* note 2, at 138.

One is entitled to be skeptical of Scanlon's remarks about the superiority of general standards over adjudication. *See supra* notes 374–76 and accompanying text.

[353]*See* Scanlon & Rogowsky, *supra* note 347, at 29.

[354]*Id.* at 29. This point is not well taken. Theoretically, only Congress can declare behavior legal one day and illegal the next. Of course, it is true that an agency may decide that behavior it viewed as legal one day is really illegal the next and a court may agree with the agency. But, this situation is not unique to adjudication; it could just as easily occur in the context of rulemaking. The CPSC could decide on one day that a product it felt was safe the day before really constitutes an unreasonable risk and take regulatory action against the product.

turers to accede to CPSC safety demands than rulemaking because adjudication presents more of a risk of adverse publicity;[355] that adjudication carries more uncertainty and less predictability;[356] that there is no cost/benefit analysis before a rulemaking standard is set;[357] that no effort is made to ascertain if there is an unreasonable risk of injury associated with the product in the adjudicatory process,[358] nor is there any analysis of possible impact on small businesses.[359]

Some of these objections have merit; others do not. It is probably accurate that the threat of litigation, with attendant bad publicity, sometimes can lead a manufacturer to agree to take corrective action that the manufacturer feels is unnecessary,[360] but this threat probably diminishes when the Commission takes adjudicative action against multiple parties since individual manufacturers cannot be singled out by the media the way they can in individual adjudications. Adjudication probably does present more uncertainty and less predictability than rulemaking, but this point cuts both ways: adjudication also can be exercised more flexibly and with greater precision than rulemaking. For example, a manufacturer that makes an extremely safe widget will nevertheless have to meet CPSC testing and recordkeeping requirements if the agency promulgates a rule for widgets.[361] But, such a manufacturer would remain untouched by the CPSC under an adjudicative approach since the agency would have no basis for regulatory action against it. Only companies producing suspect products would be at risk. In short, adjudication can sometimes avoid overregulation.

The argument that the CPSC makes no effort to ascertain in an adjudicatory proceeding whether there is an unreasonable risk associated with the product is incorrect. The essential purpose of an adjudicatory hearing is to *determine* whether or not a product presents

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It is true that the CPSC could seek to require a manufacturer to remove dangerous products from consumers' hands through adjudication under section 15 whereas it could not under section 9 rulemaking, but that has nothing to do with the product being legal on one day and illegal the next.

[355] *Id.* at 29.

[356] *Id.* at 30.

[357] *See* Address by Terrence Scanlon, CPSC Chairman, at the Consumer Assembly, of the Consumer Federation of America in Washington, D.C. (Jan. 31, 1985), at 5 [hereinafter 1985 Scanlon CFA Speech]. *See also, infra* notes 378–92.

[358] 1985 Scanlon CFA Speech, *supra* note 357, at 5.

[359] *Id.*

[360] *See* Schwartz & Adler, *supra* note 25, at 440.

[361] Under section 14 of the CPSA, 15 U.S.C. § 2063(a) (1982), *every* manufacturer of a consumer product subject to a consumer product safety standard must issue a certificate certifying that its products comply with the consumer product safety standard. Also, the CPSC may require *every* manufacturer subject to a consumer product safety standard to establish testing programs to certify that their products comply with a consumer product safety standard, 15 U.S.C. § 2063(b) (1982), or to place labels on complying products subject to a CPSC standard. 15 U.S.C. § 2063(c) (1982).

a substantial product hazard.[362] It is true that the agency often negotiates corrective action plans without making a formal determination of whether the subject product presents a "substantial hazard." But, the lack of a formal determination does not mean that the agency has failed to analyze carefully the risks associated with the subject product and concluded that agency involvement is necessary.[363] The agency typically refrains from making a formal determination in order to promote cooperation with the involved company or companies,[364] an approach no different from that with respect to voluntary standards.[365] In neither case has it made a formal determination, but in both cases, it has examined carefully the risks of injury.

Similarly, the objection that the agency conducts no cost-benefit analysis or fails to analyze the impact of "adjudicatory rulemaking" on small business misses the mark. It is true that the law does not require the extensive, cumbersome formal economic findings under section 15 that it does for setting safety standards and imposing bans. This is to be lauded.[366] But, it is not true that the CPSC fails to conduct economic analyses in adjudicatory matters. To the contrary, the agency always requires "substantial input" from its professional economists in section 15 cases[367] and likely will continue to do so.[368] Again, the agency's approach with "adjudicatory rulemaking" pro-

[362]15 U.S.C. § 2064(c) (1982). If the objection is that the Commission does not make its "substantial hazard" determination before it commences an adjudication, the answer is that any agency doing that would be guilty of prejudging the merits of its case. Moreover, for those who advocate rulemaking as an alternative, one would be correct in pointing out to them that the agency similarly does not make a final determination that a product presents an unreasonable risk at the outset of a proceeding.

[363]The agency's policy on substantial product hazards requires as part of every corrective action plan that the agency include "[a] statement of the nature of the alleged hazard associated with the product, including the nature of the alleged defect or noncompliance and type(s) of injury or potential injury presented." 16 C.F.R. § 1115.20(a)(1)(i) (1988).

[364]Indeed, one of the strongest inducements for companies to enter into voluntary corrective action plans is to avoid having a formal hazard determination made by the CPSC. *See* Schwartz & Adler, *supra* note 25, at 440.

[365]According to the Commission's voluntary standards policy, the Commission's "interest in a specific voluntary standards activity will be based in part on the frequency and severity of injuries associated with the product, the involvement of the product in the accident, the susceptibility of the hazard to correction through standards, and the overall priorities of the Commission." 16 C.F.R. § 1032.2(b) (1988).

[366]It is these findings, among others, that prevent more expeditious rulemaking and lead the agency to seek alternatives. For a further discussion of cost-benefit analyses in the context of agency adjudications see notes 378–92 *infra*.

[367]*See Standards-Setting: Section 15 v. Section 7*, Address by Pittle at the Seminar on the Federal Regulatory Process (sponsored by Law and Business, Inc.) in Washington, D.C. (Feb. 10, 1981), at 12 (available from author).

[368]Schoem interview, *supra* note 332.

vides no greater protections than its approach with voluntary standards.[369]

Undoubtedly, the greatest advantage that adjudication has over rulemaking is speed. The vast majority of recall actions commenced by the agency are resolved within months[370] whereas rulemaking—mandatory or voluntary—inevitably takes years to complete.[371] Whether an *expanded* program of "adjudicatory rulemaking" would be able to operate as expeditiously as the current section 15 operation is difficult to predict. It might be that an expansion would give rise to "hotly contested" litigation, which "may proceed no more quickly than hotly contested rulemaking."[372] On the other hand, given the current cumbersomeness of voluntary and mandatory rulemaking, it is hard to imagine that "adjudicatory rulemaking" could operate less expeditiously.[373]

Those who consider "adjudicatory rulemaking" to be "back-door rulemaking," aside from failing to show that it is in any way improper, weaken their case considerably by their inability to offer better alternatives. They are loathe to use mandatory standards[374] while the major reasons they cite for supporting voluntary standards[375] would

[369]The Commission's voluntary standards policy is arguably more lax in some respects. Although the agency sets as a condition for participation in a voluntary standards proceeding that the voluntary standards group open the proceeding to small business and consumers, 16 C.F.R. § 1032.5(a) (1988), the agency does not set as a condition that the voluntary standards group conduct a cost-benefit analysis. But, much more important, nothing in the Consumer Product Safety Act or the CPSC's regulations bars the agency from deferring to a voluntary standard that was developed behind closed doors and reduces an unreasonable risk through requirements that discriminate against small business.

[370]Schoem interview, *supra* note 332.

[371]According to Chairman Scanlon, a recent CPSC study of thirty-two voluntary standards indicated that they took an average of 3.4 years to develop and implement. Although the agency has conducted no study of the time for development and implementation of mandatory standards, Chairman Scanlon indicated that three standards he looked at took 5.5 years to develop and implement. (Given Chairman Scanlon's dislike for mandatory standards, one can assume he chose standards that took a long time. Nevertheless, it is clear that mandatory standards can take years to develop). *See 1987 Senate Reauthorization Hearings, supra* note 126, at 40.

[372]Pittle, *supra* note 367, at 9.

[373]Scanlon and Rogowsky argue that the 1981 amendments added so many procedural requirements that they made rulemaking in the 1980s "an even less attractive pursuit than it was in the 1970s. Indeed, the informal consensus in the agency is that rulemaking is dead; it simply takes too much effort." Scanlon & Rogowsky, *supra* note 347, at 27–28.

[374]*See, e.g., BNA Interview With CPSC Chairman Terrence M. Scanlon, supra* note 94.

[375]According to CPSC Chairman Scanlon, "the most important argument for the use of voluntary standards is that they usually generate safety benefits more quickly." *Supra* note 347, at 6. Yet, "adjudicatory rulemaking" is probably faster. *See supra* note 371 and accompanying text.

seem to justify "adjudicatory rulemaking" over voluntary standards.[376]

Although there are probably limits to what can be done with "adjudicatory rulemaking,"[377] it seems clear that there is a useful role for this authority. One can only regret that the agency seems reluctant to invoke it.

A third issue confronting the CPSC recall program is what role, if any, cost-benefit analysis should play in it. With respect to rulemaking, a fairly extensive comparison of costs and benefits is required,[378] although the agency is not required to "conduct an elaborate cost-benefit analysis."[379] With respect to recalls under section 15 of the CPSA, however, there is no requirement for CPSC cost-benefit analysis.[380]

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[376]Aside from the objections already discussed, Chairman Scanlon dislikes "adjudicatory rulemaking" because it does not offer as much opportunity for public participation as mandatory standards proceedings. On this point, he is correct. But his point is substantially undermined by his advocacy of CPSC deferral to voluntary standards, which often are developed with no opportunity for public participation. *See 1987 Senate Reauthorization Hearings, supra* note 126, at 92 (testimony of Gene Kimmelman, Legislative Director, Consumer Federation of America) (alleging that the CPSC on several occasions has deferred to standards developed solely by industry with no opportunity for consumer participation).

[377]For example, the more complex the set of product hazards to be addressed, the less useful that adjudication might be to address them since the adjudicatory proceeding would become overly complicated and cumbersome. *See* Pittle, *supra* note 367, at 11.

[378]Prior to promulgating a mandatory rule (safety standard or ban), the CPSC must first publish a preliminary regulatory analysis that includes "a preliminary description of the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs." 15 U.S.C. § 2058(c)(1) (1982). Once the agency has published a proposed rule, it must publish a final regulatory analysis that includes a final description of these points, 15 U.S.C. 2058(f)(2) (1982), and a finding that "the benefits expected from the rule bear a reasonable relationship to its costs." 15 U.S.C. § 2058(f)(3)(E) (1982). Similar requirements apply for the other acts enforced by the CPSC. *See* 15 U.S.C. § 1262(h)–(i) (1982) (Federal Hazardous Substances Act) and 15 U.S.C. § 1193(i)–(j) (1982) (Flammable Fabrics Act).

[379]Aqua Slide 'N' Dive Corp. v. Consumer Prod. Safety Comm'n, 569 F.2d 831, 840 (5th Cir. 1978). The Commission does, however, have to determine whether the benefits of a rule have a "reasonable relationship" to the costs. Southland Mower Co. v. Consumer Prod. Safety Comm'n, 619 F.2d 499, 522 (5th Cir. 1980). The 1981 amendment to the Commission's acts "codifies the cost-benefit test articulated by the court in *Southland Mower*. . . . " *See* H.R. CONF. REP. No. 208, 97th Cong., 1st Sess. 875 *reprinted in* 1981 U.S. CODE CONG. & ADMIN. NEWS 1237.

[380]There has never been a court ruling requiring a cost-benefit analysis for recalls. *See 1987 Senate Reauthorization Hearings, supra* note 126 at 43. The only language in the CPSA that arguably might be interpreted in this direction is section 15(d), 15 U.S.C. § 2064(d) (1982), which requires the agency to determine that corrective action "is in the public interest" before it can seek a recall. Nothing in the act's legislative history clarifies this language. Presumably, it would not be "in the public interest" for the agency to insist on a recall where a product presented little risk and the costs of the recall were enormous.

On the other hand, given Congress' attention to cost-benefit concerns in the 1981 amendments regarding CPSC rulemaking, one can safely assume that Congress would

The purpose of cost-benefit analysis, according to its proponents, is to promote efficient decisionmaking so as to maximize the number of lives that can be saved by agency action.[381] Failure to use cost-benefit principles means that some consumers will suffer needless deaths or injuries because an agency will use its resources to reduce lesser, rather than greater, risks.[382] Critics of cost-benefit analysis do not dispute these sentiments; they argue that data available to regulators rarely is sufficient to permit meaningful cost-benefit analysis.[383] Moreover, it is usually easier to calculate costs than intangible benefits, so such analyses usually are biased in favor of no safety measures.[384]

The current CPSC Chairman strongly favors cost-benefit analyses for agency recalls.[385] At least one of his colleagues strongly disagrees,

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have added an explicit set of requirements to section 15 had it wished the agency to engage in cost-benefit analyses for recalls.

[381]*See* Memorandum from Paul Rubin, Associate Executive Director to CPSC Commissioners on Cost-Benefit Analysis (Feb. 25, 1986) at 8 [hereinafter Rubin Memorandum]. For discussions of the proper and improper use of cost-benefit analyses, *see* M. Bailey, REDUCING RISKS TO LIFE (1980) (American Enterprise Institute); *The Use of Cost-Benefit Analyses by Regulatory Agencies: Hearings Before the Subcomm. on Oversight and Investigations and the Subcomm. on Consumer Protection and Finance of the House Comm. on Interstate and Foreign Commerce*, 96th Cong., 1st Sess. (1980) and R. CAMPBELL, FOOD SAFETY REGULATION, A STUDY OF THE USE AND LIMITATIONS OF COST-BENEFIT ANALYSIS (1974) (American Enterprise Institute).

[382]*See* Rubin Memorandum *supra* note 381, at 1.

[383]The CPSC Associate Executive Director, David Schmeltzer, argues:

> The results of recalls and other remedial actions are difficult to predict and difficult to quantify. In many cases, we can say that there will be a lesser or greater continuing problem if a product is not corrected, but it is dishonest to pretend that we can predict the number of deaths or injuries that will be prevented and even more misleading to predict mythical percentages of efficiency which might result from different approaches.

Memorandum from David Schmeltzer, Associate Executive Director, Compliance and Administrative Litigation to Paul Rubin, Associate Executive Director, Economics Regarding AED Rubin's Cost-Benefit Draft Memo, (Jan. 17, 1986).

[384]CPSC critics cite a memo from Paul Rubin, CPSC Associate Executive Director, as representative of this type of thinking. After the American Furniture Manufacturers Association had decided to take safety measures to eliminate the risk of death and injury from children catching their heads in the footrests of recliner chairs, Rubin wrote his memo to the Commission recommending that "nothing be done beyond mentioning this product along with others that lead to entrapment in safety alerts. The deaths and injuries that have occurred are certainly tragic. However, the incidence is extremely small and it is not clear that any remedial actions could be cost effective." *See* Rubin Memorandum, *supra* note 381, at 12. For a staff member of a safety agency to make a pronouncement that an industry group's safety actions promoted excessive safety struck some critics as inappropriate. *See 1987 House Reauthorization Hearings*, *supra* note 89, at 125 (testimony of former Commissioner Pittle criticizing the recliner chair incident as one where cost-benefit analyses "completely ignore the real world in which manufacturers take safety actions based on the need to preserve goodwill and to avoid product liability lawsuits. . . . ")

[385]According to Chairman Scanlon:

> I believe that cost-benefit analysis can be very helpful with respect to Section 12 [imminent hazard actions] and Section 15 proceedings. By quantifying advantages and disadvantages, cost-benefit can help both the Commission and the manufacturer evaluate the various options and reach mutually satisfactory decisions.

arguing that CPSC rarely has adequate data upon which to base meaningful analyses[386] and that too many of the factors that have to be weighed in making recall decisions cannot be easily quantified.[387] Joining the Chairman's colleague in objecting to cost-benefit analyses for recalls are former Republican and Democratic CPSC commissioners,[388] consumer groups,[389] and members of Congress.[390] In fact, so strong has the sentiment grown against it that in 1987, Congress enacted language in an appropriations bill that forbade the CPSC from making any expenditures on cost-benefit analyses[391] and Congressman James Florio has introduced legislation to bar the agency from conducting such analyses.[392]

On balance, the case for conducting formal cost-benefit analyses is not strong, although the Commission should continue incorporating

---

> Depending on the circumstances, it could prompt the Commission to seek and/or a manufacturer (or distributor) to accept a more sweeping remedy than was initially anticipated or proposed. Furthermore, since the CPSC has the relevant economic data available in most instances, a cost-benefit analysis can usually be done by one of our economists in a short period of time.

1987 Senate Reauthorization Hearings, supra note 126, at 43.

[386]*See 1987 Senate Reauthorization Hearing, supra* note 126, at 49–50 (response of Commissioner Anne Graham to questions submitted to CPSC Commissioners by Senator McCain).

[387]*Id.*

[388]The following questions and answers illustrate this point:

> Senator Gore: Does anyone here believe that it is a good idea to put the CPSC staff to work doing cost-benefit analyses of voluntary recalls of hazardous products proposed by manufacturers? Does anybody think that's a good idea?
>
> Mr. Statler: [former Republican Commissioner appointed by President Carter] Definitely not.
>
> Ms. Steorts: [former Republican Chairman appointed by President Reagan] Definitely not.
>
> Mr. Byington: [former Republican Chairman appointed by President Ford] I do not see any value in it.
>
> Mr. Pittle: [former Democratic Commissioner appointed by President Nixon and reappointed by President Carter] Definitely not.

Id. at 73.

[389]*See id.* at 97 (response of Gene Kimmelman, Legislative Director, Consumer Federation of America to written questions submitted by Senator Gore in which Kimmelman states that "CFA opposes the use of formal cost-benefit analysis in section 15 actions.")

[390] *See id.*, at 20 (According to Senator Gore, "I think it is ridiculous to tie up very scarce resources at the Commission to analyze the costs and benefits of a voluntary recall proposed by a manufacturer who determines that his or her product is hazardous and needs to be recalled.").

[391]H.R. 2783, 100th Cong., 1st Sess. (1987); H.R. Rep. No. 189, 100th Cong., 1st Sess. 16 (1987); S. Rep. No. 192, 100th Cong., 1st Sess. 20 (1987).

[392]H.R. 3343, 100th Cong., 1st Sess. (1987) (Sept. 25). Under section 106(a)(2)(B) of H.R. 3343, "[i]n determining if action under [section 15(b) of the Federal Hazardous Substances Act (15 U.S.C. 1274(a)) (1982)] is in the public interest, the Commission shall consider the risks presented to the public if action is not taken under this subsection but may not compare the costs that would be incurred in taking the action with the benefits from the action."

as much economic data in its decisionmaking process for recalls as reasonably can be obtained. The product recall setting is uniquely not conducive to formal cost-benefit analysis. Done well, recalls occur before the full potential for injury or death can be calculated. Defective products are often discovered in commerce before the full potential for injury or death can be calculated.[393] The lack of an accurate "body count" will usually skew a cost-benefit analysis against taking corrective action. Because of this inherent bias, the agency should not adopt these analyses.

CONCLUSION

Despite the immense setbacks suffered by the Consumer Product Safety Commission, it has managed in modest fashion to enhance public safety. A new administration is going to have to decide a number of fundamental questions about the agency that will affect its direction for many years. One hopes that the new President will examine his options carefully and approach decisionmaking from a fresh perspective. If so, there is reason to hope that the CPSC can be redeemed and strengthened.

[393] *See* Schwartz & Adler, *supra* note 25, at 438–39.

Exhibit 124

S. HRG. 100-142

CPSC AUTHORIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSUMER

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

MAY 13, 1987

Printed for the use of the
Committee on Commerce, Science, and Transportation

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AUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

WEDNESDAY, MAY 13, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON THE CONSUMER,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. Albert Gore, Jr. (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Thurgood Marshall, Jr., staff counsel and Chuck Harwood, minority staff counsel

OPENING STATEMENT BY SENATOR GORE

Senator GORE. If our guests will take their seats, we will call this hearing to order and get started.

As Chairman of the Consumer Subcommittee, I very strongly support the legislative efforts to improve consumer product safety and enhance the ability of the Consumer Product Safety Commission (CPSC) to accomplish its mission. The reauthorization of the CPSC is a Commerce Committee priority. The last CPSC authorization was approved by the Commerce Committee in May 1985 and passed the Senate two months later, only to fail in conference.

The CPSC was established in 1973 to reduce the number of deaths and serious injuries associated with dangerous consumer products. Its efforts comprise one of the most important public health programs in America, in terms of lives saved and injuries avoided.

The states and product manufacturers have also played an important role in promoting consumer product safety, having devoted resources to safety promotion, research and marketing. Indeed, several valuable safety requirements result from industry self-regulation.

CPSC efforts are essential in reducing the estimated 30 million consumer product injuries that occur each year. Injuries associated with all-terrain vehicles (ATVs), for example, are staggering. They range as high as 7,000 each month. As many as 20 ATV riders are killed in ATV mishaps each month, for a total of almost 700 ATV deaths so far. Half of those injured and killed are children. In the face of these startling statistics, I question whether the CPSC's action thus far has been adequate or timely.

The current lack of leadership at the CPSC sends the wrong signal to anyone who cares. The signal is that as far as the CPSC is

concerned, it is "open season" on consumers. Given the CPSC's lack of leadership, it is hardly surprising that efforts to develop voluntary standards within the ATV industry have been a disaster. These and other serious problems at the agency cause me to question whether the current structure of the agency should remain in place.

The ATV situation is only one example of how the CPSC's failure to take swift, decisive action has contravened Congressional intent underlying the establishment of the agency and its mission.

In addition, it is my understanding that the CPSC is considering the application of cost-benefit analyses to voluntary decisions by manufacturers to recall dangerous consumer products. An agency with such limited resources simply does not need to deter safety measures when the industry determines that a product is sufficiently hazardous to warrant voluntary recall.

Those limited agency resources would be better spent on enforcement actions to remove hazardous products where recalcitrant manufacturers are unwilling to act voluntarily. I intend to delve into this issue during our authorization hearing this morning, and I want to make it clear that I am very troubled by the direction this policy seems to be taking.

I have briefly reviewed the Consumer Federation of America's study of the CPSC's failings. This study details numerous shortcomings and problems, and makes the point that CPSC failures result in injuries and unnecessary death, consumer litigation, increased disability and health insurance expenditures, and lost wages.

That is not what the Congress intended, and it will not be tolerated. We are going to explore the issues and proposals set forth in the report in more detail as we proceed with the authorization process.

Additional authorization issues we will examine this morning include whether to change the structure of the CPSC from a five-member commission to a single-headed agency; whether to maintain the CPSC's independent status; whether the overall performance of the agency is consistent with its statutory mandate; and CPSC activity concerning toy safety and all-terrain vehicles.

I would like to recognize the distinguished ranking Republican member, Congressman McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator McCAIN. I have been promoted.

Senator GORE. Are you not the ranking member?

Senator McCAIN. Yes, but I am a Senator. Thank you.

Senator GORE. Oh, Senator McCain. Sorry about that.

Senator McCAIN. I thank the Chairman, and I appreciate the opportunity.

Senator GORE. We served together in the House, too. That is my only excuse.

Senator McCAIN. I would like to thank the Chairman for holding this hearing. I appreciate his opening remarks, and I share many of his concerns. I am convinced that we are talking about some extremely serious issues here. You mentioned the ATV. Seven hundred lives have been lost, and the number of injuries resulting

from that has been astronomical. As the Chairman mentioned, over half of these have been sustained by young people.

I think the CPSC has enjoyed some success in reducing product-related injuries, and I think over time it has demonstrated that government and industry can work together to increase the safety of consumer products. However, I think some of the testimony during today's hearing will show that the CPSC has not lived up to its full potential from the standpoint of both industry and consumers.

Mr. Chairman, we will be talking about toy safety, all-terrain vehicles, butane lighters and probably other products which have posed a hazard to the consumers. But, I think we are also talking about a larger issue here, and that is what is the proper role of government as far as the consumer is concerned. That is really the crux of the matter. How much or how little should this government regulate or involve itself in the affairs of industry? I think there is definitely a role. I think that most Americans certainly agree with that. The question is how far-reaching is that role.

Some people have argued that during previous years perhaps the CPSC overstepped its boundaries and, indeed, the intent of Congress. An argument can be made today that perhaps the present Commission has not lived up to the requirements as laid out by Congress at the formation of this organization.

Let me also point out, Mr. Chairman, this bill expired in 1983. In 1983 and again in 1985 Congress attempted to reauthorize the Commission. There is a long history of reasons why the Commission has not been reauthorized. I would suggest one of the reasons was an inability of the Congress to act in a bipartisan fashion in trying to shape legislation and make the necessary concessions and compromises in order for any legislation which has controversy attached to it to be successful.

I share your commitment in attempting to achieve the long overdue reauthorization of the CPSC, and I hope we can achieve that with a minimum of partisanship and work closely with our colleagues in the House as well as in the administration because this reauthorization is long overdue.

Thank you, Mr. Chairman. I look forward to the testimony of the witnesses.

Senator GORE. Thank you, and I want to share those sentiments very strongly and commit to exactly that kind of process.

I have an opening statement that Senator Hollings would like inserted in the record.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

Mr. Chairman, this hearing on the reauthorization of the Consumer Product Safety Commission (CPSC) provides an opportunity for the Subcommittee to examine the role of this particular agency—and of government in general—in improving the quality of life in our nation.

It is not mere happenstance that we live in the safest society of any nation in the world. Rather, it is because we have recognized that the paramount function of our government is the protection of its citizens from harm.

The Consumer Product Safety Commission, which serves to protect consumers against injuries from hazardous products, is a vital part of this commitment. It's estimated that each year, the research, regulatory, and informational activities of the CPSC prevent more than 200,000 needless injuries and countless deaths.

Yet the Reagan Administration has repeatedly sought to abolish or weaken the CPSC on the grounds that it represents needless government spending and an unnecessary restraint on the free market. We would never accept that argument for other vital governmental entities which protect the American public—the military, the FBI, and the Federal Aviation Administration, to name a few—and we shouldn't accept it for the CPSC either.

The last formal authorization of the CPSC to become law was the Consumer Product Safety Act Amendments of 1981. Although this Committee approved authorization legislation in both the 98th and 99th Congresses, those efforts failed to become law. As a result, the CPSC has operated without an authorization since the 1981 law expired in 1983.

It is crucial that this Committee and the Congress proceed with the authorization of the CPSC. The failure to do so over the past few years has fueled questions about the continuing viability of the agency's mission to protect the American public from death and injury associated with dangerous consumer products. This situation has been compounded by internal squabbling at the agency and relentless attacks by the Administration which has slashed the CPSC's budget by one-third since 1981.

The CPSC and the laws it enforces were created for reasons which are as compelling now as they have ever been. At its inception, the agency's mere existence had a deterrent effect on the sale of dangerous consumer products. I am concerned that this may no longer be true. These hearings will address this issue as well as proposals to alter the CPSC's structure, and the CPSC's consideration of toy and all-terrain vehicle safety. We will also examine the effect that a proposed cost-benefit analysis for voluntary hazardous product recalls will have in deterring voluntary actions of the market to improve product safety.

The experience and continuing interest in this agency of the witnesses today will be valuable to our deliberations. I intend to work closely with Chairman Gore and the members of the Consumer Subcommittee on this important authorization.

Senator GORE. Our first witness is the Honorable Terrence Scanlon, Chairman of the CPSC, accompanied by Commissioners Carol Dawson and Anne Graham, Mr. Thomas Murr, Deputy Executive Director, and Mr. James Lacy, General Counsel.

Mr. Scanlon, I understand you have an opening statement.

Mr. SCANLON. Yes, I do, Senator.

Senator GORE. Without objection, it will be included in full in the hearing record, and please feel free to present any or all of it or portions of it as you see fit.

STATEMENT OF HON. TERRENCE M. SCANLON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION, ACCOMPANIED BY CAROL G. DAWSON AND ANNE GRAHAM, COMMISSIONERS; THOMAS W. MURR, JR., DEPUTY EXECUTIVE DIRECTOR; AND JAMES V. LACY, GENERAL COUNSEL

Mr. SCANLON. Thank you, Mr. Chairman and Senator McCain. It is a pleasure for my colleagues and me to appear before this Subcommittee today to discuss reauthorization of the Consumer Product Safety Commission and its role in protecting people from unreasonable risks of injury associated with consumer products.

Although no reauthorization legislation has been enacted for the Commission since 1981, the Senate and House have passed differing reauthorization bills in each of the last two Congresses. We hope this will be the year that a single reauthorization bill for the Commission be agreed to by both bodies. While our statutes are permanent law, reauthorizing legislation gives renewed Congressional sanction, direction and public assurance.

When such a bill is considered, we request that it be of at least three years duration or four years if two-year budget cycles are to be adopted. Also, we request that authorized funding be maintained at levels sufficient to support current activities as well as

future pay and benefit increases, rent adjustments and other such items over which we would have little or no control.

Mr. Chairman, this agency, using the array of tools that Congress has provided, stands ready to address consumer product safety hazards wherever they develop. Our task is one which requires not only vigilance but a constant sense of responsibility to consumers and industry as well.

Once a substantial hazard is discovered, it is our job to find a remedy and assure that it is applied. The way that we carry out our duties can have great consequences for the well-being of consumers, and it can also have profound effects on manufacturers. So we must walk the narrow path of first assuring safety within our jurisdiction but, if possible, without unnecessary economic upheaval in the marketplace.

Mr. Chairman, one of the important features of our safety efforts each year is the selection of priority projects for the succeeding year. We fully fund these priority projects in order to apply the maximum expertise and effort necessary to reach an early solution. Public comments on recommended priority projects are sought and received at a public hearing each year.

Finally, the Commission makes its selections after reviewing the public and staff recommendations, considering the frequency and severity of injuries and deaths associated with the product, the vulnerability of the population at risk, and other factors.

Our priority projects for Fiscal Year 1987 are: fire toxicity; poison prevention; safety for older consumers; all-terrain vehicles; child drownings in residential pools; and riding mowers. At the end of this fiscal year, the first three will revert to ongoing activity status using the information developed while the project was a priority. However, the other three projects, ATVs, child drownings in residential pools and riding mowers, will be continued as priority projects in Fiscal Year 1988.

Since it is one of the most resource-intensive projects ever undertaken by the Commission, let me say a few more words about ATVs with which 696 deaths and an estimated 290,000 injuries have been associated since 1982.

In the spring of 1984, due to the rising number of accidents associated with ATVs, the Commission began an investigation of ATV-related incidents. That led to the issuance of an advanced notice of proposed rulemaking in May of 1985, the first in several years, and the creation of an all-terrain vehicle task force at the Commission.

This task force was assigned the long and difficult job of conducting all of the pertinent studies, surveys and analyses as well as monitoring the industry's education and training efforts and coordinating a series of six public hearings held around the country. The task force findings and recommendations were forwarded to the Commission on September 30, 1986, and in December the Commission directed a number of steps be taken.

In brief, those steps included: (1), a request to the ATV industry to cease marketing ATVs intended for children under 12; (2), letters to appropriate officials stressing the safety information developed by our ATV task force; (3), an update of our consumer safety alert on ATVs; (4), development of an extensive notice program that expands upon the task force's labelling recommendations; (5),

expressing the Commission's displeasure at the slow rate of progress on the voluntary standard; and (6), continuing to participate in development of that standard while conducting the technical work necessary to support the issuance of one or more notices of proposed rulemaking to address performance characteristics of three- and four-wheeled ATVs.

Additionally, the Commission voted two to one—mine was the negative vote—to seek an enforcement action under the provisions of section 12 of the Consumer Product Safety Act in the U.S. District Court for appropriate relief necessary to protect the public. The Commission is seeking the assistance of the Department of Justice in this matter.

One of the effective tools in our inventory is the enforcement authority provided in section 15 of our statutes. This is the instrument which requires manufacturers to report suspected product hazards. Filings for the first six months of Fiscal Year 1987 are running ahead of a comparable period in 1986.

Also, it empowers us to negotiate or impose corrective actions when otherwise unregulated products are found to pose substantial hazards. For example, in Fiscal Year 1986, there were 60 recalls of items intended for use by children, 46 of which involved toys. Included among those were: a recall of more than 250,000 children's expandable enclosures which had been involved in three deaths; a recall by six different firms of more than 113,000 hazardous toy helicopters which had been involved in 15 incidents, including four cases of permanent blindness in one eye; and a repair program affecting approximately 625,000 strollers which had been involved in collapsing incidents that resulted in six finger amputations and eight other serious injuries to children.

In addition, Fiscal Year 1987 has already seen: (1), a refund program involving more than 1.6 million crib toys which had been involved in two deaths; and (2), a recall of a robot toy that is expected to be one of the costliest, to the manufacturer, in Commission history.

Just for the record, Mr. Chairman, it should be noted that over 95 percent of the corrective action plans that the Commission is involved in are agreed to voluntarily by industry.

Also, I might mention that the Commission is participating in the development of 14 voluntary standards and monitoring the progress of 25 others. These efforts are in keeping with the 1981 amendments to the Consumer Product Safety Act which require that we rely upon voluntary rather than mandatory standards whenever such a voluntary standard would eliminate or adequately reduce a risk and when there is a likelihood of substantial compliance with its provisions.

Successful voluntary programs provide adequate safety features more quickly and generally eliminate protracted and expensive litigation. Please be assured, however, that while we prefer voluntary standards whenever possible, the Commission always stands ready to initiate mandatory proceedings if necessary.

Again, it is a pleasure to testify on behalf of the Commission's reauthorization. This agency plays a vital role in the maintenance of safe products in the marketplace. We urge a favorable consideration of our extended Congressional mandate.

Mr. Chairman, I have a very brief personal statement that I would like to read.

Senator GORE. Please proceed. I thought that was your statement.

Mr. SCANLON. That statement was on behalf of the Commission, and I have a very brief personal statement.

Senator GORE. All right.

Mr. SCANLON. So that you and your colleagues are in a better position to judge the worthiness of these views, permit me to mention some of the Commission's recent accomplishments.

In the enforcement area in fiscal year 1986, civil penalties collected came to $250,000, less than in 1985 but higher than in five of the preceding eight years.

Also, regulated product recalls, which totaled 77 in fiscal year 1986, were higher than four of the previous five years.

Moreover, the total number of recalls, 172, compared favorably with the totals in each of the previous five years. Some of those recalls, I might add, were particularly notable. Last fall, for instance, one company agreed to refund the purchase price of approximately 1.6 million crib toys to resolve Commission concerns that these toys might pose a strangulation hazard.

About the same time, another firm, in what could be the most costly recall to the manufacturer in the history of the Commission, agreed to replace almost 1.5 million rather expensive robot toys or parts thereof because they were found to violate the Commission's lead paint standard.

Then there was the case involving McDonald's which was in the midst of giving away Lego plastic building blocks as part of a sales promotion. It was apparent to me when I saw these blocks being distributed that they could wind up in the hands of children under three who could choke. Luckily, no children had suffered strangulation injuries up to that point, but the potential for harm was clearly evident, and when the Commission brought that possibility to McDonald's attention, the firm quickly agreed to exchange these blocks for the larger ones.

In addition to these recalls, which could cost the manufacturers millions of dollars in several instances, the Commission's ATV task force also completed its comprehensive evaluation of ATVs and, as I mentioned earlier, issued its report—on schedule. That report was the product of 18 months work which cost the Commission roughly $2 million, a large sum for an agency the size of ours.

Other Commission activities of note in recent months include: (1), the publication of a proposed rule on methylene chloride, a chemical solvent used in paint strippers and spray paints; (2), issuance of an enforcement policy on the labelling of certain consumer products containing asbestos; and (3), a decision to continue involvement in the development of adequate voluntary standards for pressed wood products containing formaldehyde.

In all, the Commission has voted on over 30 matters of concern since I resumed the chairmanship last July 17.

In the area of State and local cooperation, considerable progress has been made as well. In September 1986 and April 1987, memoranda of understanding were signed with the National Conference of State and Building Codes and Standards and the Council of

American Building Officials, respectively, paving the way for mutually beneficial exchanges of information in the critical area of home safety.

Also, in November 1986, a very successful conference with our State designees was held to help promote cooperative activity on product safety problems of mutual concern. Not only was this the first such conference in six years but, as a consequence of it, cooperative work plans have been submitted by 48 states, the District of Columbia and three territories. When implemented, these plans will advance a number of CPSC projects at little or no additional cost to the Commission.

Last, but certainly not least, several major consumer education efforts have borne fruit in recent months. Last September, a joint press conference with the Juvenile Products Manufacturers Association was held to promote safer use of nursery equipment.

Then, in November, the Commission and the Toy Manufacturers of America conducted a press conference on toy and holiday safety that generated extensive nationwide press coverage.

Also, the Commission conducted a press conference this past January on home heating safety.

I could go on, Mr. Chairman, but I think these highlights demonstrate that the Commission made significant contributions to consumer product safety in 1986 and so far in 1987. With your help plus the help of many interested State, local and private organizations, we will continue to do so in the months and years ahead.

Thank you very much.

Senator GORE. Thank you.

Senator Kasten, do you have a statement before we go to the other two commissioners?

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, I look forward to working with you on the reauthorization of the Consumer Product Safety Commission, and I hope that this is the first of a number of hearings before this Subcommittee on issues of product safety and liability.

The CPSC has been without an authorization since 1983. And, at this point, to simply reauthorize the CPSC may not be adequate. Today's hearing should shed a great deal of light on that issue.

As the Subcommittee is considering the effectiveness of the CPSC, I think two points must be kept in mind. First, it is important to look beyond the number of rules promulgated or the number of products recalled. Because of its mandate, much of what the CPSC does is undertaken in cooperation with industry. These are not the kinds of activities that make the major newspapers or attract the attention of congressional committees. And yet, I think it is clear that a high degree of industry cooperation was contemplated when the CPSC was established. So I urge the Subcommittee to consider all of the activities of the CPSC, not just those that involve some sort of Commission-mandated action by industry.

Second, the CPSC's budget is very limited. Any time Congress orders that the CPSC undertake a new task, the money must come from somewhere, and usually that somewhere is another program within the agency itself. So while it may be appropriate to tell the

CPSC that it must undertake additional activities, it is also appropriate to consider which activities within the agency should be cut back or eliminated.

Authorizing legislation for the CPSC was last enacted in 1981, after 4 days of hearings before this Subcommittee and a great deal of controversy. May you have the same success, Mr. Chairman, with none of the controversy.

Senator GORE. Commissioner Dawson, Commissioner Graham, do you have statements?

Ms. DAWSON. Yes. Thank you, Mr. Chairman. I do have a prepared statement and I would be happy to submit it for the record. I have a few additional comments I would like to make at this point, however.

There has been some discussion, as you know, about a potential change in the structure of this agency. I have said in the past, and continue to believe, that a collegial structure is still preferable. I think it was a desirable structure in the beginning.

The fact that there have been some problems should not lead us to abandon that system. Perhaps the committee may want to look into ways to clarify or fine tune the statute to improve the operation of the collegial structure.

One of those clarifications, as I suggest in my prepared text, is that the quorum requirement for meetings be changed from three to two. As you know, the quorum was established at three because the agency was authorized for five Commissioners.

However, at present we only have three Commissioners. Funds have not been appropriated for the other two, and this means that without a two member quorum any one Commissioner can effectively stop a meeting from occurring.

That is one thing which I would appreciate the subcommittee considering.

[The statement follows:]

STATEMENT OF CAROL G. DAWSON, COMMISSIONER

Thank you, Mr. Chairman and members of the Subcommittee, for giving us the opportunity to discuss the reauthorization of the consumer Product Safety Commission.

You have seen our reports and familiarized yourself with our activities during the past few years, and the Chairman has outlined the major aspects of the agency's operations, so I need not repeat that information here.

There are other matters that deserve your attention, however, and I ask the Subcommittee to look at these issues and give the agency the benefit of your guidance.

With regard to the agency's operations, the Commission has run into a problem with the quorum requirement of the CPSA. As you know, section 4(d) of the Act requires that a quorum consist of three Commissioners. That requirement is reasonable when there are five Commissioners, but Congress has appropriated funds for only three Commissioners.

Thus, the absence of any single Commissioner makes it impossible to conduct business. I urge that this panel amend the CPSA to permit a two-member quorum.

In the past, the Chairman has indicated that if a two member quorum were to be adopted, he would favor a requirement that the chairman be one of the two members. But no single Commissioner should be allowed to obstruct the work of the Commission; thus a simple two-member quorum is appropriate.

If the Commission is to act as a collegial body, then it must have some authority over the activities of the senior staff members upon whom it relies to carry out its decisions. Top management must be accountable to the entire Commission, not just the Chariman. If not, the collegial body becomes merely an advisory board to the Charirman. I do not believe that is the intent of the law. I would suggest, therefore,

that the Subcommittee consider clarifying the CPSA regarding the full Commission's authority over key agency staff.

Some have suggested that the CPSC's structure be altered, either as an independent agency with a single administrator or to become part of a larger cabinet-level agency. Reasons given for such suggestions include cost and efficiency considerations, as well as overall management.

If the concern is efficiency, a three-member collegial structure already produces savings of at least $500,000 annually over a five-member structure while maintaining the benefits of a Commission structure. This is not to say I don't support even more government efficiency and cost-cutting, which is why I pushed so long and hard for the Commission to move from its downtown location to Bethesda. That move will save an estimated $300,000 a year in rental costs alone.

But cost-cutting aside, alternatives to the collegial system have definite disadvantages that Congress will want to explore fully before reaching a decision.

While the collegial system is not perfect, I believe it is still the most effective alternative. We should not allow problems in a meritorious system to cause us to abandon the system. Perhaps it is better to clarify and fine tune.

Since only Congress can make a decision on structure, I know that members of this Subcommittee, and and all members of the Senate and the House, will study the pros and cons of any such proposals very carefully.

Whatever direction the Congress wishes to take, I urge that the agency's current size and funding be retained. There are some fine public servants with unique expertise and accumulated knowledge currently on the staff. It would be tragic for the American people to lose the benefit of that skill should considerations of efficiency and cost not be balanced by considerations of due process, thoughtful decisionmaking, and thorough research. CPSC has been meeting its obligations to the public. Any proposal to change its structure should be given serious and thorough review.

Thank you again for this chance to address some important issues confronting the CPSC. I would be happy to answer any questions you may have.

Senator GORE. Thank you.

Commissioner Graham?

Ms. GRAHAM. Mr. Chairman, I do not have a statement for the record, so I will just say that I endorse Commissioner Dawson's remarks.

Senator GORE. Well, let me lead off by saying I have an open mind on this question about the proper structure of the CPSC.

The increased attention being given to the proposal for a single administrator arises largely from the intense frustration felt in both the House and the Senate by many at the current performance of the CPSC. It may well be that some of these proposals for structural change are not in the best interest of the Commission, and we need to examine them very closely.

But I think that that examination is overdue.

Mr. Scanlon, you have talked a lot about ATVs in your statement today and in recent days. You personally as a member of the Commission, have supported the following actions in the area of ATVs:

Number one, letters to officials stressing safety information;

Number two, an update of the CPSC consumer alert on ATVs;

Number three, an expression of displeasure at slow industry progress on voluntary standards;

Number four, a request to the industry to voluntarily cease marketing ATVs intended for children under twelve.

In your statement you note that there have been almost 700 deaths in the last few years and almost 300,000 injuries. And yet, you oppose any action other than a letter or a request or an expression of displeasure. You voted against the Commission's proposal to recall ATVs.

Do you honestly believe that your recommended action is strong enough, given 300,000 injuries and 700 deaths?

Mr. SCANLON. I think my votes and my conduct of the ATV activity at the Commission have been judicious. I am a strong proponent of voluntary standards and, as the committee knows, they are mandated by the Congress. Voluntary standards were made mandatory by the Congress in 1981, in amendments to the Consumer Product Safety Act, that asked the Commission pursue a voluntary standard activity when feasible.

I must say that we are frustrated——

Senator GORE. If I could interject there, you are not saying that Congress directed you not to pursue mandatory action on ATVs and directed you to just approach it with a request for a voluntary action. Are you not saying that?

Mr. SCANLON. Not at all.

Senator GORE. OK. I misunderstood.

Mr. SCANLON. Our first approach is to obtain voluntary standards. When they are not feasible, then we will use stronger enforcement activities. We have done that, Senator.

Senator GORE. You have not done that, Mr. Chairman. You have not done that. What I asked you is whether or not you believe that your recommended action is strong enough, given 700 deaths and 300,000 injuries, half of them to children. Do you think that your recommended action is appropriate or strong enough?

Mr. SCANLON. I think my recommended action is the most judicious at this time.

Senator GORE. That is not the question. Judicious is a different word. Do you think it is strong enough? Do you think your recommended action is strong enough, given 700 deaths and 300,000 injuries?

Mr. SCANLON. I do.

Senator GORE. Tell me why?

Mr. SCANLON. Because historically the average time for the Commission to promulgate a mandatory standard is about four and a half years. In all cases these were litigated, and so you had lots of staff time taken up during this litigious period.

What we did at the Commission was conduct an 18 month study, the most comprehensive in the history of the Commission. We looked at every aspect of ATV safety.

We set a deadline for the report due to the Commission of September 30, 1986. That deadline was met. Shortly after——

Senator GORE. 350 died during that study, correct?

Mr. SCANLON. Well, during that same time, Senator, we could have pursued a mandatory standard and it would have taken four and a half years. Then the question would be how many deaths and injuries occurred during the average four and a half year period.

Mr. LACY. If I may, Senator, under the 1981 amendments to the Consumer Product Safety Act, I would cite section 7, the agency has a requirement that is Congressionally mandated to rely upon voluntary consumer product safety standards in the development of any regulatory action.

I think it is fair to say that over a period of time steps have to be taken by Congressional mandate that the Senators and the Con-

gressmen have given to the CPSC to work in development of voluntary standards. So it is really fair to say that some time has to be given to that effort.

Senator GORE. Two of the Commissioners disagree with your recommended action on that, and I would like to ask them to comment on why you felt that a mandatory approach was appropriate.

Ms. GRAHAM. Mr. Chairman, I feel that it was an imminent hazard, that the consumer is not aware of the extent of the risk that he or she is taking with an ATV. I was concerned by the numbers of deaths and injuries, and I feel that with 20 deaths a month and approximately 7,000 reported injuries, that we had a mandate to do something that is strong.

Senator GORE. Commissioner Dawson.

Ms. DAWSON. I do not have a lot to add to what Commissioner Graham has said, except to say that I approached this issue with an open mind. And frankly, I was skeptical in the beginning that the Commission would have an answer to this problem.

However, we did achieve quite a bit in our study. I think our staff has gained a lot of knowledge about the reasons for these accidents. We did not know why the accidents were occurring. It took time and resources to give our staff the opportunity to study exactly why the accidents were happening.

We do know a lot more now. I also feel now that some relief is appropriate, whatever relief the courts may decide. I believe that, as Commissioner Graham has indicated, there were many purchasers of these vehicles who did not understand the risks.

Senator GORE. My time has expired. I will come back to this in the next round.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Scanlon—and other members of the Commission, please feel free to respond after Commissioner Scanlon does. On March 30, 1987, the entire Commission sent to Mr. Isley, President of the Specialty Vehicle Institute of America, a letter concerning the progress of the voluntary ATV standard.

What prompted the Commission to send this letter, and has any reply been received from Mr. Isley? And how did that in any way contribute to the progress of resolving this issue?

Mr. SCANLON. The purpose of the letter was to advise the industry, Senator, that we were frustrated with both phase one and phase two of the industry's attempts to obtain a voluntary standard utilizing the ANSI process. We were frustrated with what they were doing on standardization of controls, on labeling, on minimum age requirements.

We were even unhappy with what little they were doing on public education.

The answer to the second part of your question is that we have not, to date, received a response from Allen Isley of SVIA, the trade association.

Senator MCCAIN. Do you think it is an inordinate length of time for us to receive a response?

Mr. SCANLON. Yes, and I think an inordinate amount of time has elapsed for an industry to move on a voluntary standard.

Senator McCAIN. Then it seems to me you are making an argument, Chairman Scanlon, for a mandatory rule.

Mr. SCANLON. We have started that process, and this is what I attempted to advise Senator Gore. On May 31, 1985, we published the advanced notice of proposed rulemaking, which is the first step in the mandatory rulemaking process.

On December 18, 1986, we voted to proceed with an NPR. Just the week before that, we had voted for a section 12 action.

Senator McCAIN. But if I might interrupt, but you yourself voted against that, is that correct?

Mr. SCANLON. I did not vote against the NPR, no, I did not. What I voted against was the remedies called for in the enforcement action.

Senator McCAIN. But you do favor a mandatory rule, is that right?

Mr. SCANLON. I voted for it in 1985, Senator.

Senator McCAIN. Would either of the other two, Ms. Graham or Ms. Dawson, would you care to comment on that?

Ms. GRAHAM. Senator, I would just like to go on record as saying that this industry has been totally unresponsive to us, and I feel they are not being honest with the American people about the hazards associated with ATV's.

Ms. DAWSON. Thank you. I support the use of voluntary standards whenever they are reasonable and useful, and I think in many cases they are. In this particular case, we have given the industry every opportunity to come up with an adequate standard and thus far it has not.

And so therefore, I believe the Commission has to move. The important thing is that it moves as soon as it can. It is urgent that we do that for the consumer.

Senator McCAIN. How long is it going to take us to implement a mandatory rule?

Mr. LACY. Well, Senator, if I can for purposes of clarification make the point that the Commission has authorized a section 12 action. That is the policy of the Consumer Product Safety Commission. So the steps have been taken.

Senator McCAIN. How long will it take, Mr. Lacy, if you want to answer that?

Mr. LACY. Well, we are awaiting a decision from the Department of Justice, where we have sent a referral letter on February 2 to determine if the Civil Litigation Division will represent the agency.

Senator McCAIN. I am asking about the rule, Mr. Lacy, not about the enforcement action.

Mr. LACY. The rulemaking procedure could take three or four years.

Senator GORE. Would you yield just briefly?

Senator McCAIN. I would be glad to yield.

Senator GORE. On the referral to the Justice Department, under the statute there is a 45-day period for the Department of Justice to enforce the action, and at the end of that 45-day period the CPSC has the authority to bring the action itself.

This has been taken under the imminent hazard authority of section 12, and after the 45 day period elapsed the CPSC then had the authority to move quickly and alleviate this imminent hazard. And

yet, it is my understanding that the CPSC has failed to do that, notwithstanding the fact that the 45 day period has lapsed.

And I thank my colleague for yielding.

Mr. LACY. Could I take one minute to give a thorough legal response to your statement? Senator, with all due respect, your interpretation of section 27 and my interpretation of section 27 are at odds.

What section 27 does is create an optional power in the Consumer Product Safety Commission to act in its own capacity after a 45 day period has elapsed. While we are waiting for the Department of Justice to make a decision on whether or not they will represent us, that 45 day period has lapsed and we now have the opportunity to pick up the case on our own if we wish.

The fact of the matter, however, Senator, is that this is an extremely complex case. There is a 14,000 page record in connection with it. It certainly is to the advantage of consumers, in our determination, to have the Civil Litigation Division of the U.S. Department of Justice represent the Commission in this case, rather than being left to our own devices in the Office of General Counsel at the CPSC.

If we need to, that is a determination for the Commissioners to make in the event that the Justice Department declines to represent us. We have no indication as of today that the Department of Justice will not represent us.

We think that it is in the interest of the taxpayers and in the interest of the consumers that the case be well prepared and thoroughly reviewed prior to the filing of any papers. And this is what is ongoing today at the Department of Justice, and we are confident we will have a decision soon.

We have no indication from them when, but we are confident that we will hear from them soon.

Senator GORE. Well, this will not come out of my colleague's time, but briefly, in response to your legal response—which was more factual than legal—as I understand your statement, our interpretations are the same. But is there a section 27. Aren't you referring to section 16 which does refer to optional power.

Just as my statement pointed out, the statute says that if the Attorney General fails within 45 days to intervene then the Commission may commence to defend or intervene and supervise the litigation of such action and the appeal of such action in its own name, by any of its attorneys designated by and for such purpose.

So if in fact the power exists and if in fact the Commission has decided it is an imminent hazard and if in fact 20 people are dying each month, and if the Justice Department fails to respond, the Commission does have the authority to go forward.

If you have reason to believe the Justice Department is going to respond imminently, of course, that puts a different face on it. I have no such indication.

I appreciate the patience of my colleague.

Mr. LACY. Senator, I hate to be put in the position of correcting you, but your statutory reference is wrong. There is a section 27. I have—of the Consumer Product Safety Act, which is the Act under which we are proceeding under section 12. And you can find the

reference that I am referring to at section 27(b), section (7), subsection (a).

Senator GORE. Well, since I corrected you you have every right to correct me. We are working from different copies of it evidently. But in my copy of it I was provided by the subcommittee, we have section 16. But we can seek to resolve that.

In any event, it is a discretionary authority. The CPSC does have the right to move. The CPSC has not acted.

Senator MCCAIN. Thank you, Mr. Chairman.

Let me just say that, if it is correct that it takes three to four years to enact a mandatory rule, it seems to me that we have got to repair the system to some degree. The fact is that since 1982 we have had almost 700 deaths, 290,000 injuries, and, perhaps more importantly than that, the majority of those accidents and deaths have occurred in the last four years. It appears to me that we are in a situation where we are going to see a whole lot more accidents and needless deaths while we are waiting for this rule to be enacted.

And I know one of your responses is going to be, Chairman Scanlon, that we can enact a voluntary standard, and I hope so.

Mr. SCANLON. I agree, Senator. And as frustrated as I am with the progress to date with the voluntary standard, I want to point out that, at the same time we have been working and sending staff to the voluntary standards meetings, we did begin a rulemaking progress because of the seriousness of this hazard.

Senator MCCAIN. But I am not sure that we can wait three or four years to get it done.

Mr. SCANLON. Unfortunately, the process works that way. The lawnmower, the infamous CPSC lawnmower standard, took seven years.

Senator GORE. If I could ask you to hold that response, we will give you a full opportunity to say that. We do have a vote on. The bells rang without us realizing, and we only have three or four minutes to get over to the Capitol. We will come back in about ten minutes, so we will reconvene at 10:30.

[Recess.]

Senator GORE. The hearing will come back to order.

I have good news and bad news. The bad news is that there are going to be a series of votes, back to back, one right after another, for the next two hours.

The good news is, we are going to plow forward, with short interruptions, for those votes.

I am not sure which is good and which is bad in the news department there. We considered rescheduling the hearing for another day. But we have had a lot of witnesses who have gone to great difficulty to be here.

What this will mean is that we will attempt to shorten the procedure somewhat, and rely on statements inserted into the record as much as possible.

And I apologize. Sometimes the Senate gets into one of these situations where a procedural battle mandates a whole series of moves, one right after the other, with record votes. And there is nothing that can be done about it.

At any rate, please forgive the inconvenience, but we are going to try to finish in spite of the difficulties, and I will lose a little weight running back and forth.

Let me pick up some of the statements and questions that we were talking about before.

Mr. Scanlon, do you not think that if the CPSC had moved forward beyond a mere notice of rulemaking and sent a clear signal of your intent to go forward with a mandatory proceeding, that the industry would have responded with a better voluntary standard?

Mr. SCANLON. Senator, again, I would say that we did move forward by publishing an ANPR on May 31, 1985. Again, in December 18, 1986, we voted for a notice to proceed with rulemaking.

So we have begun that process.

Senator GORE. Let me restate the question if I could, because you may not have heard it.

The question is: Do you not think if the CPSC had moved forward beyond the notice of rulemaking, and sent a clear signal of your intent to go forward with a mandatory proceeding, that the industry would have responded with a better voluntary standard?

Mr. SCANLON. With the notice to proceed with rulemaking, we were doing what was to be obtained in phase one of the voluntary standard, namely, training, warning and labelling.

Senator, we were doing that.

Senator GORE. Well, let me try again.

If you had done more than that, if you had gone beyond a mere notice of rulemaking, and moved quickly to more affirmative steps, sending a clear signal of your intent to go forward with a mandatory proceeding, do you think that would have resulted in a better voluntary standard?

Mr. SCANLON. Senator, during the 18-month period, there were a number of items that had to be addressed for the Commission to make its case.

We had to have epidemiological studies. We had to have a myriad of engineering analyses, and stability test. I can go on and on with respect to the various things we had to do.

This was all part of the published 12,000 page report released on September 30, 1986. All this was necessary in order to make the case that I think you want to be made.

Senator GORE. Well, let me try again. I do not want to beat it into the ground, but I do not think you are responding to the question, with all due respect.

If you had gone beyond a mere notice of rulemaking, and given a clear intent, a clear signal of your intent to seek mandatory action, do you think the industry might have responded with a better voluntary standard?

Mr. SCANLON. I do not think so, because I do not know of any other notice we could have given other than what we did.

Senator GORE. You could have filed under Section 12, the imminent hazardous article.

Mr. SCANLON. We did, Senator, but we had——

Senator GORE. No, not for two years, and you have not followed up on that yet, by enforcing it.

Mr. SCANLON. We had to make the case. We did not have the data in either 1985 or early 1986, to make a case for an imminent hazard.

Senator GORE. Well, there is substantial disagreement about that, and people of course will differ about what kind of evidence you need to justify proceeding, the kind of evidence available at that time led a great many people to believe the CPSC should have gone forward.

The kind of evidence available now has convinced even your colleagues at the CPSC to move forward, but you are still not convinced that you ought to move forward with a mandatory action.

So your assertion that the evidence would not sustain the action, I think, should be called into question.

Mr. SCANLON. Senator, I favored a Section 12 imminent hazard action. I favored the warning, notice and training provisions under Section 12.

Senator GORE. I thought you said in your own statement that you dissented?

Mr. SCANLON. I did, and if you will permit me to finish the sentence, I can explain this to you.

Senator GORE. Surely. Go ahead.

Mr. SCANLON. I disagreed with the remedies that were voted on that were part of the motion. That is why I voted against the action.

Senator GORE. You mean, to have a mandatory action?

Mr. SCANLON. It was not because it was mandatory. And because this is now at Justice, and we are waiting for a decision, I am not comfortable in providing all this publicly, but I would be delighted to do it one-on-one.

Senator GORE. Well, in your situation, I would not feel comfortable with what has happened either, but perhaps for different reasons.

The reliance on voluntary action, it seems to me, is just not justified when you have this kind of record.

It is my understanding that Congress amended the 1981 Act not to result in weaker voluntary standard efforts but to spur strong and quick voluntary actions.

The Congress intended that the CPSC use its mandatory standard authority as a stick, if necessary. And this Commission has been unwilling to use that stick.

If you knew in 1984, when this first came to the CPSC's attention, that in 1987 there would be 700 deaths and over 300,000 injuries, if you had known that at the time, would you then have urged stronger action?

Mr. SCANLON. Yes.

Senator GORE. Good. Good. We're making progress.

When will the Justice Department determine whether to pursue the ATV enforcement action?

Mr. SCANLON. I was advised by the Assistant Attorney General for the Civil Division on Friday of last week that it would be in a few weeks.

Senator GORE. A few weeks? Is the CPSC encouraging Justice to undertake this enforcement action?

Mr. SCANLON. Yes.

Senator GORE. What is the CPSC's contingency plan in the event the Justice Department elects not to pursue the Section 12 enforcement proceeding?

Mr. SCANLON. We will have a meeting as soon as that decision is made, if the Justice Department decides not to take the case, to determine what we are going to do.

We are now, I might say, Senator, looking at what resources will be needed in our legal area, in our engineering and other directorates within the Commission.

Senator GORE. Now, you used the figure earlier, for 4½ years to get action with a mandatory proceeding. Were you referring to Section 7 actions?

Mr. SCANLON. I was referring to the average time to promulgate a mandatory standard in the——

Senator GORE. Under Section 7?

Mr. SCANLON. Yes.

Senator GORE. Okay, so proceeding under Section 12 with the imminent hazard authority, which is a rarer way to proceed, would not carry with it the expectation of a 4½ year delay, would it?

Mr. SCANLON. I do not think so.

Senator GORE. So your argument earlier that it might have been 4½ years in any event really does not apply to the option of taking a Section 12 action?

Mr. SCANLON. That was for the notice to proceed with rulemaking.

Senator GORE. I understand. But your argument earlier was that the voluntary approach, in your view, was superior partly because a mandatory action would take just as long.

And yet the evidence does not indicate that a Section 12 action would take as long. When you have an imminent hazard, you have the authority to go straight into court, request that DOJ do it, and then, after 45 days, do it immediately yourself.

It would still be litigation, but the delay is not as significant—at least, the evidence would not support a contention that the delay would be that long.

Why have so many Commission meetings been cancelled or postponed?

Mr. LACY. Senator, if I may respond——

Senator GORE. Excuse me, Mr. Lacy. We are operating under real time constraints here, and I would like to get an answer to the question that is asked.

Mr. SCANLON. Last summer, Senator, I had back surgery, and I was instructed by my surgeon to lay flat for some 30 days following the operation.

I came back to the Commission too soon. I then had a reoccurrence, a flareup, and I again was flat for another 30 days.

There is another reason that some meetings were missed. I think, in the last month, there were two meetings of the Commission missed because one of each of my colleagues was sick. And, some seven months ago, I think three meetings were missed during a dispute over an internal governance policy issue.

Senator GORE. The cost-benefit analysis?

Mr. SCANLON. No, these were internal.

Senator GORE. What about the meeting scheduled on the cost-benefit approach that was cancelled? Did that have to do with a health problem, or was it related to the likelihood of a particular point of view carrying the day?

Mr. SCANLON. I will defer to Commissioner Graham on that. I think she scheduled that for next month.

Ms. GRAHAM. There was one last winter, Mr. Chairman. I do not recall the reason why that one was cancelled. We do have it on the agenda for early June now.

Senator GORE. Well, good. The record indicates that there have been lots and lots of meetings cancelled or postponed.

I might say that I appreciate the suggestion earlier on the question of a quorum—due to the unusual circumstances we have now with the makeup of the Commission, it may be that that is a part of it as well.

What is the status of the general policy proposal placed on the agenda several times in November and December of last year by Commissioners Graham and Dawson? Do either of you wish to respond?

Ms. DAWSON. I do not recall the exact date, but some weeks ago we did resolve that issue. We did have a meeting eventually, and we did adopt a general policy. To some degree it addresses some of the concerns that Commissioner Graham and I have had about responsiveness of key staff people and other issues relating to management, and to the work of the staff in providing information to the Commissioners.

We will continue to see how that works, Senator.

Senator GORE. Okay. What about this business of applying cost-benefit analysis to voluntary recalls proposed by manufacturers who discover a product is hazardous? Can you clear that up briefly, Mr. Scanlon?

Are you really proposing to apply the agency's cost-benefit analysis to voluntary recalls proposed by manufacturers?

Mr. SCANLON. Senator, we have on file the costs of injuries, the number of products and so forth. It takes approximately five hours of an economist's time to do the analysis, the cost-benefit analysis, with the information that is already in the file.

One thing I would stress is that this is one of many reports which is part of a briefing package.

Senator GORE. What is the purpose of it? To convince a manufacturer to abandon a voluntary recall?

Mr. SCANLON. Not at all. It is to provide the Commissioner who will be voting on an item to have the most information available to him or her.

Senator GORE. Well, in order to analyze the prospect of a no vote against a voluntary recall proposed by a manufacturer proposed on its own product?

Mr. SCANLON. Not at all. I can cite the *Johnson & Johnson* case late in calendar year 1986, where the costs were not significant, but there were two deaths related to a crib toy, and the Commission voted for that.

Senator GORE. Do you have resources to burn over there?

Mr. SCANLON. We do not.

Senator GORE. Are you sort of strapped for resources?

Mr. SCANLON. We are.

Senator GORE. Do you think it makes sense to put your people to work analyzing the cost-benefit of a voluntary recall proposed by a manufacturer?

Mr. SCANLON. As I said before, we have all that information on file, and I don't think five hours of an economist's time to complete the work is extravagant.

Senator GORE. Well, with all due respect, I think it is kind of silly.

Ms. GRAHAM. Mr. Chairman, may I go on record? I am opposed to applying cost-benefit to our compliance issues. And I base that on the fact that neither the law nor the legislative history supports a cost-benefit analysis.

I am going to try to bring that up at the briefing on cost-benefit analysis in June.

Senator GORE. Well, I applaud your view of it, and I agree with it. And I think it is ridiculous to tie up very scarce resources at the Commission to analyze the costs and benefits of a voluntary recall proposed by a manufacturer who determines that his or her product is hazardous and needs to be recalled.

To have the Consumer Product Safety Commission waste its resources on a lengthy and questionable analysis of that type seems to me to be ridiculous.

[The following information was subsequently received for the record:]

QUESTIONS SUBMITTED BY THE CHAIRMAN

Question 1. The domestic textile/apparel industry has provided the CPSC with numerous examples of imported 100 percent cotton apparel items that fail to meet CPSC flammability standards, when the garment has been "fleeced" or "napped" to make it more comfortable. Why has the CPSC failed to place a priority on the flammability problem that exists in this area?

Answer. Although not specifically identified by the Commission as a priority matter, the compliance staff has actively investigated the five trade complaints received during the past two years regarding 100 percent cotton "fleeced" or "napped" apparel. Two firms were found to be selling sweatshirts that failed to comply with the Standard for the Flammability of Clothing Textiles (16 CFR 1610). Both firms have initiated corrective action. Investigations at two other firms are ongoing. The garments brought to our attention by the fifth complaint met the requirements of the clothing textile standard.

In addition to the activities just described, the staff has initiated two marketplace surveillance efforts during the past two years on 100 percent cotton "fleeced" or "napped" apparel. A description of these efforts follows:

(1) In the fall of 1985, the field staff visited approximately 200 retails stores nationwide to examine the "fleeced" or "napped" apparel being offered for sale. At that time, six potentially noncomplying garment styles were sampled for testing by the Commission. Four of the garment styles failed to comply with the mandatory flammability standards. Voluntary corrective action was requested and initiated.

(2) In the fall of 1986, the field staff visited retail stores (approximately 50) nationwide looking for potentially noncomplying "fleeced" or "napped" apparel. This time, garment styles were sampled for testing by the Commission, four which failed to comply with the mandatory flammability standard. Once again, voluntary corrective action was requested and initiated.

These two voluntary corrective actions included a stop sale by the manufacturer or importer, notice and recall to the retail level and/or notice and recall to the consumer level, depending upon the extent of the failure before and after washing.

Question 2. What course of action does the CPSC plan to undertake to address this situation and notify the public and retail community of the potential hazard associated with stocking and selling imported, fleeced 100 percent cotton textile items,

since many foreign manufacturers are unaware of or neglect flammability standards?

Answer. In May 1986, an information letter was mailed by the compliance staff to approximately 200 manufacturers, importers and retailers believed to be involved in the sale of "fleeced" or "napped" apparel. The letter advised the firms that if the "fleeced" or "napped" side of a fabric is the exposed fabric surface in a garment, or the garment is capable of being worn with the "fleeced" or "napped" surface exposed, the "fleeced" or "napped" side of the fabric must comply with the Standard for the Flammability of Clothing Textiles (16 CFR 1610). The letter further advised the firms that "fleeced" or "napped" fabrics, when tested for adverseness to this standard, usually comply when the fabric is a blend of untreated cotton and a synthetic fiber, such as acrylic or polyester, but frequently fail to comply when the fabric is 100 percent untreated cotton.

The provision of the flammability standard which involves garments that may be worn with the "fleeced" or "napped" inner surface exposed was issued in the late 1960's due to an observed practice of wearing athletic shirts or "sweat shirts" inside out. The CPSC staff is currently investigating the extent of this "inside out" practice as it relates to the types of apparel in the U.S. market today, many of which have unique design characteristics and/or are referred to as designer sweatshirts.

QUESTIONS SUBMITTED BY SENATOR GORE

Question 1. What is the Consumer Product Safety Commission's (CPSC) contingency plan in the event that the Justice Department elects not to pursue the CPSC's Section 12 ATV enforcement proceeding? How would this plan affect the CPSC's allocation of resources? Would the CPSC require supplemental funding to pursue the Section 12 proceeding on its own?

Answer. Early on, our Office of General Counsel made preliminary estimates of the staff and resource requirements that would be needed if we were to prosecute the case on our own. In addition, funds were set aside to enable the Commission to begin the enforcement action. However, the CPSC would have to ask Congress for either reprogramming authority or supplemental funding for the litigation support staff if we were to pursue the case alone.

Question 2. How has the fact that there are two vacancies at the CPSC affected its functioning?

Answer (Scanlon). To my way of thinking, the CPSC has continued to exercise its educational, regulatory and enforcement responsibilities in a timely and responsible manner. However, the reduction of the Commission from five to three has reinforced the tendency of the Commissioners other than the Chairman to engage in administrative micro-management without any compensating reduction in the amount of time required to make policy decisions. As a consequence, I would recommend that the Commission be converted to a single administrator independent agency beginning in Fiscal Year 1989. Failing that, I would suggest that the Commission once again be made a five member body with the Commissioners other than the Chairman serving on a per diem rather than a full time basis. Such a collegial framework would not only provide for greater diversity of viewpoint than is possible with a three member body, but would retain the cost advantage realized by reducing the size of the Commission in the first place.

Answer (Dawson). The fact that there are two vacancies at the Commission has not been without its consequences. The CPSA requires that three Commissioners constitute a quorum to do business. Last year, because the Chairman was absent from several Commission meetings that had been scheduled to discuss and vote on certain management subjects, the Commission was unable to resolve those issues for over six months.

My nearly three years at the Commission have persuaded me that this collegial body, under the terms of the Consumer Product Safety Act (CPSA), has the right and even the obligation to set forth policies governing management issues as they relate to our decisionmaking responsibilities.

We must often make decisions that affect the safety, health and the very lives of American citizens. In order to make these critical decisions with confidence, we must be sure the senior staff that provides us with information and implements our decisions is accountable to the entire collegial body. Accordingly, we owe it to the public and to Congress to set forth clear guidance to the Chairman in the areas of personnel, structure and the flow of information to guarantee such accountability.

In fact, several times in the past the Commission has exercised its prerogative under Section 4(f)(2) of the Consumer Product Safety Act to set such guidelines for the Chairman. The matters scheduled for discussion last year were in the same cate-

gory as those previous actions. Had there not been two vacancies on the Commission, the meetings could have been held even in the absence of the Chairman.

The majority of the Commission, mindful of its responsibility not to allow internal disputes to affect its ability to address safety issues, continued to attend regularly scheduled meetings on all safety issues. Ultimately, a compromise was reached on the management issues and a set of general policies was adopted. Thus far, we are not able to determine if those new policies will resolve our management problems. Nonetheless, I believe that additional legislative changes could be drafted that would improve the ability of the collegial body to oversee the functioning of key staff.

In addition, the adoption of a two-member quorum requirement, should the collegial body remain at three, is key to the survival of a meaningful consensus decision-making system.

Answer (Graham). Having two vacancies at the Commission with no change in the quorum requirement has seriously affected the functioning of the Agency.

Section 4(d) of the Consumer Product Safety Act (CPSA), anticipating a five-member Commission, states that ". . . three members of the Commission shall constitute a quorum for the transaction of business." Current appropriation language limits us to funding no more than three Commissioners, so now all three must always be present to conduct business.

If the Commission is to be limited to three members, the statute should also be changed to indicate a quorum requirement of two members rather than all three. The present quorum provision renders the other two Commissioners virtually impotent and has the practical effect of the Chairman single-handedly being able to block a majority of the Commission from taking any significant action with which he disagrees.

Last year's debate over a set of general policies proposed to enhance the accountability of the Commission staff, insure the free flow of valid information and encourage the collegial body structure Congress mandated illustrates this problem.

Because the Chairman was absent from several Commission meetings scheduled to decide what course of action to take with regard to these substantial management issues, the Commission was unable to resolve them for over six months.

The general policy debate also clearly addresses how a collegial body should interact. I believe the statute and the intent of Congress are clear. On substantive questions such as the appointment and supervision of personnel, the Commission as a body has the right, and the duty, to provide clear and precise general policy guidance to govern the actions of the Chairman. To guarantee the integrity of the collegial process at the CPSC, Congress, in its wisdom, included statutory language in Section 4(f)(2) of the CPSA to provide the necessary checks and balances of the power of the Chairman. Section 4(f)(2) of the CPSA limits the Chairman's authority by requiring him to be governed by general policies of the Commission. I believe this limitation on the Chairman's authority allows the Chairman to establish, organize or abolish any position and appoint and supervise personnel so long as the action is consistent with and contrary to any general Commission policy concerning these areas. To put it simply, the statutory language makes it clear that the Commission as a whole sets the policies and the Chairman executes them.

After over half a year, a number of general policies were approved on March 18, 1987. Commissioner Dawson and I felt the minimum required for the Commission to function properly was the policy statement we put forward in January (which was a compromise from our earlier ones). However, we concluded that with the current quorum problem, the Chairman would probably ignore any provision adopted by the Commission with which he disagreed. Thus, we ended up with the lowest common denominator in the interest of reaching temporary accord for the good of the institution.

Staff accountability still needs to be improved. They need to be accountable to the entire Commission and not just the Chairman. One way of achieving this is to give the Commission as a whole hiring authority over Section 4(g)(3) positions as well as Section 4(g)(1) of the CPSA. I also believe it would be a logical step to include majority dismissal for any individual in a senior level position which requires majority approval when he or she is appointed. Therefore, in addition to changing the quorum requirement, I believe the statutory changes mentioned above should be made to ensure that the CPSC will function in the collegial manner Congress mandated.

Question 3. How many voluntary standard activities is the CPSC staff involved in and what percentage of the CPSC budget is devoted to such activities?

Answer. The Commission is currently participating in or monitoring the development of approximately 39 voluntary standards. As shown in the table below, voluntary standards activities account for 16 percent of the Commission's total budget:

Hazard program costs of voluntary standards work:	*Thousands*
Fire/household	$1,445
Electrical/mechanical/children's	2,270
Chemical	673
Subtotal	4,388
Laboratory support for voluntary standards work	155
Voluntary standards coordination	84
Program administration and management support	905
Total	5,532
Total 1987 budget	34,596
Percent of budget	16

Question 4. How many women and minorities occupy management positions at the CPSC? What are their civil service grades and how does that compare with 1980?

Answer. As of June 1987, 13 minorities and 17 women were serving in managerial positions (GS 13-15) at the Consumer Product Safety Commission. Also, two of the three Commissioners and three Commissioner's Special Assistants are women.

Since data for 1980 does not distinguish between managerial and non-managerial personnel, it is difficult to make comparisons with 1987. However, the data does indicate that there were 31 minorities and 46 women in grades GS-13 through SES in 1980 compared to 24 minorities and 36 women in grades GS-13 through SES in 1987. But any assessment of that comparison should take into account the fact that employment at the CPSC has declined approximately 46 percent since 1980.

Question 5. What is the CPSC's backlog for releasing information under the Freedom of Information Act (FOIA)? Has Section 6(b) become an excuse for non-disclosure of product-specific information?

Answer. As of May 15, 1987, the backlog of FOIA requests not completed was approximately 1,480 requests. During calendar year 1986, the Commission completed 13,548 requests, an increase of over 1,000 from the previous year.

Section 6(b) has never been interpreted or used as an excuse for the non-disclosure of product-specific information. Most non-disclosures occur because the information involved is unconfirmed or uncorroborated, and indiscriminate disclosure might conflict with the Commission's statutory obligation not to release inaccurate or misleading information. Since 1983, however, the CPSC has been asking individual consumers to confirm information in complaints they have made. Consequently, the number of denials (in part or in full) pursuant to Section 6(b) has decreased steadily since that year. In calendar year 1986, the Commission withheld materials under Section 6(b) from only 271 requests.

Question 6. Does the CPSC agree with estimates that the societal costs associated with ATV injuries range as high as $1.5 billion?

Answer. In September, 1986, the Directorate for Economic Analysis estimated the costs of ATV-related injuries and deaths for 1985. Based on the Commission's Injury Cost Model, emergency room treated injuries cost consumers about $144 million exclusive of pain and suffering, and about $421 million including the pain and suffering component. In addition, although the Commission has no precise figures, other medically attended injuries (such as those treated in physicians' offices) could have cost consumers on the order of about $400 million in 1985. There were also at least 245 ATV-related deaths in 1985. The Commission does not ascribe a value to life but, for illustrative purposes, a cost of $1,000,000 was assigned to each of the lost lives, the total cost of ATV-related deaths would approximate $245 million in 1985.

Under the above assumptions, all of which were included in the Commission's ATV Task Force Report, the total costs of ATV-related deaths and emergency room treated injuries in 1985 may have run in the neighborhood of $660 million. If other medically attended injuries are included in the calculation, the total costs of ATV-related deaths and injuries could have approximated $1 billion in 1985, and, of course, if higher values of life are assumed, the total costs were well in excess of $1 billion.

While these costs are high, they are in the same range as those for snowmobiles, higher than those for off-road motorcycles and lower than those for on-road motor-

cycles. Furthermore, for each of these vehicles there are societal benefits which could be enumerated.

Question 7. What is the status of any negotiations with Justice Department representatives or ATV manufacturers concerning the Section 12 enforcement proceeding? Who represents the CPSC during such negotiations?

Answer.

[NOTE: In order to protect the integrity of Commission procedures in this regard, the response to this question would be treated as Restricted information.]

The Commission has requested DOJ to represent it in the Section 12 case. Commission and DOJ attorneys are working together in preparing a case; however, no decision has been made by DOJ about actually filing the complaint.

No negotiations with industry have occurred at this time, either by DOJ attorneys or by CPSC staff attorneys.

CPSC and DOJ attorneys met in May, 1987 with industry attorneys, who expressed their views on various legal issues surrounding the case and expressed a desire to discuss a possible settlement. However, CPSC attorneys are continuing to work on preparing to file a complaint. If and when the Commission does begin negotiations, CPSC staff attorneys expect to work closely with DOJ's litigation team.

Question 8. How do ATV injury and death statistics compare to injury and death statistics for other consumer products?

Answer (Scanlon). We have some preliminary information on the relative use of other recreational vehicles and motorcycles. Based on the estimated annual use of ATVs, there have been approximately 142.7 emergency room treated (ERT) injuries per million hours of use and about 0.41 deaths per million hours of use. For off-highway motorcycles, the figures are 94.6 ERT injuries and 0.06 deaths per million hours of use. For snowmobiles, there have been roughly 67.1 ERT injuries and 0.91 deaths per million hours of use. The relative use of on-highway motorcycles is more difficult to estimate, but based on some assumptions, there may have been about 119.3 ERT injuries and 2.85 deaths per million hours of use.

Thus, taking into account relative use, the risk of injury on an ATV may be about 1.5 times greater than that for a trailbike, about 2.1 times greater than that for a snowmobile and about 1.2 times greater than that for an on-highway motorcycle. With respect to the risk of death, for an ATV it is 7 times higher than that for an off-highway motorcycle. However, the risk of death on a snowmobile may be about twice that on an ATV and the risk of death on an on-highway motorcycle may be about 7 times the risk of death on an ATV for a common unit of use.

At this point, it should be noted that the snowmobile death estimates are based on adjustments to death certificate data available to the Commission. A detailed survey of how consumers use snowmobiles, trailbikes and ATVs would have provided additional information but the Commission voted in August, 1985 (by a 3-1 margin with Chairman Scanlon dissenting) not to conduct such a survey. Hence, these findings are based upon the best information available.

Based on this information, we can also estimate the costs of these deaths and emergency room treated injuries, for a common unit of vehicle usage, using the CPSC's Injury Cost Model and arbitrarily assigning a cost of $1,500,000 for each death (the Commission does not endorse any value of life). When this is done, for every 1,000 hours of vehicle use, the total cost of vehicle-related injuries and deaths may amount to roughly $1,310 for ATVs, approximately $460 for off-highway motorcycles, around $1,670 for snowmobiles and in the neighborhood of $4,820 for on-highway motorcycles.

Answer (Dawson). As I understand the nature of this question, what is desired is an assessment of ATV death and injury statistics compared to those of other consumer products in general, not just a comparison of ATVs to other recreational vehicles.

In terms of numbers of deaths and injuries associated with a consumer product, the statistics compiled by the Commission staff with regard to ATVs are extremely high. Of course, it is not always possible to assess relative risks based strictly on numbers. Other products under the Commission's jurisdiction, i.e., bicycles, skateboards, stair steps, and ladders, for example, also show a high number of Emergency Room Treated injuries, according to NEISS statistics. But the Commission has to take into consideration other factors, such as the relative severity of the injuries (including the frequency with which such products are related to actual deaths), and how the products are marketed to the consuming public. Another factor which must be considered is whether or not there is a possibility that Agency action could effectively reduce the numbers of injuries.

In cases considered during my tenure where the Commission undertook either the commitment of large resources or other corrective action, I know of no other prod-

uct where the numbers of deaths and injuries was or is as high as that for ATVs. For example, in 1985 the Commission undertook extensive action with regard to expandable babygates, when the deaths involved were much fewer in number (four deaths over a four year period and an estimated 600 injuries annually). In another Commission action, a large manufacturer, as the result of a consent agreement with the Commission, offered consumers a refund for all of a certain type of crib toy, at an estimated cost of over $500,000.00. In that case the Commission had information about only two deaths that were associated with the product.

Another example is riding lawn mowers, a Commission priority for the past three years and for which the Commission has expended large amounts of time and money. These products are associated with an estimated 75 deaths per year and an estimated 18,000 Emergency Room Treated injuries annually. (In the case of ATV deaths, I wish to emphasize that the 696 deaths from 1982-1986 are known documented deaths as opposed to estimates such as is the case with the riding mower figure.)

With each individual class of products, the Commission judges not only the severity of the injuries, but the number of products in use, and the vulnerability of the population at risk. Ultimately, the Commission must also address whether or not there is reason to believe that Agency action could bring about a reduction in those injuries. For all of the above reasons, I believe the Commission, under its Congressional mandate, had no choice but to address the ATV issue and take strong action to bring about a remedy to protect the public.

Answer (Graham). I concur with the answer of Commissioner Dawson. ATVs present the most serious safety problem I have encountered during my term at CPSC. As Commissioner Dawson points out it is not always possible to assess relative risks based strictly on statistics. Based on the unacceptably high number of death and injury figures associated with ATVs, especially to children under 16 years of age, this is a product which is deserving of immediate attention by CPSC.

Question 9. Why has the CPSC failed to investigate the actual cause of ATV deaths?

Answer. The CPSC has extensively investigated possible causes of ATV-related deaths. In no less than 250 cases, in-depth reviews were done of such deaths after they were reported to the Commission. Furthermore, information on all cases reported to the Commission is always included if an ATV accident is listed on the death certificate. This helps to keep all the cases in perspective.

Often, it is not possible to identify a single cause in accidents of this type. All this information notwithstanding, there was insufficient data to assess the causal role of the ATV in 63.6 percent of the 250 cases reviewed. Usually, the "cause" is the result of several interactions involving the ATV, the rider and the environment in which the ATV is being ridden.

Sufficient data has been obtained, however, for the Commission staff to compute the risk of death by vehicle type, engine size, type of suspension, model year, driver age, driver sex, carrying of passengers and use on paved roads. Further analysis, done under contract, showed that poor driving judgment was a major contributing factor in fatal accident causation (in 29.6 percent of the 250 cases), along with excessive speed (29.6%), poor operating proficiency of the driver (25.6%), and alcohol consumption (21.2%). Usually two or more of these factors combined to play a role. Also, in 28.8 percent of the 250 fatal accident cases reviewed, the vehicle was adjudged by analysts as not being a causal factor. In only 7.2 percent was it judged that vehicle instability or component malfunction was a causal factor.

Question 10. What has the CPSC done to encourage states to pass ATV safety legislation?

Answer. First, as part of its 18 month study of ATVs, the Commission's ATV Task Force reviewed State legislation dealing with recreational vehicles in general and ATVs in particular. Its findings, which were that less than half of the States had adopted legislation or regulatons dealing with ATVs, were subsequently included in the Commission's September, 1986 ATV Task Force Report.

In November, 1986, following release of that Report, the Commission held a conference for its State designees in Louisville, Kentucky during which ATVs were extensively discussed. Greater Federal-State cooperation on ATVs and other product safety issues has been the result. In addition, the Commission sent a letter (on January 28, 1987) to all Governors stressing the importance of ATV safety. Information was provided on injury and death data, the unique handling characteristics of ATVs, minimum age recommendations, the virtues of wearing helmets and protective clothing and the importance of not consuming alcohol, riding with a passenger or riding on paved roads.

Also, the CPSC has shared ATV safety information with a Model State ATV Legislation Committee (composed of representatives from Kentucky, California, Tennessee, and Connecticut) formed to develop draft model State legislation. The committee reviewed and considered the California ATV Act, the Pennsylvania ATV Act and the Specialty Vehicle Institute of America's suggested model state statute in the process of drafting its proposed Model Act. This proposed Model State ATV Act was then sent to the CPSC's State Designees on May 15, 1987.

Question 11. Identify all regulatory action taken by CPSC affecting indoor air quality since FY 1980. For each action, provide a chronology of steps taken.

Answer. The Commission has taken a number of regulatory actions affecting indoor air quality since FY 1980. As the following chronology indicates, these involved benzene, asbestos, urea formaldehyde foam insulation, unvented gas space heaters and other products that were, or are, used inside the home.

A. Benzene

1976-1987.—Evaluated health effects of exposure of benzene. Concluded it caused leukemia.

May 19, 1987.—Proposed rule to ban products containing 0.1% or more benzene.

May 22, 1981.—Withdrew proposed rule on benzene since most products containing benzene had been removed from marketplace and the remaining products were determined not to pose an unreasonable risk.

B. Asbestos

1977.—Issued a ban on asbestos-containing patching compounds and artificial emberizing materials.

1979.—Initiated asbestos fiber release testing on asbestos millboard, paper and other products.

1979-1980.—Negotiated a voluntary agreement with numerous manufacturers to cease using asbestos in hair dryers.

1979-1986.—Encouraged the voluntary withdrawal, from the retail market, of products which contained releasable asbestos.

1982.—Co-authored, with EPA, a booklet entitled "Asbestos-in-the-Home."

Fall, 1986.—Issued an enforcement policy requiring warning labeling and use instructions on all remaining asbestos-containing consumer products.

C. Urea formaldehyde foam insulation

Oct. 1976.—The CPSC was petitioned to develop a safety standard for certain types of home insulation products, including urea formaldehyde foam insulation (UFFI).

Dec. 1979-Feb. 1980.—Held public hearings.

Apr. 1980.—Conducted a technical workshop at the National Bureau of Standards.

June 10, 1980.—Proposed a rule to require information disclosure to potential purchasers warning of potential abverse health effects of UFFI.

Feb. 5, 1981.—Proposed ban on UFFI based on projected risk and the absence of a feasible standard that would adequately reduce that risk.

Aug. 2, 1982.—Issued a ban on UFFI.

Aug. 25, 1983.—Ban set aside by Fifth Circuit Court of Appeals.

Sept. 1983.—Authorized creation of Chronic Hazard Advisory Panel (CHAP) to consider chronic hazards associated with exposure to formaldehyde from UFFI and other cosnumer products.

Nov. 1986.—Voted not to convene a CHAP on formaldehyde.

D. Formaldehyde in pressed wood products

(1) In 1981, the Commission initiated work to evaluate industry formaldehyde measurement procedures in manufacturing plants for quality control purposes. Also, the CPSC staff developed a plan to assess consumer exposure to, and risk from, formaldehyde released from pressed wood products manufactured with urea-formaldehyde (U.F.) resin.

(2) In 1982, the CPSC received a petition from the Consumer Federation of America requesting a mandatory rule to limit formaldehyde emissions from pressed wood to 0.05 ppm.

(3) Between 1982 and 1984, the Commission sponsored extensive laboratory testing of various pressed wood products at the Oak Ridge National Laboratory. The purpose of the testing was to determine pressed wood's formaldehyde emission characteristics under a variety of environmental conditions. From this work, mathematical models were developed which allowed the Commission to predict the formaldehyde concentration in homes. During this same period, work also was conducted on im-

proved means for measuring formaldehyde at low concentratons using standardized methods.

(4) Between 1984 and 1985, the CPSC sponsored laboratory testing at the National Bureau of Standards to validate the mathematical models that had been developed by Oak Ridge National Laboratory. After being validated, the models were used along with information from the National Association of Home Builders Research Foundation to estimate consumer exposure and risk from the formaldehyde released by pressed wood products used in conventional home construction.

(5) In 1986, the staff completed its cancer risk assessment on formaldehyde in pressed wood products found in newly constructed conventional homes. Based on this assessment, the Commission denied (on November 6, 1986) the petition by the Consumer Federation of America, but directed the staff to continue to work with the industry to develop adequate national consensus voluntary standards to limit formaldehyde emissions from pressed wood.

(6) In 1987, staff engaged in discussions with the pressed wood industry over development of a national consensus standard for pressed wood products and the feasibility of a graded standard based on the emission potential of those products. The discussions are continuing.

E. Unvented gas space heaters (UVGSH's)

1974.—CPSC petitioned to develop a mandatory standard for all space heaters to address alleged carbon monoxide poisoning hazard.

1975.—Denied petition except for unvented gas space heaters (UVGSH's).

1978.—Proposed ban on UVGSH's.

1979.—Withdrew ban in light of a new technical development: the oxygen depletion sensor (ODS).

1980.—Proposed standard requiring that UVGSH's be equipped with ODS devices.

1982.—Promulgated the standard.

1983.—Withdrew the mandatory standard in order to defer to a voluntary standard.

F. Methylene chloride

1976.—The CPSC wsa petitioned to require special labeling of products containing methylene chloride (DCM) due to an alleged carbon monoxide hazard.

1976.—Conducted exposure study on methylene chloride at an Edgewood Arsenal (MD) laboratory.

1978.—Granted petition for special labeling.

1979.—Referred petition labeling issue to Toxicological Advisory Board (TAB).

1981.—The TAB recommended that the petition be denied but that product carry several warning phrases.

1981.—Deferred decision on labeling pending the results of several animal bioassays.

Late 1983.—Gavage bioassay terminated by the NTP due to procedural flaws.

Spring 1985.—Inhalation bioassay is completed by the NTP, finds clear evidence of carcinogenicity in mice and female rats and some evidence of carcinogenicity in male rats.

June 1985.—Staff presents briefing package on DCM, including an individual risk assessment, to the Commission.

Feb. 27, 1986.—The CPSC decides to conduct formal rulemaking under Section 3(a) of the Federal Hazardous Substances Act.

Aug. 20, 1986.—Proposed Rule published in Federal Register.

Oct. 20, 1986.—Comment period on Federal Register notice ends.

June 25, 1987.—Commission briefed by staff on comments to proposed rule, modified risk assessment.

July 30, 1987.—Decision meeting on DCM scheduled.

G. Perchloroethylene (PERC)

1981.—In cooperation with the Environmental Protection Agency, assessed exposure levels inside coin-operated laundries with dry cleaning machines on the premises.

1981.—Deferred further action on PERC pending results of on-going NTP inhalation bioassay.

1986.—Staff presented status report on perchloroethylene which analyzed the 1985 NTP bioassay and limited consumer exposure data. Report concluded that PERC was a "sufficient evidence animal carcinogen" and estimated the increased risk of cancer to consumers from (1) use of coin-operated laundries containing dry cleaning machines and (2) indoor air exposure through dry cleaned clothes brought into the home.

Question 12. How does CPSC intend to allocate indoor air quality resources by project during FY '88?

Answer. In FY '88 the CPSC staff will be:

(1) Evaluating data from indoor air quality (IAQ) studies funded in previous years, developing recommendations for remedial action and continuing to coordinate IAQ efforts through the Interagency Committee on Indoor Air Quality (CIAQ). Resource projections: $93,000 and 1.5 Full Time Equivalent Staff Positions (FTEs).

(2) Conducting additional laboratory chamber studies of consumer products identified as contributors of airborne biological pollutants to determine effective strategies for reducing consumer exposure. Also, developing consumer information and guidelines for use of products to minimize exposure. These messages will be targeted towards particularly susceptible populations. Resource projections: $282,000, 3.5 FTEs and 70,000 contract dollars.

(3) Implementing Commission decisions on methylene chloride and developing appropriate remedial strategies to reduce consumer exposure to perchloroethylene. Resource projections: $132,000 and 2.1 FTEs.

(4) Developing model certification guidelines for asbestos removal or repair in the home; also, developing and distributing advice to home owners on what actions to take and avoid if they have deteriorating asbestos in their homes. Resource projections: $95,000 and 1.5 FTEs.

Question 13. Now that indoor air quality has been voted a CPSC priority project for FY 1989, what does CPSC intend to do and how much staff time and contract dollars does the CPSC intend to devote to this priority?

Answer. By 1989, the CPSC will have gained sufficient knowledge and technical information from prior years' projects on combustion appliances, allergens and pathogens, solvents, volatile organics, respirable fibers and polynuclear aromatic hydrocarbons to provide advice to consumers on dealing with indoor air problems. Using this information, two guidance documents will be developed. The first will provide suggestions to consumers for decreasing indoor air pollution exposures from consumer products while the second will be a reference manual for contractors and consumers on how to deal with asbestos in the home.

Also, in fiscal 1989, the Commission will continue to monitor and support ongoing research so as to further understand the nature and magnitude of the health problems posed by individual indoor air pollutants and pollutant mixtures. In addition, the CPSC will continue to monitor voluntary standards activities designed to promote improved indoor air quality. The resources currently allocated for this priority project are 5.8 FTEs and $200,000 contract dollars for a total costs of $558,000.

Question 14. What has the CPSC done to identify and evaluate consumer product sources of organic pollutants, some of which are already known carcinogens?

Answer. The CPSC has undertaken a variety of initiatives to identify and evaluate sources of organic pollutants from consumer products. Specifically, the Commission has:

(1) Evaluated a number of specific products expected to release organic pollutants which have been identified as potential carcinogens in both field and laboratory studies. These products have included polyvinyl chloride plastics (DEHP), pressed wood products (formaldehyde) and paint strippers (methylene chloride).

(2) Conducted chamber studies to determine levels of pollutants released from the pressed wood products, paint strippers and aerosol spray paint.

(3) Developed modeling capabilities to predict consumer exposure to these pollutants and calculated risk assessments based upon these predictions.

(4) Conducted field studies monitoring levels of volatile organic chemicals in a total of 100 homes to date. Thirty to forty specific organic pollutants have been identified in indoor air at concentrations (higher than those found outdoors) which may cause adverse health effects.

Question 15. Why, in light of the known cancer risk presented by asbestos, has the CPSC failed to take regulatory action to ban all consumer products containing asbestos? Why has the CPSC chosen to wait a possible ten years for such a ban?

Answer. The Commission's efforts to negotiate voluntary withdrawal of asbestos products from the consumer market have been very successful. Most manufacturers have ceased production of asbestos products for household use. Asbestos substitutes are available for these products and are widely used. The few manufacturers of asbestos products available for consumer use are gradually phasing out their use of asbestos. The number of asbestos products remaining under CPSC jurisdiction is small and decreasing; usage of these products is also decreasing.

The Commission has determined, however, that these products present a cancer risk. But, since there are reasonable substitutes for these products, the Commission believes that any reduction in the overall risk of asbestos exposure afforded by a

ban of consumer products would be small. The Commission's enforcement policy, (adopted last fall) requiring labeling to inform consumers about products containing asbestos, should provide additional protection against exposure.

Question 16. What has the response been on the part of each manufacturer that has been requested to exclude asbestos from household products?

Answer. Most manufacturers stopped production of asbestos products for household use in the late 1970's. For asbestos products still available for use by consumers, the number of manufacturers is small and most have agreed voluntarilly to phase out the use of asbestos in their products. Only a few firms have stated that they will continue to use asbestos. Under the Commission's enforcement policy, these remaining asbestos products must be labeled to warn consumers of any chronic health risks.

Question 17. Has the CPSC estimated the percentage of homes that contain asbestos? If so, what is the estimate? If no determination has been made, why?

Answer. The Commission's Asbestos in Homes project is designed to address the potentially widespread risk of household exposure to asbestos, particularly in older homes. Based on Census data, the CPSC estimates that up to 30% (about 25 million) of the 85 million existing households were built before 1950. Since asbestos materials were most widely used in home construction prior to 1950, the Commission believes that many of these homes contain some asbestos building or insulating materials. In 1983, the American Society of Home Inspectors conducted a survey of homes its members inspected in the Eastern United States. In this limited sample, 27% of the homes were found to contain asbestos; most of these asbestos-containing homes were 20 to 40 years old.

Question 18. What mandatory or voluntary standards are in place to limit human exposure to pressed wood products, such as particleboard, medium density fiberboard and hardwood plywood?

Answer. The U.S. Department of Housing and Urban Development (HUD) currently has requirements in their manufactured housing safety standard to limit the amount of formaldehyde that can be released from particleboard and hardwood plywood used to construct mobile homes. These standards require that particleboard not exceed a 0.3 parts per million (ppm) level and hardwood plywood not exceed a 0.2 ppm level, when tested under certain specified conditions. The HUD standard does not include medium density fiberboard (MDF).

The two principal trade associations representing manufacturers of pressed wood made with urea-formldehyde (U.F.) resin have published voluntary standards to limit formaldehyde emissions. The standards (published by the National Particleboard Association and the Hardwood Plywood Manufacturers' Association) are identical to the HUD requirement for particleboard and hardwood plywood. The National Particleboard Association also recently published a voluntary industry standard to limit the amount of formaldehyde released by MDF. Although the limit for MDF is 0.3 ppm, the test conditions under which this level has to be achieved are less stringent than those required for the other pressed wood products.

After evaluating the results of three recent studies on formaldehyde, the Commission voted (on November 6, 1986) to authorize its staff to continue working with industry on development of voluntary standards for pressed wood (reversing an earlier decision made for budgetary reasons). Discussions subsequently have been held on the development of a consensus standard (industry has indicated it is willing) and on the feasibility of incorporating a product grading system, based on formaldehyde emission potential, into that standard.

Question 19. What regulatory action has the CPSC taken on pressed wood products since 1980?

Answer. Please refer to Part D of the response to Question #11.

Question 20. Why has the CPSC pursued a voluntary standard rather than a mandatory standard for formaldehyde emissions from pressed wood products? When did the CPSC decide not to issue an Advanced Notice of Proposed Rulemaking?

Answer. The Commission decided not to issue an Advanced Notice of Proposed Rulemaking on November 6, 1986 when it denied the Consumer Federation of America's petition requesting a mandatory standard to limit formaldehyde emissions from pressed wood products. Instead, the Commission decided to pursue the use of voluntary standards to limit the release of formaldehyde from pressed wood because: (1) the industry expressed a willingness to develop standards, (2) the voluntary process is expected to take less time and resources and (3) the body of data needed to support a voluntary standard is less extensive than that required from a mandatory standard.

Question 21. Now that the Environmental Protection Agency has identified formaldehyde as a probable human carcinogen, what action does the CPSC intend to take regarding the formaldehyde emissions from pressed wood products?

Answer. At the present time, the Commission intends to continue its efforts to encourage development of suitable national consensus voluntary standards for pressed wood products. However, if those efforts fail to produce a suitable result, the Commission may undertake development of a mandatory standard. The decision by the Environmental Protection Agency to classify formaldehyde as a probable human carcinogen does not alter the Commission's outlook since the CPSC has considered formaldehyde a potential human carcinogen from the time it acted to ban the use of urea-formaldehyde foam insulation in 1982.

Question 22. When did the CPSC first become aware of the hazards posed by formaldehyde emissions from pressed wood products?

Answer. In 1980, the Commission received some preliminary information from a laboratory, under contract to the CPSC, that was screening products containing formaldehyde to deterrmine which products had the greatest poter.tial for formaldehyde release. Pressed wood materials were the highest emitters of the products being tested. In addition to the findings of the contractor, the Commission also was receiving consumer complaints on formaldehyde believed to be associated with pressed wood. A great many of these complaints came from residents of mobile homes in which the use of pressed wood was know to be extensive. These findings, along with increasing concern about the adverse health effects being associated with formaldehyde, led to the Commission's investigation into pressed wood products.

Question 23. What is the status of CPSC action on methylene chloride?

Answer. On August 20, 1986, the Commission published a proposed rule on methylene chloride in the Federal Register. Interested parties were given 60 days to comment and 17 comments were subsequently received. The CPSC staff then evaluated those comments and, on June 12, 1987, provided the Commission with briefing materials including analyses of the comments, an indication of options and recommendations for action. The staff then briefed the Commission verbally on June 25, 1987 and the Commission is now in the process of evaluating the staff's recommendations. A decision meeting has been scheduled for July 30, 1987.

Question 24. Have consumers been warned of the cancer risks posed by methylene chloride?

Answer. In preparation for a number of public briefings on methlene chloride (DCM), the Commission staff has prepared briefing packages and memoranda which are publicly available and which discuss the available scientific information on the potential cancer risk posed by exposure to methylene chloride. Also, on February 28, 1986, the Commission issued a press release announcing its decision to initiate a rulemaking procedure on DCM under Section 3(a) of the Federal Hazardous Substances Act (FHSA). Then, on August 20, 1986, the Commission published a proposed rule in the Federal Register which (1) discussed whether household products containing methylene chloride should be determined to be hazardous substances by reason of DCM's potential carcinogenicity to humans and (2) solicited public comment. That Federal Register Notice generated 17 responses from interested parties, all of which were carefully evaluated by the Commission staff. Analyses of these comments and an updated risk assessment were then presented to the Commission in a briefing package (dated June 12, 1987), the contents of which were summarized in an open-to-the public briefing June 25, 1987.

Should the Commission decide the proceed with a mandatory rule or some other regulatory option, product labeling and other consumer information efforts are a likely result.

Question 25. Has the CPSC been informed of possible carcinogenic emissions from wood stoves? If so, when was the agency informed?

Answer. It is commonly known that wood-smoke contains a variety of combustion products including a spectrum of polynuclear aromatic hydrocarbons, some of which are carcinogenic. If a wood-stove is operating properly, it is assumed that the vast majority of the combustion products are vented to the outdoor air and diluted. In 1984, the CPSC funded research with the Tennessee Valley Authority to determine whether or not a properly operating wood-burning stove released carbon monoxide and/or polynuclear aromatic hydrocarbons (PAH) into the indoor air in sufficient levels to result in adverse health effects. Measurements were made, in a test facility, of the concentrations of a full range of combustion products including total suspended particulates, respirable suspended particulates and polynuclear aromatic hydrocarbons. Results of these tests indicated that levels of polynuclear aromatic hydrocarbons, which include benzo(a)pyrene, a suspected carcinogen, were elevated by the use of these wood stoves. The final report on these limited tests was received in

August, 1985. This was the first confirmation received by the agency that some level of carcinogenic emission from stoves were to be found in indoor air.

Since these limited tests had been conducted in a test facility rather than in real-use situations, the CPSC funded additional monitoring of these pollutants in home wood stoves as part of the larger Kingston-Harriman 300 House Indoor Air Quality Study. Data from that study, which were collected in an actual use situation, are currently being analysed by the staff and will be presented to the Commission later this year.

Question 26. Identify all advice that the CPSC provided to the public on possible hazards from wood stoves.

Answer. The increased use of auxiliary heating in the late 1970's produced a dramatic increase in residential fires caused by woodburning heating equipment. Major causes of these fires were identified as improper installation, unsafe use and inadequate maintenance of appliances, chimneys and chimney connectors.

Since that time, CPSC has endeavored to inform the public of the serious nature of the fire hazard and remedial measures that should be taken. Specifically, the Commission has advised consumers to:

Install new equipment according to existing building codes and manufacturer's instructions.

Check to make sure that existing stoves, chimneys, fireplaces and stovepipes are installed properly in accordance with local building codes and manufacturer's directions. If improperly installed, the equipment should not be used until the installation is corrected.

Check chimneys and stovepipes frequently during the heating season for creosote buildup and have them cleaned when necessary.

Have the entire system professionally inspected and cleaned at least once a year.

Be aware that "HT" (high temperature) metal chimneys provide greater protection than non-HT metal chimneys in the event of a creosote chimney fire.

Operate stoves within the manufacturer's recommended temperature limits. To that end, a chimney temperature monitor may be a useful accessory.

Make sure no flammable or combustible items are near a stove or a chimney pipe.

Never use a stove pipe or gas vent as a chimney.

Do not use flammable liquids to start a fire.

Use the correct fuel, never trash.

Place ashes in metal containers.

A variety of different avenues were followed to transmit this information. These included:

(1) A mandatory rule requiring permanent labels on stoves (adopted in May, 1983).

(2) Television and radio public service announcements.

(3) A press conference (on January 21, 1987).

(4) Media interviews.

(5) Distribution of printed materials (Fact Sheet, Consumer Safety Alert, Safety for Older Consumers brochure, What You Should Know About Home Fire Safety borchure, etc.).

(6) Community demonstration projects.

(7) Trade Show exhibits.

(8) Liaison with states, communities, fire departments, consumer organizations and industry.

(9) Workshops.

(10) Model stove installation manual (published in January, 1987).

In addition, the CPSC conducts a Home Heating Equipment consumer information program which emphasizes woodburning heating safety each year. While the Commission cannot say for sure that all these activities are responsible, it is encouraged by the fact that the number of woodburning-related residential fires has been declining since 1984.

Question 27. What is the status of research begun in FY 1986 on humidifiers and their allergenic effects? What is the pace of research on this issue and when will a report be produced?

Answer. Two types of research were begun in FY 1986 on humidifiers and their allergenic effects. One type deals with in-home measurements while the other involves laboratory tests.

The first series of in-home measurements were made for the CPSC by the Oak Ridge National Laboratory as part of the Kingstone-Harriman 300 home indoor air quality study initiated in 1985. These measurements have been completed and are currently being analyzed by the CPSC staff. In addition, a correlation between these measured levels and health effects is to be done by the Harvard School of Public Health. Results from this correlation are expected late in calendar year 1987.

A second phase of in-home measurements are being conducted by the University of Michigan in homes in: Portage, Wisconsin; Steubenville, Ohio; and Topeka, Kansas. Results of these studies are expected in fiscal year 1989.

With regard to the laboratory experiments, a number of difficulties were encountered in the initial stages of this research. However, the preliminary tests and the necessary modifications to the testing protocol have been completed. Experimental work will continue throughout FY 1987 and a final report is expected in July, 1988.

Question 28. Why did the CPSC fail to publish an advanced notice of proposed rulemaking for performance standards addressing pollutant emissions from kerosene heaters and from unvented gas space heaters?

Answer. The basic reason the CPSC has not issued an Advanced Notice of Proposed Rulemaking (ANPR) in recent years dealing with emissions from kerosene heaters and unvented gas space heaters (UVGSHs) is that the circumstances have not seemed to warrant the Commission taking such action. Last fall, however, the National Kerosene Heater Association (NKHA) petitioned the Commission to issue a mandatory rule limiting the nitrogen dioxide emissions of kerosene heaters and otherwise requiring those heaters to comply with Underwriters Laboratories (UL) Standard 647 on kerosene heaters. After a careful review, the CPSC's Office of General Counsel concluded that this petition met the necessary requirements and that the full Commission should decide if it should be granted.

To reach its decision, the Commission will have to examine not only the lastest facts but some past history. When problems associated with emissions from kerosene heaters and UVGSHs were identified, both the industries and UL volunteered to work with the Commission on possible remedies. Not only did the industries thereafter introduce new technology heaters that emitted fewer air pollutants, but they also worked to develop a certification test method that would enable the Commission, and others, to check the effectiveness of those heaters. As a consequence, the feeling has been that many of the issues that would be addressed by a mandatory rulemaking have been largely resolved, especially since considerable progress has been made towards perfection of the certification test method. Indeed, the rate of progress has been such that the CPSC staff expects to be in a position to seek a voluntary standard on nitrogen dioxide emission levels by the end of this calendar year. However, now that the industry itself has requested a mandatory rule, on the grounds that differing state standards would otherwise apply, further consideration will have to be given to that possiblity.

Question 29. What is the status of certification test methods for the measurement of pollutants from kerosene heaters and from unvented gas space heaters?

Answer. Draft certification test methods have been developed for the testing of both unvented gas space heaters and kerosene heaters. Testing to compare the results of the new test methods with chamber measurements is nearing completion. These results will provide a basis for the use of measured emission rates in extrapolating, through computer modeling, to pollution levels expected in a home. An emission rate for the certification test method can then be established with some assurance that it will provide the consumer with a reasonable level of protection in a home use situation. All this testing should be completed during the summer of 1987.

Question 30. How long has the CPSC recognized that the Federal Hazardous Substances Act requires labels on chronically hazardous consumer products?

Answer. The CPSC has always recognized that the Federal Hazardous Substances Act (FHSA) applies to chronically hazardous household products by virtue of the FHSA definition of "toxic substance". A part of Section 2(g) of the FHSA, that definition reads: ". . . any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface."

Commission recoginition of its responsibilities in the area of chronic hazard labeling has been demonstrated by a number of developments over the last several years. In 1985, for instance, the CPSC began evaluating whether consumer products containing methylene chloride should be declared chronically hazardous substances and labeled accordingly. In early 1986, to resolve scientific uncertainties surrounding the issue, the Commission voted to issue a proposed rule under Section 3(a) of the FHSA, and it is now in the process of determining whether a final rule on methylene chloride, which would set the stage for a chronic hazard label, should be published. Also, in October 1986, the CPSC voted to adopt an enforcement policy on consumer products containing asbestos. That policy, which took effect 90 days after it was issued, requires such products to be labeled in such a way as to warn consumers of the cancer risk posed by asbestos.

Inasmuch as other chemicals suspected of posing chronic hazards are in the process of being investigated or will be coming to the Commission's attention in the

future, the Commission has also undertaken a project in FY '87 designed to help develop criteria and guidelines for a systematic approach to chronic hazard labeling. Also, to encourage voluntary implementation of chronic hazard labeling, the Commission's Acting General Counsel issued an Advisory Opinion on March 19, 1987 concerning the jurisdictional applicability of such labeling under the FHSA. That Opinion concludes that, is a consumer product is subject to the labeling requirements of the FHSA, because it is believed to pose a chronic hazard, then those requirements cannot be pre-empted by differing state or local labeling regulations.

Question 31. What is the CPSC's explanation for its inaction up to now in regulating consumer products that pose chronic hazards?

Answer. The Commission has not been inactive in regulating consumer products found to pose a chronic hazard. In addition to the efforts previously mentioned (see response to question #11) the CPSC has taken the following regualtory actions:

Vinyl Chloride

1974/1987.—Banned the use of vinyl chloride monomer as an ingredient or propellant in self-pressured household products.

Nitrosamines

1984.—Issued an enforcement policy to limit the use of nitrosamines in pacifiers.

DEHP

1983.—Authorized creation of a Chronic Hazard Advisory Panel to consider chronic hazards associated with exposure to DEHP from vinly baby pacifiers and teethers.

1986.—In response to a CPSC request, the Toy Manufacturers of America (TMA) developed a voluntary standard to limit the use of DEHP in vinyl baby pacifiers and teethers.

Question 32. Now that it has issued a formal statement of authority to require chronic hazard labeling, does the CPSC intent to follow it up with enforcement? If so, what steps does the CPSC plan to take?

Answer. While it will help clarify the fact that consumer products containing chronically hazardous substances must be labeled in accordance with the FHSA and that such labeling takes precedence over any state or local labeling requirements, Advisory Opinion #309 does not establish any new regulatory requirements. As noted in respone to Question #30, the CPSC has always recognized that the FHSA requires labels on chronically hazards consumer products. And, as in the past, it will continue to enforce the FHSA labeling requirements for chronic as well as acute hazards.

With regard to specific steps the CPSC plans to take, one will be to follow up on the statement of enforcement policy adopted by the Commission last fall calling for the chronic labeling products containing asbestos. Also, if the Commission promulgates a final rule declaring methylene chloride to be a hazardous substance by virtue of its carcinogenicity to humans, then the staff under the CPSC's ongoing Chemical Hazards Enforcement Program will take steps to ensure that products subject to that rule are properly labeled. In addition, the CPSC staff is working with art and craft trade groups in an effort to communicate to all manufacturers and distributors of art and craft materials their responsibilities for both chronic and acute hazard labeling under the FHSA. Nor will the effort stop there. A consumer alert on art and craft materials is planned for dissemination to parents and teachers, and an art material handbook will be developed to provide guidance on their safe use, handling, storage and disposal.

It should also be noted that the CPSC staff is currently reviewing a proposed voluntary standard on precautionary labels for hazardous industrial chemicals. This draft standard was developed by a leading chemcial trade association and has been submitted to the American National Standards Institute (ANSI) for consideration as a consensus standard. CPSC input into this process is likely to be facilitated by the fact that the Commission has its own FHSA chronic hazard labeling project underway in FY '87. A description of that project is contained in the response to Question #30.

FOLLOWUP QUESTIONS SUBMITTED BY SENATOR GORE

Question 1. What is the CPSC's policy to ensure compliance with standards applying to products such as those which brought about the death of Mr. Snow's daughter and the CPSC resources committed to compliance?

Answer.The Consumer Product Safety Commission conducts a compliance program to enforce safety regulations for toys and children's products. Enforcement of the labeling criteria for lawn darts and the prohibition of lawn dart sales in toy

stores and toy departments is a part of this program. Lawn darts are banned as children's articles but may be sold as a game of skill for adults under certain conditions which include specific warning labels and a prohibition against sales in toy stores by toy departments of stores.

For fiscal year 1987, the CPSC has allocated 10.9 FTE's to enforcing its safety regulations for toys and children's products. To make the best, most-efficient use of these resources, the Commission concentrates its enforcement efforts on suspected instances of non-compliance rather than relying on random sampling of products. Our experience has shown that a targeted approach, using leads obtained for a variety of information sources, results in a higher percentage (slightly over 50%) of violative products being identified (compared to samples collected) than does the random inspection approach.

Leads about products that may not comply with CPSC regulations are obtained from a variety of sources, including: Consumer complaints; trade complaints; reports of injuries and deaths; reports of hazardous products filed by companies under section 15 of the Consumer Product Safety Act; CPSC staff observations at trade shows; CPSC staff observations during reviews of firms' catalogs; newspaper articles; and reinspection of firms which have had previous violations.

Once a lead results in the identification of a potential violation, members of the Commission's field staff inspect manufacturers, importers, distributors and retailers. In addition, they collect samples of suspect products to be tested or evaluated for compliance with applicable regulations. When violations are confirmed, manufacturers and importers are promptly notified of the violations and asked to stop distribution immediately. The Commission also requests that products which present serious hazards be recalled from retailers and consumers.

Most companies voluntarily cease distribution of, and conduct recalls on, violative products when asked to do so by the Commission. In fact, over 95% of the corrective action plans in which the Commission is involved are agreed to voluntarily. However, there are instances where the company involved is not willing to undertake the desired corrective action on its own initiative. In those cases, legal action has been taken by the Commission, just as it will be taken in the future if the circumstances warrant.

Question 2. How many complaints concerning lawn darts have been received by CPSC?

Answer. There were 28 complaints related to lawn darts reported to the CPSC from July 1, 1973 through April 1987. This does not include reports of injuries the CPSC has received from its National Electronic Injury Surveillance System (NEISS). That figure is provided in response to question 3.

Question 3. How many injuries and deaths related to lawn darts have been reported to CPSC?

Answer. From calendar year 1978 through 1986 the CPSC received, from the hospital emergency rooms that comprise NEISS, reports of 105 injuries associated with lawn darts. Based on that figure, the Commisison estimates there were 6,100 lawn dart related injuries treated in the nation's hospital emergency rooms during that period, an average of approximately 680 injuries per year.

Since 1970, the CPSC is aware of two deaths associated with lawn darts. Michele Snow, who died in April 1987, was the most recent death reported through CPSC's Reported Incident File. The other involved a 4 year old boy in North Dakota who died in August 1970.

Question 4. What is the status of CPSC compliance efforts undertakan in response to complaints concerning lawn darts and the status of any efforts undertaken in response to Mr. Snow's situation?

Answer. Lawn darts are exempted from classification as a banned toy or other banned article for use by children under Federal Hazardous Substances Act Regulations, CFR 1500.86(a)(3). The regulations state that lawn darts and similar sharp-pointed articles not intended for toy use and marketed solely as a game of skill for adults must bear a specific statement (set out in the regulations) on the front panel of the carton and on any accompanying literature. The statement on the carton must be printed in sharply contrasting color, within a border, and in letters at least one-quarter inch high. In the accompanying literature (instructions) the lettering must be at least one-eighth inch high.

As noted in question 3, the CPSC is aware of two deaths associated with lawn darts. Also, the Commission estimates there were 6,100 injuries associated with these darts from 1978 through 1986. Appproximately 12 million individual lawn darts may be in use at this time.

As a result of the Snow tragedy and our independent observations of lawn darts which failed to meet the labeling criteria, an assignment was issued to the CPSC's

field staff on June 8, 1987 to inspect a minimum of 100 retail stores including toy, variety, department and sporting goods stores, While the results have not been fully tabulated, a number of violations have been identified as follows:

Retail Sales of Lawn Darts.—One hundred ten (110) retail stores have been inspected so far. Four toy stores out of the thirty-two which were inspected were found to be selling lawn darts. The management at all fours stores has been informed verbally of the ban on sales of lawn darts in toy departments/stores and told to stop sale. Six variety and department stores out of the fifty-three inspected were discovered selling lawn darts in toy departments. Management at these six stores has been informed of the ban on lawn dart sales in toy departments and told to either stop selling lawn darts or move them out of the toy department. Generally, all store management has agreed to our requests. The Commission staff will monitor these stores to ensure that violative sales practices have ceased. Also, the staff will confirm these violations in letters to retailers and will request that consumers be notified, through store posters and possibly news releases, of the potential hazards presented to children by the lawn darts they sold.

Three variety stores and three sporting goods stores out of twenty-five inspected were selling lawn darts with sporting goods but displaying them close to items which were obviously intended for young children. Here again, CPSC staff will be requesting that personnel in those six stores move the lawn darts away from items that are obviously child oriented. Also, guidance to retail stores will be provided on the appropriate display of lawn darts with sporting goods.

Lawn Dart Labeling.—During inspections of retailers, the CPSC investigators collected samples of lawn darts for review of the labeling. Twenty-one (21) models of lawn darts from thirteen importers and one distributor of domestically manufactured lawn darts were collected. Ten products from eight firms were found to have serious labeling violations, namely the total absence of the required warning statement on the front panel of the package. A number of the products also were found to have less serious labeling violations in conjunction with the instructions. These eight firms with the serious violations have been told to (1) stop distribution of the lawn darts, (2) recall them from retail stoes or arrange to have all labeling violations corrected at the retail level with stick-on labels, and (3) provide notice to the public of potential hazards that law darts present to children. They have agreed to our requests.

Eleven (11) products from seven firms (including one of the firms which had a serious labeling violation) has less serious labeling violations such as inadequte instructions or a smaller than required warning label on the front of the box. Relabeling the boxes with warning labels in the required type size is the usual remedy for this type of violation. These firms will be notified of violations and requested to stop distribution until they are corrected.

We will monitor correction of violations by retailers, importers, and the distributor to make sure that adequate corrections are accomplished promptly.

Investigation of Lawn Darts Involved in the Death of Michele Snow and the Retail Sale of These Lawn Darts.—We have ascertained the following facts regarding this tragic accident.

The original lawn dart carton conformed to the CPSC's labeling requirements, based on the Corner's report to the incident which contained a photograph of the box purchased by Mr. Snow. The original carton, which we have inspected, is in the hands of Mr. Snow's attorney. The carton used by Mr. Snow during his appearance before Congress was not in compliance with the labeling requirements. This second carton was purchased in April, 1987 by a law clerk from Mr. Snow's attorney's office. This carton was purchased at a store different from the one where Mr. Snow bought the game set that included the fatal lawn dart. We believe this non-complying carton is no longer being distributed by the firm.

Mr. Snow has indicated he bought the three-game combination set containing lawn darts in December, 1986. During our inspection in June 1987, we found the display at the end of an aisle featuring sporting goods. The display of lawn darts in sporting goods departments has been permitted in the past. However, the location was within a few feet of children's tricycles and bicycles with training wheels. Therefore, we requested the manager of the Riverside, California, store to remove the lawn darts from this location because of the close proximity to children's toy articles. Six other retail stores in this chain of outlets were inspected and did not display lawn darts near toys.

Our investigators recently inspected the importer of the lawn darts involved in this incident. Samples were collected of all of the firm's lawn dart sets and combination game sets, which include lawn darts, to evaluate compliance with the regulations. The labeling criteria of the exemption on three of the four cartons was being

met by the firm. However, although directions and warnings were included on the accompanying literature (instructions), these warnings did not contain the specific language required in the regulations. On the fourth carton, a four-game combination set, the required labeling on the front panel of the carton was found to be 1/16 inch smaller than the required type. The importer will be told to stop distribution until these violations are corrected. Reprinting the instructions with the required specific language would be an acceptable remedy for this type of violation.

The actual lawn dart involved in the fatality had been altered subsequent to manufacture. Instead of having a point less than an approximate two inches long with a diameter of ¼ inch, the dart in question had a point more than eight inches long with a diameter of ⅛ inch. The Riverside County Corner's Report had originally shown the diameter to be approximately 1/16 inch, but subsequent examination showed it to be ⅛ inch.

With regard to the retailer involved in the Snow case, there is no clear violation of the CPSC's lawn dart regulation. However, it would have been more prudent for the retailer not to have located the lawn darts near the toy displays. While the retailer has been asked to relocate the lawn dart displays, no enforcement action is contemplated at this time.

Question 5. Has the CPSC ever considered banning the sale of lawn darts?

Answer. The CPSC has been presented various staff suggestions for making the current regulations more meaningful. One of these suggestions is revocation of the exemption to the existing ban which permits the sale of lawn darts in retail stores, other than toy stores and departments, if the darts carry the required warning statements. Revocation of this exemption would result in a total ban of lawn darts.

Question 6. Does the exemption for classification as a banned hazardous substance for educational materials [16 CFR 1500.85(a)(4)] apply to children in grades kindergarten through 6? If not, what does the CPSC intend to do to inform parents and educational institutions about the limitation on this exception?

Answer. The exemption, from classification as banned hazardous substances, which exists for education materials, including art materials, would not apply to products intended for children in grades kindergarten through six. A limitation to the exemption, found in Section 2(q)(1) of the Federal Hazardous Substances Act (FHSA), states that exemptions may be granted only on the condition that the articles" . . . are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings . . . ."

The CPSC staff is curently working with art and craft trade groups in an effort to inform or remind all manufacturers and distributors of art and craft materials of this limitation and their responsibilities for both acute and chronic hazard labeling under the FHSA. To get this information to parents and teachers, the CPSC will be preparing a consumer alert for dissemination. Additionally, the CPSC staff is going to begin work with the art materials industry, consumer groups and educational groups to develop an art materials handbook. This booklet will provide guidance on the safe use, handling, storage and disposal of art and craft materials.

Question 7. What is the CPSC's policy with regard to consumer complaints concerning adult and child-size sunglasses?

Answer. Adult and child-size sunglasses are "medical devices" and are subject to regulations issued by the Food and Drug Administration (see 21 CFR § 801.410). "Medical devices" are specifically excluded from the products subject to the Commission's jurisdiction under provisions of the Consumer Product Safety Act by Section 3(a)(1)(H) of that act (15 U.S.C. § 2052(a)(1)(h)). However, the Federal Hazardous Substances Act (FHSA) (15 U.S.C. § 1261 *et seq.*) gives the Commission authority to regulate toys and articles intended for use by children. The FHSA does not exclude "medical devices" from the products which are subject to the Commission's authority under the provisions of the act. Thus, the Commission has the authority to regulate child-size sunglasses under provisions of the FHSA if it appears necessary.

If the Commission receives a complaint concerning either adult or child-size sunglasses, the Commission's policy is to refer that complaint to the Food and Drug Administration as the agency having exclusive jurisdiction over adult sunglasses and considerable experience in dealing with child-size sunglasses. However, the Commission would be free to reassert its claim to jurisdiction if it appeared that an unreasonable risk of injury existed and that the FDA was unlikely to take remedial action.

Question 8. Should the Consumer Product Safety Act be amended to impose a time limit requiring the CPSC to determine whether to pursue a Section 12 imminent hazard action on its own in situations when the Department of Justice fails to act on a request by the CPSC to pursue such an action?

Answer. No. Such an amendment is not necessary. The Consumer Product Safety Act gives the Commission the authority to pursue a Section 12 imminent hazard action on its own without the assistance of the Department of Justice. Imposition of a fixed time limit would be unfair to the Department of Justice in cases that are highly technical or involve a voluminous record. For example, in the ATV enforcement action, due to the complexity of the issues, the 14,000 page record, resource consideration and the Commission's record in previous Section 12 cases, a decision was made to seek the assistance of the Department of Justice. Conversely, a time limit would not give the Commission the flexibility it needs in pursuing different types of enforcement actions, and would inhibit decision-making where complex litigation is involved.

QUESTIONS SUBMITTED BY SENATOR BREAUX TO CHAIRMAN SCANLON

Question 1. The CPSC states that it is aware of 696 "ATV-related" deaths since 1982. How many of these were caused by the ATV? I understand some were caused by gunshots, electrocutions, or drownings. Why have you included incidents that were not caused by ATV's.

Answer. In September 1986, the Directorate for Epidemiology prepared a hazard analysis of All-Terrain Vehicle (ATV) related injuries and deaths. Wherever possible, investigations were made of these deaths after they were reported to the Commission. Information on all cases reported to the Commission is always included if an ATV accident is listed on the death certificate. This helps to keep all the cases in perspective.

It is not usually possible to identify a single cause in accidents of this type. The "cause" is usually the result of several interactions involving the ATV, the rider and the environment in which the ATV is being ridden. Investigation and analysis has provided the information needed to help define the various roles of those elements.

Commission staff were able to compute the risk of death by vehicle type, engine size, type of suspension, model year, driver age, driver sex, carrying of passengers and use on paved roads. Further analysis, done under contract, showed that poor driving judgment was a major contributing factor in fatal accident causation (in 29.6% of the 250 cases reviewed in depth), along with excessive speed (29.6%), poor operating proficiency of the driver (25.6%) and alcohol consumption (21.2%). Usually two or more of these factors combined to play a role.

Insufficient data was available to assess the causal role of the ATV in 63.6% of the 250 fatal accident cases reviewed but, in 28.8%, the vehicle was adjudged by analysts as not being a causal factor. In 7.2% it was judged that vehicle instability or component malfunction was a causal factor.

Question 2. The CPSC estimates the number of ATV-related injuries treated in hospital emergency rooms in 1986 to be 86,400. How many were caused by the ATV? How many actual injuries does the CPSC count in that year?

Answer. As mentioned previously, often it is not possible to identify a single cause of ATV accidents. Usually, they are the result of several interactions involving the ATV, the rider and the environment in which the ATV is being ridden. Additional information on accident scenarios, the interaction of factors contributing to ATV accidents and the relative risk of injuries and deaths, can be found in hazard analysis on ATV-related injuries and deaths referred to in the response to the previous question.

In 1986, treatment of 1,101 ATV related injuries in hospital emergency rooms was reported through the National Electronic Injury Surveillance System (NEISS). These cases formed the basis for a national estimate of 92,900 hospital emergency room treated injuries. However, only 93% of these injuries were confirmed in the injury analysis, prompting a downward revision of the national estimate to 86,400.

Question 3. What is the injury and death experience during utility use of ATV's (e.g., farming)?

Answer. According to an Injury Survey conducted by the Commission's Directorate for Epidemology, about 7 percent of ATV accidents (roughly 6,000) occurred when ATV's were being used for non-recreational purposes, approximately 4% took place (roughly 3,400) during farming or ranching activities, around 2% occurred in organized events and roughly 1% happened when the ATV was being used for some other non-recreational use. Available data on ATV-related deaths does not indicate how the machines were being used when the fatal accidents occurred.

In September 1986, the Directorate for Economic Analysis completed a report entitled "Factors Affecting the Likelihood of All-Terrain Vehicle Accidents." This analysis indicated that ". . . the probability of an accident decreased if the ATV in

used for non-recreational purposes. Few drivers used their ATV solely for non-recreational purposes. However, the greater the percentage of time the ATV is used non-recreationally, the smaller the probability of an accident."

Based on the available data, the Commission cannot say that non-recreational use of ATV's is associated with a reduced probability of accident; our data only shows that ATV's used for non-recreational purposes are generally involved in fewer accidents. This may be because some work-related activities require that the driver ride in a safer manner to accomplish the task. Alternatively, drivers who use their ATV's non-recreationally simply could be safe drivers, or not inclined to take the risk that recreational drivers take to have fun.

QUESTIONS SUBMITTED BY SENATOR MCCAIN TO CHAIRMAN SCANLON

Question 1. If the Consumer Product Safety Commission (CPSC) were to proceed with its mandatory rulemaking regarding ATVs, what would be the cost to the agency? Is that money presently available?

Answer. The CPSC spent $2.274 million in FY '85 and FY '86 to assess the hazards associated with ATVs. In addition, the Commission allocated $850,000 in FY '87 and $808,000 in FY '88 to support development of a mandatory rule, some of which has been spent and much of which remains available. Also, the Commission will consider additional funds for FY '89 during its budget deliberations this summer.

Question 2. What percentage of the ATV-related deaths and injuries known to the Commission involved "child-size" ATVs?

Answer. Currently, the Commission is aware of one death and three minor injuries associated with the use of "child-size" ATVs (those with 50 and 60 cc engines). Those figures represent approximately 0.1% of all the deaths and 0.001% of all the injuries associated with ATVs of which the Commission is presently aware. However, after an extensive 18 month study, the Commission's ATV Task Force concluded that, typically, children under 12 years of age (who would be most likely to ride a child-size ATV) are unable to operate any size ATV safely. The ATV Task Force based its finding on a human factors study and on the testimony of pediatricians obtained during the course of six public hearings on ATVs.

In addition to the death and injury figures just mentioned, the Commission also has statistical information available on the relative risk of ATV related deaths and injuries by age of drivers and engine size. Those data, in chart form, are attached for the subcommittee's information.

TABLE 1.—RELATIVE RISK OF ATV-RELATED DEATHS (1985)

[By age of driver and engine size]

Age of driver (years)	Engine size							
	50 to 60 CCD		70 to 80 CCD		90 CCD or more		Total	
	Percent	Relative risk	Percent	Relative risk	Percent	Relative risk	Percent	Relative risk
Less than 12	[1] D 0.56		D 3.9		D 11.3		D 15.8	
	E .99		E 3.4		E 8.0		E 12.4	
		[1] R .57		R 1.2		R 1.4		R 1.3
12 to 13	D 0		D 0		D 10.2		D 10.2	
	[1] E .10		E .59		E 6.0		E 6.7	
		R 0		R 0		R 1.7		R 1.5
14 to 15	D 0		D 0		D 18.6		D 18.6	
	E 0		E .20		E 6.1		E 6.3	
		R 0		R 0		R 3.0		R 3.0
16 or more	D 0		D 0		D 55.4		D 55.4	
	E .49		E 2.1		E 72.0		E 74.6	
		R 0		R 0		R .77		R .74
Total	D .56		D 3.9		D 9.55		D 100	
	E 1.6		E 6.2		E 92.2		E 100	
		R .35		R .63		R 1.0		R 1.0

[1] Based on 1 or 2 reports.

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis.

NOTE.—Sample size: Deaths: 177 reports. Exposure data: 1012 reports. D=Deaths (1985) reported to CPSC. E=Exposure survey (Market Facts, Inc.). R=D/E=Relative risk to death.

TABLE 2.—RELATIVE RISK OF ATV-RELATED DEATHS (1985)

[By age of driver and engine size]

Age of driver (years)	Engine size							
	50 to 60 CCD		70 to 80 CCD		90 CCD or more		Total	
	Percent	Relative risk	Percent	Relative risk	Percent	Relative risk	Percent	Relative risk
Less than 12	[1] I .64		I 4.2		I 11.8		I 16.7	
	E .99		E 3.4		E 8.0		E 12.4	
		[1] R.65		R 1.2		R 1.5		R 1.3
12 to 13	I 0		[1] I .34		I 11.3		I 11.6	
	[1] E .10		E .59		E 6.0		E 6.7	
		R 0		[1] R .58		R 1.9		R 1.7
14 to 15	I 0		[1] I .99		I 15.5		I 16.5	
	E 0		[1] E .90		E 6.1		E 6.3	
		R 0		[1] R 5.0		R 2.5		R 2.6
16 or more	I 0		I 0		I 55.2		I 55.2	
	E .49		E 2.1		E 72.0		E 74.6	
		R 0		R 0		R .77		R .74
Total	I .64		I 5.5		I 93.8		I 100	
	E 1.6		E 6.2		E 92.2		E 100	
		R .40		R .89		R 1.0		R 1.0

[1] Based on 1 or 2 reports.

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis

NOTE.—Sample size: Inquiries: 238 reports. Exposure data: 1012 reports. I=Injury survey (NEISS—1985). E=Exposure survey (Market Facts, Inc.). R=I/E=Relative risk of injury.

Question 3. Why did the OPSC ask the Department of Justice (DOJ) to represent it in litigation under CPSA Section 12 regarding ATVs?

(a) How long does Justice have to decide whether to represent the CPSC, and has that time limit expired?

(b) If Jusice should refuse to represent the CPSC, what would it cost the CPSC to represent itselt and is that funding available?

Answer. The Civil Division at the Department of Jusice (DOJ) has exprience in handling complex litigation that is unmatched by the Consumer Product Safety Commission's small legal staff. Since no prior Section 12 case has been litigated in a full-scale trial, the additional resources of the DOJ are all the more important. Also, it should be noted that the DOJ already represents the Commision on a routine basis when the latter seeks civil penalties and other enforcement actions in the federal courts.

Another significant benefit attached to the DOJ's representtion is possible avoidance of protraced litigation on the "separation of powers" issue associated with the enforcment powers exerecised by independent regulatory agencies such as the CPSC.

In the last 10 years, the Supreme Court, in such cases as *Buckley, Bowsher* and *Chadha,* has raised serious constitutional questions about delegated powers, and such an issue certainly could be raised by the BTV industry's Washington counsel if the CPSC had sought to file the Section 12 action in the Federal courts on its own behalf.

However, referring the Section 12 matter to an executive branch agency (the DOJ) for representation may have effectively removed this issue from the list of those that may be litigated thereby saving time and, more importantly, lives that would otherwise be lost during the course of extended legal proceedings on a collateral issue basically unrelated to ATV safety. In that connection, it should be noted that the last Section 12 case the Commission filed on its own behalf, involving aluminum wire, was litigated for five years on the collateral issue of jurisdiction, and was eventually lost on that point alone.

On (a), there is no time limit within the DOJ must respond. However, since the CPSC decided to refer the case to the DOJ, and since 45 days have elapsed from the date of the referral within the meaning of Section 27(b)(7), the CPSC is authorized to institute civil proceedings in its own name, using its own attorneys if it so chooses.

As for (b), preliminary estimates of the staff and resources that might be necessary if the Commission were to represent itself in court have been made by the Commision's Office of General Counsel. However, a definitve determination of these

costs has not been reached and, even if such an esstimate was available, I do not believe it would be wise for the CPSC to proceed on its own. First, for the reasons cited above, experienced DOJ attorneys will be very helpful to our case. And second, the DOJ has acknowledged that it is already representing the CPSC at this stage. That it took somewhat longer than 45 days for the DOJ to reach that conclusion is understandable in light of the complexity of the issues, the 14,000 page record and the nature of the remedies being sought.

Question 4. Is there a need to more specifically define "imminently hazardus consumer product" as that term is used in the Consumer Product Safety Act (CPSA) Section 12?

Answer. No. There tern. .mminently hazardous consumer product" is necessarily broad to cover a variety of situations where use of the statute would be in the public interest.

Question 5. What is the average length of time required by the Consumer Product Safety Commission (CPSC) to develop and implement a mandatory product safety standard?

Answer. The agency has not routinely tracked the time frame required to implement all of its mandatory standards. However, a sample of three (3) standards revealed that an average of 5.5 years development time was required.

Question 6. What is the average length of time required for the development and implementation of a voluntary standard?

Answer. A recent study of thirty-two (32) standards projects revealed an aveage time spent of 3.4 years. It is important to note, however, that the Commission does not always participate in the development of totally new standards. Most of our activities involved the improvement of existing standards. Nevertheless, it is significant that, of these 32 voluntary standards projects, 13, or 41%, were accomplished in two (2) years or less. As a consequence, when mandatory and voluntary standards are compared, the amount of time needed for development purposes can be considerably less for a voluntary standard.

Question 7. Do you perceive any problems or conflicts resulting from the initiation by the Consumer Product Safety Commission (CPSC) of litigation against the ATV industry, while at the same time the Commission is engaged in development of a voluntary ATV standard, in cooperation with the same industry?

Answer. To date, no. The CPSC staff is working with the ATV industry to develop a voluntary standard to address ATV performance characteristics, including dynamic stability. This effort is continuing even though the ATV industry knows the Commission voted 2-1 (I dissented) to seek an enforcement action under Section 12 of the Consumer Product Safety Act (CPSA). In that context, it should be noted that Section 12(c) also provides that: "Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed." This provision makes it clear that a rulemaking proceeding, which necessarily involves potential reliance on a voluntary standard under the Consumer Product Safety Act, is not inconsistent with litigating an "imminent hazard" case.

Question 8. What is your view of state efforts to address safety problems associated with ATVs?

(a) The Specialty Vehicle Institute of America has developed a model state statute regarding ATVs. Has the Consumer Product Safety Commission (CPSC) been active in the development and dissemination of this statute?

Answer. A review of state laws by the CPSC staff, the results of which were included in the CPSC's ATV Task Force Report, found that less than half of the states have enacted regulatory and/or educational options to deal with ATVs. Of those states which took action, some did so based on limited technical, epidemiological and human factors analysis. As a consequence, state regulation of ATVs follows no set pattern and its effectiveness, in terms of injury reduction, is unknown.

In November, 1986, following release of the ATV Task Force Report, the Commission held a conference for its state designees in Louisville, Kentucky during which ATVs were discussed extensively. Greater federal-state cooperation on ATVs and other product safety issues has been the result. In addition, the Commission sent a letter (on January 28, 1987) to all Governors stressing the importance of ATV safety. Information was provided on injury and death data, the unique handling characteristics of ATVs, minimum age recommendations, the virtues of wearing helmets and protective clothing, and the importance of not consuming alcohol, riding with a passenger or riding on paved roads.

Also, the CPSC has shared ATV safety information with a Model State ATV Legislation Committee (composed of representatives from Kentucky, California, Tennes-

see, and Connecticut) formed to develop draft model state legislation. This committee reviewed and considered the California ATC Act, the Pennsylvania ATV and the Specialty Vehicle Institute of America's suggested model state statute in the process of drafting its proposed model act. This proposed Model State ATV Act was then sent to the CPSC's state designees on May 15, 1987.

Question 9. If the Commission size remains at three, would you recommend any changes to the Consumer Product Safety Act (CPSA), such as the number of Commissioners required to constitute a quorum?

Answer. My hope is that the Commission will not remain a three member body. Such a structure retains all the administrative inefficiencies of a five member Commission, while compromising the diversity that is the strength of a pentagonal body. A single administrator would be preferable. Failing that, I would suggest a return to the five member collegial unit, with the Commissioners, other than the Chairman, serving on a per diem rather than a full-time basis.

With respect to quorum requirements, it should be noted that a quorum of two (for a three member Commission) has the practical effect of preventing any face to face or telephone conversations between any two Commissioners without official meeting notice being filed in advance. However, if the Congress decides a three member Commission is best and that the quorum requirement by two Commissioners instead of three, my recommendation is that one of the two Commissioners should have to be the Chairman. That way the Commission may be able to conduct business more frequently without jeopardizing the authority of the Chairman to administer the agency as provided for in Section 4(f)(1) of the CPSA.

Question 10. If the Consumer Product Safety Commission (CPSC) were restructured as a single administrator agency, would you recommend that it remain independent or should it be merged with another agency?

Answer. My recommendation is that the CPSC should remain independent. One of the principal reasons I favor a single administrator above all other structural forms for the Consumer Product Safety Commission (CPSC) is that such a structure would result in quicker, more efficient decisionmaking. To incorporate the CPSC into another agency would mean that the decisions of the single administrator would likely be subject to at least one more level of review, which could defeat the objective of streamlined decisionmaking. Also, incorporating the CPSC into another agency might result in a lessening of the visibility currently accorded public safety concerns which could, in turn, detract from efforts to educate and inform consumers. And finally, merging the CPSC into another agency is potentially more disruptive than maintaining it as an independent agency, especially at a time when the Commission is heavily engaged in finding solutions to several major product safety problems.

Question 10a. If independent, under what circumstances should the administrator be subject to removal by the President?

Answer. The Consumer Product Safety Act (CPSA) currently provides that the Chairman and Commissioners of the Consumer Product Safety Commission (CPSC) can be removed only for neglect of duty or malfeasance in office. My recommendation would be to simply apply that same language to a single administrator if one were to be appointed. Consideration might be given, however, to additgional language to address the question of who would run the agency in the event the single administrator were incapacitated or the office were to become vacant.

Question 10b. If incorporated into another agency, with an administrator subject to confirmation by the Congress, under what circumstances should the administrator be subject to removal by the President?

Answer. Here again, I would recommend that causes for Presidential removal of the administrator be limited to those that currently apply to the Chairman and Commissioners of the CPSC: neglect of duty and malfeasance in office. But, depending on the agency into which the Consumer Product Safety Commission (CPSC) was being merged, consideration might be given to the question of what happens in the event of the incapacity of the CPSC administrator or a vacancy in that office.

Question 11. If the Consumer Product Safety Commission (CPSC) were to be converted to a single administrator agency, when should such a conversion occur and what steps should be taken to ensure a smooth transition?

Answer. To make matters easier, I would recommend that the changeover to a single administrator take place in three phases. Plase I, beginning immediately after adoption of the enabling legislation and running until September 30, 1988, would consist of planning for the changeover and either completion of on-going rulemaking or making provision for the ultimate disposition of proposed rules by the future single administrator. Phase II, starting October 1, 1988 and continuing until a permanent single administrator could take office, would be a transitional phase

during which the agency would learn from the experience of operating under an interim single administrator and make necessary refinements. Full scale, fine tuned operations under a permanent single administrator—Phase III—would begin as soon as the person nominated to fill that position by the newly elected President was confirmed by the Senate and sworn into office.

In addition to providing sufficient time for all the adjustments that would be necessary, this phased-in approach has the virtue of making the date of the changeover for a collegial body to a single administrator agency (October 1, 1988) coincident with the start of a new Fiscal Year. That, plus the recognition given to the advent of a new administrator in early 1989 should make the conversion to a single administrator easier than might otherwise be the case.

Question 12. If the size of the Commission is permitted to return to five, how much additional funding would the Consumer Product Safety Commission (CPSC) require? Is that additional funding currently available?

Answer. The 1987 appropriation and our 1988 budget request include sufficient funds to support only three Commissioners and their staffs. A budget increase of approximately $500,000 would be required to support a return to a full-time five member Commission.

However, such a return could be accomplished at less additional expense if the four Commissioners, other than the Chairman, were put on a per diem rather than a full-time basis and their staffs were reduced accordingly. Personally, I would support such an approach as the next best alternative to a single administrator.

Question 13. Please provide statistics on the number of Freedom of Information Act (FOIA) requests processed annually by the Consumer Product Safety Commission (CPSC) since 1984, and the average length of time required to process an FOIA request.

Answer. The Commission has processed the following number of FOIA requests over the past three years:

1984	10,900
1985	12,500
1986	13,500

It is difficult to estimate an average length of time to process a request because the requests vary considerably in complexity and response volume, and thus in length of time to answer. A full 60% of all requests are answered within 10 days. However, requests such as those which ask for all Commission information on a product or class of products, or those which require sending a Section 6(b) notice to a manufacturer, may take up to six month or more to fill.

Question 14. Please provide the same information requested in Question 13 for Freedom of Information Act (FOIA) requests involving the Consumer Product Safety Act (CPSA) Section 6(b) matters.

Answer. Under the Section 6(b) provisions, all material provided to FOIA requestors must be cleared to ensure that it is suitable for release. Approximately one-third of the material contains product or manufacturer-related information requiring information notification to manufacturers or special processing (such as excising identities) before release to the requestor. This percentage has not changed significantly over the three year period.

During each of the last three years, the Consumer Product Safety Commission (CPSC) has sent approximately 1,000 notices to manufacturers and private labelers. When notices must be sent to manufacturers or others regarding release of information which identifies them, the processing time is well above the average for all FOIA requests. We estimate that, on average, it takes approximately six months to fill such requests.

Question 15. How many Freedom of Information Act (FOIA) requests were denied by the Consumer Product Safety Commission (CPSC) in whole or in part in each year since 1984, because of Section 6(b)?

Answer. The number of requests denied on Section 6(b) grounds are as follows:

1983	578
1984	434
1985	287
1986	271

The decline in request denials reflects a change in Commission policy regarding the release of unconfirmed complaints received from individual consumers. With the passage of the 1981 amendments to the CPSA, all unconfirmed complaints were withheld from FOIA requestors. However, beginning in 1983, consumers were asked to verify, in writing, the informaiton contained in complaints and manufacturers

were given an opportunity to comment on the complaint. As more and more complaints are being verified, fewer and fewer of them are being withheld from FOIA requestors.

Question 16. Should cost/benefit analysis such as that required by the Consumer Product Safety Act (CPSA) Section 9 also be considered by the Commission in Section 12 and/or Section 15 perceedings?

(a) In your view, is such consideration in Section 12 and/or Section 15 proceedings currently required?

(b) Should the CPSA be modified to address use of cost/benefit analysis in Section 12 and/or Section 15 proceedings?

Answer. While not the only analytical tool that can, or should, be used by the Commission, I believe that cost benefit analysis can be very helpful with respect to Section 12 and Section 15 proceedings. By quantifying advantages and disadvantages, cost-benefit can help both the Commission and the manufacturer evaluate the various options and reach mutually satisfactory decisions. Depending on the circumstances, it could prompt the Commission to seek and/or a manufacturer (or distributor) to accept a more sweeping remedy than was initially anticipated or proposed. Furthermore, since the CPSC has the relevant economic data available in most instances, a cost-benefit analysis can usually be done by one of our economists in a relatively short period of time.

With respect to (a), there is no specific language in either Section 12 or Section 15 of the CPSA that requires the use of cost-benefit analysis. Nor has there ever been a court ruling requiring that such an analysis be done pursuant to either of those Sections. However, Section 12, unlide Section 15, does contain the phrase "unreasonable risk of death, serious illness or severe personal injury" within the definition of an "imminently hazardous consumer product." In rulemaking contexts, courts have interpreted the phrase, "unreasonable risk", in such a way as to require a balancing of costs and benefits. Consequently, while there is no explicit requirement that cost-benefit analysis be done for an imminent hazard proceeding, I believe a court may well require, based on the statutory language "unreasonable risk," a balancing of costs and benefits in such a case. As far as (b) is concerned, I am satisfied with the statute as it now reads.

Question 17. Please indicate whether you would support or oppose the following proposed changes to the voluntary standards process of the Consumer Product Safety Act (CPSA) Section 7 and 9:

(a) Amend the CPSA Section 7 to permit interested persons the right to request immediate agency review of the Consumer Product Safety Commission (CPSC) reliance on voluntary standards on the grounds that the development of such standards is unreasonably delayed or that the standards themselves are deficient.

Answer. I would oppose this provision in that it is something that interested parties may already request under the Administrative Procedures Act. Under this Act, interested parties may petition the Federal Government to promulgate rules. If anyone has reason to believe that the Commission's reliance on a particular voluntary standard to address a hazard has been misplaced for any reason, that person may petition CPSC to proceed with the development of a mandatory standard addressing that hazard.

(b) Amend Section 7 as described in Question 17a and provide also that such determination by the CPSC may be subject to immediate judicial review.

Answer. I would oppose this provision as well since it diminishes the Commission's role as an independent regulatory agency. If the Consumer Product Safety Commission's (CPSC) decisions not to proceed with rulemaking are subject to routine legal review, the agency's responsibilities, in real terms, will have been shifted to the Judicial Branch and this is not what I believe the Congress intended when it created the Commission.

(c), Require that the CPSC may defer only to voluntary standards that have been developed through a consensus process providing for notice, opportunity for a participation, balance of voting interests to take account of all interested parties, and a procedure for review of such development process.

Answer. This would be an unwarranted intrusion by the Federal Government into a process that I believe is working very well at present. It is important to understand that the Federal Government as a whole, and the Commission as a federal agency, requires openness in all of the voluntary standards development activities in which it participates. Office of Management and Budget Circular A-119 contains such provisions as do the Commission's own regulations dealing with agency participation in voluntary standards (16 C.F.R. Part 1032). Existing provisions encompassed in procedures of organizations like ASTM and the American National Standards Institute (ANSI) already require consensus before a voluntary standard is pub-

lished. Thousands of voluntary standards have been published using the consensus process; explicitly requiring that it be used under the Consumer Product Safety Act is unnecessary. Only a few standards have been developed outside the ASTM and ANSI process, and these generally have been effective addressing the hazard.

(d) Amend Section 9 to require that a limitation be imposed on the amount of time the Commission has to publish a notice of proposed rulemaking following the issuance of an advanced notice of proposed rulemaking.

Answer. This would appear to be a simple solution to what many people believe is a complex problem. However, as can happen with simple solutions, unseen difficulties would arise. The Commission cannot know, in advance, the amount of time necessary to gather the best available data, analyze it and make a decision whether or not to proceed with the development of a rule. Setting arbitrary time constraints would transform the system into one whose objective is meeting a time dealing, rather than one whose objective is protecting the public interest. Such a decision could lead to less protection for consumer and/or place an unjustifiable burden upon industry. For this reason, this concept is one that I cannot support.

(e) Amend Section 9 to clarify that deferral to a voluntary standard may occur only where the standard actually exists.

Answer. This concept poses fewer problems than those outlined in the few previous questions. Experience has shown that a voluntary standard can be developed more quickly than a mandatory standard. However, the precise wording of this proposal would need to be examined carefully and it is worth noting that the Consumer Product Safety Commission (CPSC) staff may come to a conclusion that a voluntary standard is adequte before it is formally approved by the independent standards organization to which it was referred.

(f) Amend Section 9 to define more specifically the role the Commission and its staff should pay in the development of a voluntary standard.

Answer. Without a clearer understanding of the specifics, I am unable to give a definitive response. However, It should be reiterated that the Commission and its staff currently are guided by published policy (16 C.F.R. 1032 and 1033) on the role to be played in voluntary standards activities. In addition, the Commission has followed the guidance set forth in QMB Circular A–119. These provisions would appear to me to be sufficient, hence additional guidance provided in the Consumer Product Safety Act (CPSC) would be superfluous.

Question 18. Please indicate whether you would support or oppose the following provisions of the enclosed legislation (S. 1077 and H.R. 3456), introduced during the 99th Congress to reauthorize the Consumer Product Safety Commission (CPSC):

(a) Clarify the CPSC authority to disclose product hazard information to the CPSC contractors (Section 2 of S. 1077).

Answer. I am satisfied that Section 6(a) of the CPSC is working well at present and I do not believe it should be changed.

(b) Relax conflict-of-interest standards imposed on members of the CPSC chronic hazard advisory panels (Section 3 of S. 1077).

Answer. This reform would be highly desirable for the effective establishment and functioning of Chronic Hazard Advisory Panels (CHAPS). The Commission has often found it necessary to disqualify otherwise highly qualified nominees for these panels because they were employed by, or consulted for, firms that made or marketed consumer products totally unrelated to the subject matter of the panels. This reform would limit the prohibition to those associated with firms that made or marketed consumer products "that may be the subject of the panel's investigation."

(c) Impose a floor on the number of Consumer Product Safety Commission employees (Section 201 of H.R. 3456).

Answer. I do not believe that maintaining an adequate staffing level is best addressed by legislative action because it would limit management flexibility. Management must maintain the prerogative to increase or reduce staffing levels in order to respond to changes in the products under study and fluctuations in agency funding. For example, in 1986, the Commission met the Gramm-Rudman-Hollings sequestration target primarily by limiting staff hires. This option might not have been available to us had a legislative floor been in place. Similarly, our ability to rely on contact experts rather than in-house staff for short-term technical work could be adversely affected by such a provision.

(d) Repeal the cellulose standard (Section 301 of H.R. 3456).

Answer. As long as repeal of the cellulose standard was effected by Congress, I would have no objection. However, due to the resources that would be requried, I do not think the Commission should attempt to repeal the cellulose standard on its own. There are simply too many other projects more deserving of the Consumer Product Safety Commission's time, effort and money.

(e) Repeal the swimming pool slide rule (Section 302 of H.R. 3456).

Answer. Here again I am not in favor of the Commission taking the initiative to repeal the swimming pool standard for the reasons given on the cellulose standard. But I would not oppose the Congress doing so.

(f) Require the establishment and publication of the CPSC priorities and agenda prior to the beginning of each fiscal year and require a public hearing on such agenda and priorities (Section 304 of H.R. 3456).

Answer. I believe legislative provisions addressing CPSC's priorities and agenda are unnecessary. The Commission develops its priorities well before the beginning of each fiscal year and an important part of that process is a public hearing held specifically to solicit outside opinions and recommendations as to what those priorities should be. Each year, we receive numerous public suggestions which I consider extremely valuable since they contribute not only to the Commission's decisions on priorities, but also to much of our non-priority work on product hazards.

With respect to our annual agenda, or Operating Plan, I would note that, as in the case of priority project selection, all relevant Commission meetings are open to the public. Individuals and groups may comment on the discussions or the impending decisions in writing at any time. However, the Operating Plan evolves from, and almost always reflects, the decisions made by the Commission during consideration of its priority projects and adoption of its budget. Most of the changes are those resulting from Congressional adjustments (during the appropriations process) to the CPSC's budget request.

(g) Modify or study the regulation of fixed-site amusement rides (Section 201 of S. 1077 and Title 4 of H.R. 3456).

Answer. Fixed site amusement rides are a matter best left for state and local jurisdictions to regulate. However, I would favor the study proposal adopted by the U.S. Senate on July 24, 1985, dealing with fixed site amusement rides.

(h) Establish a procedure for Congressional review of newly promulgated Consumer Product Safety Commission (CPSC) rules (Section 16 of S. 1078 [not enclosed] and Section 303 of H.R. 3456).

Answer. As I have testified in the past, I favor inclusion of a legislative veto provision in the CPSC's authorizing statute. My preference would be for the joint resolution of disapproval approach since requiring action to specifically affirm rules might mean that some proposed rules would die from lack of action.

Question 19. Should the Consumer Product Safety Act (CPSA) be amended to define more specifically the qualifications required for appointment as a commissioner of the Consumer Product Safety Commission? If your response is yes, what additional qualifications should be adopted?

Answer. No.

Question 20. Please provide data regarding the number of Section 15 product recalls during the past three years and the amount and number of civil penalties assessed by the Consumer Product Safety Commission (CPSC) during the past three years.

Answer. The number of Section 15 product recalls initiated in each of the last three years is:

1984	106
1985	100
1986	95

The number and amount of civil penalties are:

	Number	Amount
Year:		
1984	5	$117,750
1985	2	835,000
1986	3	250,000

Questions Submitted by Senator McCain to Commissioners Dawson and Graham

Question 1. Do you perceive any problems or conflicts resulting from the initiation by the CPSC of litigation against the ATV industry, while at the same time the Commission is engaged in development of a voluntary ATV standard, in cooperation with the ATV industry?

Answer (Dawson). Without commenting specifically on the question of potential litigation, my response to this question is that the hazards of ATVs are so great that any legitimate activity undertaken, whether by the Commission alone or in cooperation with industry is appropriate and in the public interest. It is not unusual, for example, for the Commission to continue voluntary standards participation even while considering Section 15 actions against a manufacturer. I believe that if an industry understands that the Agency is ready and will to utilize its enforcement tools, it is more likely to undertake genuine efforts to resolve product hazards.

Answer (Graham). I see no problems or conflicts. Obviously, we are in an adversarial position in the enforcement action, while we must cooperate in the adoption of the voluntary standard. The Commission has certain objectives it wants to achieve. Since the voluntary standard route has not sufficiently addressed the safety problem, the Commission has authorized an enforcement action under Section 12 of the Consumer Product Safety Act (CPSA). While the Commission continues to work with the industry on Phase 2 of the voluntary standard, dealing with performance characteristics of ATVs, Section 12 action is viewed as the potenially most effective enforcement tool at this stage, and we are continuing our litigation effort. Our actions are not inconsistent.

Question 2. What is your view of state efforts to address safety problems associated with ATVs?

Answer (Dawson). To date, state efforts to address ATV safety problems have been spotty. But the Commission will continue to press aggressively for State action. We have gone on record in a letter to Governors (copy attached) that the Agency believes additional State action is needed and that we are ready to provide whatever assistance is needed. I intend to watch carefully in the next few months to see whether we can develop additional initiatives to aid States in addressing their unique responsibilities in this area.

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, DC, January 28, 1987.

Hon. HAROLD GUY HUNT,
State Capitol,
Montgomery, AL.

DEAR GOVERNOR HUNT: We are writing to inform you of a serious safety problem presented by All-Terrain Vehicles (ATVs), and to enlist your state's assistance in taking measures that will help reduce the large number of injuries and deaths associated with these vehicles. ATVs are motorized off-road vehicles designed to travel on three or four low-pressure, balloon-like tires.

From the period January 1, 1982 through November 6, 1986, the Commission has been made aware of 644 ATV-related deaths nationwide, including 17 deaths involving ATVs in the state of Alabama. Furthermore, 47 percent of the victims were under 16 years of age and 21 percent were under 12 years of age. During this same period, the Commission staff has estimated that over 268,000 ATV-related injuries were treated in hospital emergency rooms nationwide. As with the fatalities, about half of the injuries occurred to children under 16 years of age.

On December 18, 1986, the Commission voted to pursue several courses of action designed to address this critical safety issue, including additional technical work addressing the performance characteristics of ATVs. However, this technical work will not be completed in the near future, and more importantly, several critical factors attending ATV use are more appropriately the subject of state or local activity. As a result, the Commission staff during the course of the Commission's investigation of the safety hazards associated with ATVs. During the course of this two-year effort, the Commission obtained an extensive amount of information concerning injuries and deaths; the unique handling characteristics of ATVs; minimum age recommendations; the need for wearing helmets and protective clothing; and the importance of not consuming alcohol, riding with a passenger or riding on paved roads. We have enclosed a copy of the Commission's December 18 decision, as well as a summary of our study of ATV safety issues and an update of injury and death statistics.

We believe that this information will be of interest to you in considering the need for appropriate or additional action in your State. More detailed information on this decision is available from the Commission's Headquarters and Regional Offices, and our staff can offer any further technical or administrative support which might be needed.

Your assistance and that of your colleagues in the Alabama State legislature will be invaluable in helping reduce the risk of injury to the riders of ATVs in your State. The Commissioners and staff of the CPSC look forward to addressing this

problem cooperatively with you and your staff. We would be pleased to discuss this matter with you further should you so desire.

Sincerely,

TERRENCE SCANLON,
Chairman.
ANNE GRAHAM,
Commissioner.
CAROL G. DAWSON,
Commissioner.

Answer (Graham). A review of State laws by CPSC staff found that less than half of the States have reacted to the increase in injuries and deaths from the use of ATVs through a variety of regulatory and educational options. Most States that have reacted to the problem may have done so on limited or little technical, epidemiological, and human factors analysis. The States that regulate ATVs follow no set pattern, and the effectiveness of their regulations, in terms of injury reduction, is unknown.

On December 18, 1986, the Commission directed the staff to prepare a letter on the Commission's behalf to be sent to all Governor's stressing the importance of ATV safety. The letters were mailed on January 28, 1987, providing the States with information, such as data on injuries and deaths, information concerning the unique handling characteristics of ATVs, minimum age recommendations, the importance of wearing helmets and protective clothing, and not consuming alcohol, riding with a passenger, or riding on paved roads. In those letters we also offer to assist the States by providing technical or administrative support if needed.

Question 3. Is there a need to more specifically define "imminently hazardous consumers product" as that term is used in Consumer Product Safety Act (CPSA) Section 12?

Answer. (Dawson). Although the Commission has historically not used this most powerful of all CPSA tools frequently, I believe any effort to re-define "imminently hazardous consumer product" is unnecessary. In my view, this section is reserved for the most serious of all product hazard and is to be used with great caution. It might impair the Commission's ability to take such actions where appropriate if the definition were to be narrowed.

Answer (Graham). No. The term "imminently hazardous consumer product" is necessarily broad to cover a variety of situations where use of the statute would be in the public interest. I prefer a broad, flexible definition, rather than one that is highly specific, because it enables the Commission to respond to a wide range of potential dangers to the public. A most specific definition might prevent enforcement action where protection of the public would be warranted.

Question 4. If the Commission size remains at three, would you recommend any changes to the Consumer Product Safety Act (CPSA), such as the number of Commissioners required to constitute a quorum?

Answer. (Dawson). Yes, as I have stated publicly, I believe that, should the Commission remain at its current level of three, it makes sense to change the CPSA to require a quorum of two, rather than the present three, to conduct Agency business. Further, I do not agree with the Chairman's assertion that one of those two members should be the Chairman. Such a requirement would effectively prevent the other two members of the Commission from taking action in the absence of the Chairman. I do not believe that is what Congress intended.

Answer (Graham). Yes. As long as the Commission structure remains a three member body, I strongly favor changing the quorum requirement to two members rather than all three.

Section 4(d) of the Consumer Product Safety Act (CPSA), anticipating a five member Commission, states that ". . . three members of the Commission shall constitute a quorum for the transaction of business." Current appropriation language limits us to funding no more than three Commissioners, so now all three must always be present to conduct business. The present quorum provision has the practical effect of enabling one Commissioner to single-handedly block a majority of the Commission from taking any significant action with which that Commission member disagrees.

If the Commission is to be limited to three members, the statute should also be changed to indicate a quorum requirement of two. Such an action is imperative if the Commission is to conduct its business in an expeditious manner.

In addition, I strongly disagreed with the Chairman's recommendation that one of those two members should be the Chairman. Under that scenario, if the Chairman

were absent, the Commission would not be able to conduct business. That is exactly part of the problem we have faced for the last year. Further, Congress provided for a Vice Chairman to act in the Chairman's absence.

Question 5. If the CPSC were restructured as a single administrator Agency, would you recommend that it remain independent or should it be merged with another Agency?

(a) If Independent, under what circumstances should the administrator be subject to removal by the President?

(b) If incorporated into another Agency, with an administrator subject to confirmation by the Congress, under what circumstances should the administrator be subject to removal by the President?

Answer (Dawson). I believe that remaining independent is important for the mission of the Agency since it provides visibility and accountability, both for the public and the Congress.

(a) My inclination would be to suggest that a single administrator of an independent Agency should be subject to removal by the President under the same circumstances currently identified in the CPSA—namely only for malfeasance or neglect of duty.

(b) My response to this question is the same as to Question 5(a). Removal should be made subject to the conditions prescribed in the statute already—malfeasance or neglect of duty.

Answer (Graham). Although I believe, and have stated publicly, that there are significant benefits for supporting a collegial structure, I feel it is prudent to review the merits of the Department of Health and Human Services' draft bill, the "Consumer Product Safety Act Amendments of 1987" before I would make such a recommendation.

(a) The CPSA currently provides that the Chairman and Commissioners of the CPSC can be removed only for neglect of duty or malfeasance in office. I would recommend applying that same language to a single administrator of the CPSC if one were to be appointed.

(b) As stated in response to Question 5(a) I would recommend that causes for removal by the President of the Administrator be identical to those that currently apply to the Chairman and Commissioner of the CPSC—neglect of duty or malfeasance in office.

Question 6. If the CPSC were to be converted to a single administrator Agency, when should such a conversion occur and what steps should be taken to ensure a smooth transition?

Answer (Dawson). Since I do not support the idea of converting the Agency to a single administrator, I have not given much thought to the need for steps to ensure a smooth transition. In general, it seems rational to provide for a time period of at least two years to accomplish a genuinely orderly transition.

Answer (Graham). Since I support maintaining a collegial structure, I have not focused on what steps would need to be taken for an orderly transition if the CPSC were to be converted to a single administrator Agency. However, in general, I believe the transition should be contingent upon the confirmation of the single administrator or a time period of no more than six months, whichever would come sooner.

Question 7. Should cost-benefit analysis such as that required by CPSA Section 9 also be considered by the Commission in Section 12 and/or Section 15 proceedings?

(a) In your view, is such consideration in Section 12 and/or Section 15 proceedings currently required?

(b) Should the CPSA be modified to address the use of cost/benefit analysis in Section 12 and/or Section 15 proceedings?

Answer (Dawson). The use of cost/benefit analysis in compliance activities is a subject of debate within the Commission. While final determinations are yet to be made, I will offer some preliminary thoughts: It is clear that a formal, mechanistic, cost/benefit analysis application to most compliance issues is not required. However, the staff and Commissioners routinely expect economic data to be provided when serious compliance issues are discussed. Whether or not such data need to be in the form of a monetary analysis is the subject of dispute. I am not an economist, but I believe the Commission needs to clarify its policies in this regard—both to assure that it receives adequate data prior to decisionmaking, and to avoid any misplaced public perception that it considers economic issues above protecting the public. As a decisionmaker I would welcome rational, relevant economic data, but to ensure that the public's health and safety remains our foremost consideration, any application of formal methodologies to compliance activities should be carefully considered.

(a) No, I do not believe that the statute requires such cost/benefit analysis in cases where a product hazard is a clear threat to public health and safety. If in pre-

paring to litigate under Section 12, our attorneys advised that such an analysis should be prepared, then of course it could be done as a matter of policy. At the same time, the simple answer is that it is not currently required.

(b) I believe the statute is adequate as written. Neither a requirement nor a prohibition would be in order. I beleive that individual cases and overall Commission policy should dictate when and if formal cost/benefit analysis is appropriate.

Answer (Graham). Based on my service as a Commissioner it is very obvious to me that far and away the most productive tool the Commission has is Section 15 of the CPSA. It is a proven life saver. This answer addresses both Questions a and b.

A review of Commission actions under Section 15 shows that since 1984 over 580 reports have been received, over 35.2 million units of products have been involved in recalls or other types of corrective action, and almost 7 million product units being corrected. These are products that to varying degrees did, or could have, created serious injuries. Because of our investigations under Section 15 and the problems the Commission uncovered, there are many manufacturers, importers and distributors that have corrected problems *voluntarily* because a manufacturer of a similar product agreed to recall a product.

I believe that Section 15 investigations and recalls serve to motivate firms to manufacture safer products. I know that Section 15 activities have resulted in voluntary standards being issued or improved. For example, the Compliance staff required several manufacturers of clamp lamps to change the sockets from metal to an insulating material to prevent electrical shocks. Once this was done, the voluntary standard was modified to require the use of insulated sockets. There are many examples including pressure washers, ceiling fans, squeeze toys, mesh sided cribs, accordian gates and metal chimneys.

To require that corrective actions meet a detailed cost/benefit analysis and balancing test would seriously jeopardize the most effective tool the Commission has at its disposal to reduce injuries and deaths related to consumer products. Moreover, it would not measurably improve the Commission's decisionmaking in these matters.

Sections 12 [1] and 15 of the CPSA do not explicitly require the use of cost/benefit analysis. When Congress added a requirement for cost/benefit analysis to the Commission's rulemaking provisions in the 1981 amendments, Sections 12 and 15 were not modified. The reasons for leaving cost/benefit analysis out of Sections 12 and 15 are both pragmatic and logical, reflecting the purpose of these sections in the statutory scheme.

Section 9 governs prospective standards or bans where comprehensive industry-wide judgments about safety are being made. Many aspects of a particular industry's products may be subjected to design and/or performance requirements. Data on injuries and costs is usually available always in the context of a rulemaking proceeding. In contrast, Sections 12 and 15 deal with extremely hazardous products that have already been manufactured and pose an immediate threat to the public. Usually, relatively simple defects—rather than complex performance standards—are addressed. Hazard and cost data are usually limited. If voluntary action is not taken, an adversarial, adjudicative proceeding determines the facts.

Under Section 15(d), the Commission is empowered to recall products determined to contain a defect which presents a substantial product hazard. This can only occur after affording interested persons an opportunity for a hearing. The only criteria for determining whether corrective action should be taken under Section 15(d) is whether there is a substantial product hazard and whether corrective action is in the "public interest." Since the creation of the CPSC, the Commission policy has been to correct all substantial product hazards through notice, repair, replacement or refund of the purchase price of the product. Since the vast majority of corrective actions are voluntary, this appears to have been industry's position as well.

Proponents of cost/benefit analysis for Section 15 matters argue that the term "public interest" used in Section 15(d) means that any corrective action must pass an economics cost/benefit litmus test. I think this position not only reads requirements into the statute that are not there, but it also makes poor policy. Ordinarily, very little data is available in Section 15 matters on the costs and even less is available on the benefits of individual product hazards until after a full discovery period and hearing. Nonetheless, what information is available certainly is a consideration

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[1] Section 12(a) of the CPSA, states that an "imminently hazardous consumer product" is one that presents an "imminent and unreasonable risk to death, serious illness, or severe personal injury." Section 12(b) authorizes a court to order "such temporary or permanent relief as may be necessary to protect the public from such risk." Corrective action must "protect the public;" it need not meet a cost/benefit test. Section 12 has been used only a few occasions in the Commission's history.

during the decisionmaking process. To impose on the Section 15 process an analytical technique that requires the analyst to assign a range of estimated and assumed numbers to a variety of unknowns merely to generate a numerical analysis makes very little sense. It does not improve the quality of decisionmaking; it merely makes the analysis—now reduced to numbers—appear to be more "objective."

Furthermore, cost/benefit analysis ignores many of the fundamental non-quantifiable benefits of corrective action under Sections 12 and 15:

(1) Recalls give consumers a chance to take action to protect themselves. This enhances their faith in industry and government. They can have faith that someone is trying to protect them from injury.

(2) Requiring firms to correct defective products may motivate them, or their competitors, to make safer products in the future, and to improve product quality.

(3) Section 15 actions may motivate improvements in industry standards (as noted earlier).

These paramount benefits are not quantifiable and are, therefore, ignored in cost/benefit analysis. Nevertheless, they are the foundation upon which the Commission's recall policy stands. Currently, the Commission, through its hazard priority classification system, determines the extent of corrective action based on the seriousness of the hazard. This approach takes the statutory criteria and provides further objective criteria for decisionmaking.

Subjective considerations may enter into the consideration of even the most "objective" criteria. However, there is benefit to the public in not pretending to apply "objective" numerical criteria through a cost/benefit approach, while intentionally or unintentionally manipulating that "objective" criteria with subjective estimates and assumptions. The use of such a mechanistic formula by the Commission might encourage firms to generate such analyses to justify actions that their management perceives to be in their immediate self-interest. This type of analysis has caused courts and juries to award huge punitive damage judgments against manufacturers who coolly calculated that they could make more money by producing a hazardous product that they would pay for the suffering and loss of life and limb that decision caused.

Question 8. Please indicate whether you would support or oppose the following proposed changes to the voluntary standards process of CPSA Sections 7 and 9:

(a) Amend CPSA Section 7 to permit interested persons the right to request immediate Agency review of CPSC reliance on voluntary standards on the grounds that the development of such standards is unreasonably delayed or that the standards themselves are deficient.

(b) Amend Section 7 as described in Question 8(a) and provide also that such determinations by the CPSC may be subject to immediate judical review.

(c) Require that the CPS may defer only to voluntary standards that have been developed through a consensus process providing for notice, opportunity for participation, balance of voting interests to take account of all interested parties, and a procedure for review of such development process.

(d) Amend Section 9 to require that a limitation be imposed on the amount of time the Commission has to publish a notice of proposed rulemaking following the issuance of an advance notice of proposed rulemaking.

(e) Amend Section 9 to clarify that deferral to a voluntary standard may occur only where the standard actually exists.

(f) Amend Section 9 to define more specifically the role the Commission and its staff should play in the development of a voluntary standard.

Answer (Dawson):

(a) An additional statutory provision for Agency review of its decision to rely on a voluntary standard would be unnecessary, since a right to petition the Agency to proceed with mandatory rulemaking already exists.

(b) It is my understanding that judicial review is already available under the Administrative Procedures Act for final Agency action.

(c) Although I support measures that would provide for consensus standards-developoment, adequate public notice, and full participation by consumers, amending the statute in such a manner might unduly hinder the Agency from using all available means to address safety issues. In general, where the private standards-setting process is working well, the Federal government should allow it to continue without intervention. Many standards-setting procedures already provide for public participation and this is desirable. To impose additional requirements through amending the CPSA would, I fear, interfere with the Commission's effort to achieve adequate public safety levels by working with the private sector.

(d) Although I sympathize with the goal of such a proposal, i.e., to address safety issues in a timely manner so that the public is protected, I believe that imposing

time limitations would unduly constrain the Agency and might lead to imprudent or hasty decisionmaking. Rather, I believe that Congress, through its oversight process, can give impetus to Commission action where such action may seem unduly slow.

(e) There may be some benefit to such an approach, though the language would need to be carefully drafted. I have given a great deal of thought to the whole area of the Commission's involvement with, and deferral to voluntary standards. Some statutory amendment to clarify the government's responsibility in the process might be desirable. I would prefer to see such activity restricted to product areas which present a clear hazard to the public; in other words, the Commission would have to make a preliminary determination that a specific consumer product presents a risk of injury that demands particularly prompt action. To provide additional background regarding my thinking on this matter, I am attaching a memorandum to the Commission which I submitted in January, 1985. One of the benefits or using such procedures is that manufacturers would take their safety responsibilities more seriously if there were a more formal deferral process. The other benefit is that if the Commission limited its participation in voluntary standards to products which present some defined level of unreasonable risk of injury, our resource allocation problems would be easier to resolve.

(f) Since the Commission already has a regulation in place governing its staff's role in working in voluntary standards development, amending the statute in this regard may be unnecessary. Alternatively, perhaps the Commission should review and amend those regulations (16 CFR 1031 and 1032). I would be happy to address this question in greater depth if there are specific recommendations the Subcommittee wishes to make.

Answer (Graham):

(a) I do not believe a statutory amendment is necessary or appropriate to give interested persons specific authority to request immediate Agency review of CPSC reliance on voluntary standards on the grounds that the development of such standards is unreasonably delayed or that the standards are deficient. To the extent the Commission decides to rely on a particular voluntary standard, this decision is already made by the Commission. Any person already has the right to request that the Commission take a particular action such as engaging in rulemaking. It would appear unnecessary to provide an additional statutory right to request the Commission to take particular action.

(b) To the extent the Commission formally decides not to take a particular course of action and that decision is final Agency action, any member of the public may already seek judicial review of that decision under 5 U.S.C. § 702. Thus, there appears to be no reason to amend the statute to include a specific provision authorizing lawsuits of the type described.

(c) I believe an amendment that would allow the Commission to defer only to voluntary standards developed through a consensus process would not be in the public interest. While I support issuance of voluntary standards through a consensus process that allows an opportunity for all points of view to be heard and considered, it would be self-defeating to prohibit the Commission from relying on a voluntary standard that adequately addresses an unreasonable risk of injury and for which there will be substantial compliance simply because of the method or procedure used to develop that standard. The primary goal of the Commission is to protect the public from unreasonable risks of injury associated with consumer products. The Commission should be allowed to use any existing standard to accomplish this goal.

(d) While Congress may wish to provide guidance on timeframes within which a notice of proposed rulemaking should follow an ANPR, I do not believe a statutory amendment is necessary. It is the Commission's responsibility to determine when to proceed with the various stages of rulemaking. To the extent the Commission is slow to act, Congress through its oversight responsibility can address that problem. The problem with mandatory timeframes is that they do not give the Commission the flexibility it may need in any particular situation.

(e) I believe this proposal has merit. Under the current procedure, the Commission in its ANPR invites any person to submit an existing voluntary standard, or a statement of intention to modify or develop a voluntary standard. Where no adequate voluntary standard exists, the Commission is not required to accept an offer to modify or develop a voluntary standard. Rather, it may proceed to the issuance of a proposed rule. Nonetheless, if the suggested amendment were adopted, I believe it would give voluntary standards organizations and industry members increased incentive to issue a voluntary standard before the Commission determines it necessary to start a rulemaking proceeding. I believe industry members might review the adequacy of voluntary standards more frequently and upgrade those standards routinely if the suggested amendment were enacted.

(f) I believe a statutory amendment requiring the Commission to define more specifically the role the Commission will play in the development of a voluntary standard is unnecessary. The Commission currently has in place a regulation concerning employee membership and participation in voluntary standards organizations, 16 C.F.R. Part 1031. This regulation explains how the Commission staff will participate in voluntary standards activities. If necessary the Commission could amend this regulation or issue another regulation concerning its involvement in voluntary standards activities. This would be less drastic than a statutory amendment.

Question 9. Please indicate whether you would support or oppose the following provisions of the enclosed legislation (S. 1077), portions of S. 1078, and H.R. 3456 introduced during the 99th Congress to reauthorize the CPSC:

(a) Clarify CPSC authority to disclose product hazard information to CPSC contractors (Section 2 of S. 1077).

(b) Relax conflict-of-interest standards imposed on members of CPSC chronic hazard advisory panels (Section 3 of S. 1077).

(c) Impose a floor on the number of CPSC employees (Section 201 of H.R. 3456).

(d) Repeal the cellulose standard (Section 301 of H.R. 3456).

(e) Repeal the swimming pool slide rule (Section 302 of H.R. 3456).

(f) Reqiuire the establishment and publication of CPSC's priorities and agenda prior to the beginning of each fiscal year and require a public hearing on such agendas and priorities (Section 304 of H.R. 3456).

(g) Modify or study the regulation of fixed-site amusement rides (Section 201 of S. 1077 and Title 4 of H.R. 3456).

(h) Establish a procedure for Congressional review of newly promulgated CPSC rules (Section 16 of S. 1078 and Section 303 of H.F. 3456).

Answer (Dawson):

(a) Yes, I support clarification in this regard.

(b) Yes, I would support such a provision. In the past, the Commission has found it difficult to obtain the services of qualified nominees given the present limitations in the law.

(c) No, I do not favor such a provision. I fear it would unduly limit the ability of the Commission to respond to management priorities.

(d) According to the Commission's most recent report to Congress on this standard, (for August 25, 1986 through February 24, 1987), the Agency has not inspected any manufacturer of cellulose insulation or collected any samples of insulation. No State has requested testing of cellulose insulation during that period. Inasmuch as there does not appear to be a pressing need for continued enforcement of such a standard, and since the American Society for Testing and Materials currently has a cellulose insulation standard, perhaps the time has come for repeal. If such repeal could be accomplished legislatively, rather than through the Agency's rulemaking procedures, I would have no objection to such a provision. If the Agency's staff identifies any major problems in this area in the future, CPSC still has other enforcement tools available to deal with them.

(e) I do not have sufficient information to give a yes or no answer to this question. However, if the Congress does decide to repeal this standard, the Commission would want to take immediate measures to assure that an adequate voluntary standard could take its place.

(f) Currently, the CPSC does hold public hearings on the establishment of its priorities. Recommendations are received from a variety of public sources. In addition, the Commission has a set of regulations at 16 CFR 1009.8 governing its priority-setting role.

If the question regarding agenda refers to development of the Agency's Operating Plan, then that procedure is also public under provisions of the Sunshine Act. I would note that 16 C.F.R. 1009.8(b) defines and proscribes the general policies under which the Commission operates. The regulation specifically requires that the Chairman keep the Commission advised of, and seek its guidance on, significant problems, policy questions and solutions throughout the planning cycle leading to the development of budget requests and operation plants. It also requires that priorities be established by majority votes on all requests for appropriations, an annual operating plan and any revisions thereof. Given the fact that the majority of the Commission raised objections to the Chairman's official submission of the 1988 budget to Congress and that in one instance, the Chairman failed to abide by a majority vote on the 1987 operating plan, this provision may need to be strengthened legislatively.

(g) I have in the past indicated my support for the proposal to study the need for a Federal role in the fixed-site amusement ride area. However, I do not support an immediate proposal to grant overall jurisdiction to the CPSC for all fixed-site amusement rides, since I believe the CPSC staff is not equipped to deal with this

type of safety problem. Although there are areas of Federal-state cooperation that are mutually beneficial, I believe that this may be an area of regulation that is best left to the States and localities.

(h) As I have stated in the past, I believe that Congress has a right and a duty to ensure that Federal Agencies are legitimately exercising power delegated to them. Whether Congress should supervise rulemaking, through its oversight function, through a veto mechanism, or some combination thereof, is a decision best made by Congress itself. If Congress should decide that legislative veto of Agency rulemaking is necessary, I would hope that the mechanism chosen would not unduly delay legitimate rulemaking proceedings.

Answer (Graham):

(a) Yes. This should be supported. This has been a problem area and any clarification would be helpful.

(b) This reform would be highly desirable for the effective establishment and functioning of Chronic Hazard Advisory Panels (CHAPS). The Commission has often found it necessary to disqualify otherwise highly qualified nominees for these panels because they were employed by, or consulted for, firms that made or marketed consumer products totally unrelated to the subject matter of the panels. This reform would limit the prohibition to those associated with firms that made or marketed consumer products "that may be the subject of the panel's investigation."

(c) In a perfect world I would not support floors in personnel levels. Normally, the flexibility to utilize monies wherever most needed to address safety issues would be most desirable. However, given the present circumstances I do support a floor on the number of CPSC employees as long as adequate funds are appropriated. This would prevent cutting personnel to unacceptable levels. It would also provide for the filling of critical vacancies more expeditiously.

(d) I believe there is still a need for the cellulose insulation standard. Although we have seen a reduction in demand for this material since the standard was adopted in 1978, a residential market for cellulose insulation continues to exist. As of 1984 approximately 300 firms still manufactured cellulose insulation, and the Commission continues to receive reports that it is involved in home fires. The Commission has no information as to whether manufacturers conform to the provisions of a related voluntary standard developed by the American Society for Testing and Materials. In view of the situation, repeal of the mandatory standard would be premature.

(e) I would not support revocation of the swimming pool slide standard, even though a court has discarded the standard requirements for signs and labels. There is no voluntary standard in place for swimming pool slides and I believe that consumers should be afforded protection in this area.

(f) I believe legislative provisions addressing CPSC's priorities and agenda are not necessary. The Commission develops its priorities well before the beginning of each fiscal year, and an important part of the process is a public hearing held specifically to solicit outside opinions and recommendations as to what those priorities should be. Each year we receive numerous public suggestions. We consider them extremely valuable since they influence not only the Commission's decisions on priorities, but on much of our other work for addressing product hazards as well.

With respect to our annual agenda or Operating Plan, I would note that, as in the case of priority development, all Commission meetings regarding the plan are open to the public. They may comment on the discussions or the impending decisions in writing at any time. However, the Operating Plan evolves from and almost always reflects the decisions made by the Commission during the process described above. Most of the changes are those resulting from Congressional adjustments to our request during the appropriations process.

(g) At this point I would not support a proposal to grant the CPSC authority over fixed-site amusement rides. I believe this is an area of regulation better served by State and local jurisdictions.

(h) No. This is not necessary given the fact that Congress already has the prerogative to initiate review of rules without additional legislation.

Question 10. Should the CPSA be amended to define more specifically the qualifications required for appointment as a Commissioner of the CPSC? If your answer is yes, what qualifications should be specified?

Answer (Dawson). I believe it would be difficult to craft an adequate set of criteria by which to judge the qualifications for a Commissioner. In general, it is important that, in a collegial structure, there be an effort to achieve a balance in the backgrounds of its members. To some degree, the requriement that no more than three members (out of five) be of the same political party of the President is responsive to this goal. At one point during my preparation for confirmation hearings, I came

across this description of requirements of nominees, and I believe it is an excellent description of the type of individual which is needed for a decisionmaking body.

"Individuals appointed must: (1) by reason of background, training, and experience, affirmatively qualify for the office to which he or she is nominated, (2) display a temperament and ability for impartial decisionmaking; (3) demonstrate a commitment to and familiarity with the laws he or she will administer, (4) possess the character, reputation and integrity vital to insuring public trust and confidence, (5) exhibit a talent for leadership and executive management required to made these Agencies function effectively in response to public interest."

Answer (Graham). I do not believe that it is appropriate to require specific qualifications for appointment as a CPSC Commissioner. Prospective Commissioners' qualifications are considered by the President and the U.S. Senate during the nomination and confirmation process. Moreover, I am not aware of such a requirement being imposed for other Federal Agency appointments, including Commission members. I believe a diversity of backgrounds and qualifications strengthens the collegial process.

Senator GORE. The vote bell you have heard. We will have a number of other questions for the record. My colleagues are necessarily on the Senate floor voting, and they too may have questions for the record.

Again, I apologize for the procedure that we are forced to adopt by the unusual press of business over on the Senate floor. But at this point I am going to excuse this panel, and ask the next panel to come forward.

And right after this vote, and at the beginning of the next vote, we will come back and try to complete panel one, which is made up of Nancy Harvey Steorts, John Byington, David Pittle, and Stuart Statler.

If those four witnesses would come forward as a panel, I wish to thank the members of this panel for their testimony today, and we will stand in brief recess.

[Recess.]

Senator GORE. The subcommittee will come back to order.

Again, I will renew my standing apology for the circumstances on the floor of the Senate. I just voted twice and came back, and when this one is over, we will have a couple more votes.

For your information, in case anyone is interested, the pending question on the Senate floor is whether or not Senator Quayle has the right not to vote on the last vote, which was on the right of Senator Warner not to vote on the vote before that one, which was on approving the Journal that someone claimed he had read.

Anyway, it is one of those situations. It is getting like scoring bowling in the last three frames. You sort of have to know what you are doing.

All right, this is our first panel, Ms. Nancy Harvey Steorts, President of the Dallas Citizens Council; John Byington with Pillsbury, Madison & Sutro; David Pittle, Technical Director with Consumers Union; and Stuart Statler, Vice President of A.T. Kearney.

And I appreciate all of you being here. As I explained before, we would appreciate it if you would really summarize in your oral presentation. And without objection, your full statements will be included in the record.

And we will begin with Nancy Harvey Steorts, President of the Dallas Citizens Council. Welcome.

STATEMENT OF NANCY HARVEY STEORTS, PRESIDENT, DALLAS CITIZENS COUNCIL

Ms. STEORTS. Thank you, Mr. Chairman. It's nice to be back in Washington.

I am speaking as an individual today.

I am pleased and privileged to have the opportunity to participate in this authorization hearing for the Consumer Product Safety Commission.

My comments today come from my experience as chairman of the Commission from 1981 to 1984, and from my observations after leaving that post.

As this nation addresses the critical need to be competitive in the world marketplace, we can be proud of the fact that the United States has indeed been a world leader in the development of safe products, and in the education of our citizens in the safe use of those products.

Our dramatic progress in consumer product safety in the United States is an achievement which is shared by industry, consumers, and by government.

The U.S. Consumer Product Safety Commission has been the focal point of our nation's enlightened approach to product safety, an approach which has won the respect of leaders and citizens throughout the world.

As a member of the private sector since leaving the Commission two years ago, I have met frequently with business leaders from around the world. They always remind me of the fact that they continue to look to the United States for guidance and leadership on product safety issues and programs.

The 16-year history of this young and relatively small agency reflects the very evolution of the nation's consciousness of the importance of product safety, and a parallel growth of the responsibility of industry and its willingness to work cooperatively with the government.

In 1971 the Commission was born amid conflict and contentiousness, as the American consumer rightfully demanded safer products.

Just ten short years later, industry began to assume its new role in product safety more efficiently, more effectively, and certainly more credibly for government, industry and the consumer.

Examples of this new spirit are quite plentiful. During my administration two companies come to mind as being two that did what I considered a very admirable job in really dealing with serious consumer problems.

One was Johnson & Johnson, when we had the very serious rash of Tylenol capsule poisonings. They faced this problem headon. When they found that their tamper-resistant packaging did not meet the Commission regulations for child resistant enclosures, instead of engaging in lengthy expensive regulatory proceedings, J&J admitted to the Commission that there was a problem, and immediately proposed an acceptable solution.

Similarly, MacDonald's did the same thing when we found that one of their little toys did not meet one of our regulations. And those toys were taken out of the marketplace within a matter of days.

Both of these companies acted responsibly; saved themselves and taxpayers millions of dollars in legal fees; and most importantly, moved quickly to protect the American consumers. This would not have been possible under the adversarial conditions which dominated the Commission's relationship with industry during the 1970s.

Mr. Chairman, product safety has been institutionalized in this nation because of the work of the Commission, and because of the new spirit of cooperation which has been carefully nurtured.

Having said this, however, I must hasten to add that the work of the Consumer Product Safety Commission is far from finished. It disturbs me greatly that over the last two years, the primary public focus on the agency has too often not been on its mission to make the marketplace safer for the American consumer.

I fear at this point that product safety has become politicized. In December, 1984, I issued my final report as chairman of the Commission to the President of the United States. In that report I made several recommendations concerning the future of the Commission, including one that the five Commissioners be replaced by a single Administrator.

I believe the time has now come to take this important step. While it is true that there existed healthy differences of opinion and style of management among the commissioners during my tenure as chairman, and indeed, throughout the history of the Commission, the agency did not lose sight of its mission.

I fear that this may no longer be the case. For this and other reasons, a single administrator with technical expertise and a consumer orientation is needed to put the Consumer Product Safety Commission back on course, and to ensure that its business is being conducted efficiently and fairly.

The right individual can provide the leadership and sound management necessary to the Commission's achievement of its major objectives. Even if it is determined that the Commission be made part of a larger agency, the direction and identity provided by a single administrator, whose appointment should be confirmed by the Senate, would be essential.

Among those objectives are the effective monitoring of compliance with voluntary standards and the enforcement of those standards. As I said many times as Chairman of the Commission, I prefer the voluntary, cooperative approach to solving product safety problems. However, when this approach does not yield results, the Commission must be prepared to regulate. While it must regulate fairly and efficiently, it must regulate if it is to fulfill its purpose for being.

Also, I feel very strongly about the proposed cost-benefit analysis.

I'm concerned about this. I feel that this is impractical, and would greatly hinder the work of the Commission. To require this step, while consumers risk possible injury and even death is not justifiable, and this is based on my experience as Chairman.

If anything, we must make it easier for the Consumer Product Safety Commission to do its job. And there are many important challenges which remain before the Commission that I think are still unanswered.

I am also particularly concerned that the Consumer Product Safety Commission spend more of its resources on the health related problems, such as indoor air quality, carcinogenic substances, and other continuing threats. The Consumer Product Safety Commission has not been given adequate resources to address these issues fully. The time has come to either adequately fund and support these health-related programs or to move them to other Federal agencies, where they will receive the attention and resolution which the American consumer expects.

Mr. Chairman, we are at a critical turning point in the history of consumer product safety in the United States. I am here to tell you that the concept and mission of the Consumer Product Safety Commission are not obsolete. The product safety problems we face are more complex and perplexing than ever before. If we are to resolve them, we must act now to ensure that this agency which has served Americans so well does not get caught up in the web of political rhetoric. To this end, we must review its current structure and delivery system to guard against the backsliding from the progress we have made.

My final report to the President outlined the means by which we can ensure this. I would ask that a copy of this report be entered into the record.[1]

The U.S. Consumer Product Safety Commission has achieved the institutionalization of product safety in this country. I urge you to act in such a manner that this nation never loses the benefit of its work.

I hope that this subcommittee will take a look at this testimony of those of us that have been here before, and I do feel that the future of the Consumer Product Safety Commission is critical, and it must not be stopped.

Thank you.

Senator GORE. Thank you very much.

We would like to hear now from John Byington with the Pillsbury law firm located here in Washington. Mr. Byington, it is nice to see you again. If you could summarize your testimony, the full statement will be in the record.

STATEMENT OF S. JOHN BYINGTON

Mr. BYINGTON. I would note for the record I am with the law firm of Pillsbury, Madison & Sutro.

Senator GORE. I am sorry. Indeed, that is Pillsbury, Madison & Sutro, Washington, D.C. Sorry about that.

Mr. BYINGTON. I just did not want the Pillsbury company to have a problem with that.

And I do speak as an individual. I have a very short statement, and it says that I reviewed the April 1987 GAO report on the Consumer Product Safety Commission and GAO's findings that CPSC's administrative structure could benefit from change is consistent with my very long-held and often publicly stated position that CPSC would significantly benefit by changing its administrative structure to a single administrator.

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[1] The report was not reproducible.

I frequently testified in favor of such a change in CPSC prior to and during my tenure as chairman in 1976 to 1978, and in general I concur with the GAO report and its findings. And I only hope that the 100th Congress will make the change to the single administrator so that an orderly transition can take place during the 101st Congress.

That is the end of my prepared statement. I would be happy to answer questions.

If I could have one minute, I would like to add something based upon what has happened here this morning, listening to what is going on. And I would only suggest that the discussion of ATV's this morning is kind of deja vu since the early days of this agency.

All you really need to do is to change ATV's for lawn mowers or swimming pool slides or match books or cellulose insulation, and you come back to the same problem of how do you deal with a regulatory approach when you are trying to deal with mandatory standards versus voluntary standards?

And I really believe that Congress needs to address both the administrative structure of the agency as well as the rulemaking, standards setting procedure of the agency.

Senator McCain's suggestion earlier this morning about the need to repair the system I think is directly on target. I think you are consistently faced, as this agency has been since its inception, with the choice between the mandatory standards and the phenomenal length of time it takes to do that and voluntary standards and the so-called lack of enforcement, lack of Federal preemption, and the other things that come with voluntary standards.

So I believe that there are many mechanisms available under evolving techniques of alternative dispute resolution, and I think we are all aware of what is going on in that whole arena as it relates to trying to solve all kinds of disputes without dragging them through lengthy legal proceedings and through some form of negotiated settlement.

So the bottom line is I believe some Congressionally supported creative solutions need to be attempted by the agency. But that involves some risk taking and that is difficult enough to find in politics today to start with, much less finding two people who will vote with you, which I think is a further argument for a single administrator.

Thank you, sir.

Senator GORE. Thank you very much.

Mr. R. David Pittle, Technical Director with Consumers Union, located in Mount Vernon, New York.

STATEMENT OF R. DAVID PITTLE, TECHNICAL DIRECTOR, CONSUMERS UNION

Mr. PITTLE. Thank you, Mr. Chairman.

I really have enjoyed coming down here this morning. It is like a breath of fresh air. Not since Warren Magnuson sat where you are sitting now so many years ago and questioned me about my intentions and my qualifications for being appointed to the Commission, have I heard such a board understanding and a deep commitment to the purpose of this legislation.

Senator GORE. Thank you. And you are not limited by the summary instructions.

Mr. PITTLE. I do have a lengthy statement, which I will submit for the record. I will read through just part of it now.

As a member of the original Commission, I speak to you as someone who spent nine years weighing the many complex factors involved in establishing product safety standards and bans, recalls of substantial hazards, policies to encourage voluntary action by industry, comprehensive compliance programs, and campaigns to inform and educate the consumer.

During that time, four different Presidents resided in the White House and numerous Senators chaired this committee. Some things changed and some things stayed the same.

For example, the basic mission of the agency has stayed the same, and every Congress that has ever reauthorized this agency has reaffirmed its clear and unmistakable purpose: to reduce and eliminate unreasonable risks of injury to the consumer.

There has been no equivocation, and rightly so. The pain and suffering from accidents involving chainsaw kickback, toxic formaldehyde vapors, flammable children's pajamas, explosions caused by leaking gas valves, unsafe infant safety gates, unstable ATV's, and so on is devastating.

Promoting product safety is so important that it should transcend politics. The pain and suffering, the effect on the human body, is the same regardless of who is in the White House or who sits on the Commission.

I note with pleasure that some things have changed for the better. In particular, the number of injuries from lawn mowers and children's sleepwear and many other hazards that have been regulated by the Commission have been reduced.

On the other hand, some things have changed for the worse. The Commission staff and budget have suffered enormous cutbacks over the past six years. I cannot forget, and I urge you on the subcommittee not to forget, that former OMB Director Stockman vigorously declared that the Administration's first priority was to abolish this agency and, failing that, to slash its budget.

He was open about the Administration's motives. They cut the CPSC back because they disliked it, not because they were contributing to a reduction of the national deficit. And if anyone doubts this, let me read you a quote of his regarding both the FTC and the CPSC:

> They have created this whole facade of consumer protection in order to seize power in our society. I think part of the mission of this Administration is to unmask and discredit that false ideology.

I recite this history because the actions of the current Commission reveal that little has changed about the motives of the Administration or some of its appointees. The agency has promulgated no standards, nor has it imposed any bans. Rather than pressing for adequate voluntary standards, the Commission accepts whatever action industry offers, and it does not defer to voluntary standards, it grovels. And its chairman spends his days dreaming up new ways to undermine the CPSC's recall program.

And the comments that I have heard this morning, where Chairman Scanlon indicated that the first approach is to seek a voluntary action, and if that does not work then to set up a mandatory approach, is completely misguided. That is the inappropriate way to go, and Congress never intended that that be the case.

I was the acting chairman of the Commission when that amendment was enacted in 1981. The Commission does not have a mandate to rely on mandatory standards first.

Rather, what it is supposed to do is, when it has a completed mandatory option and there is an adequate equivalent voluntary standard, then it should defer to the voluntary program. But if you do not have a mandatory standard in your hand, there is no incentive to force progress—there is no incentive for industry to come up to speed. Your comments, Mr. Chairman, are right on target on that issue.

Regarding the switch to a single administrator, I think this is one of the topics that seems to be commanding the most attention. I discussed this issue at length in the past and will submit some comments for the record, but I want to make two points now.

Nothing in this agency's current structure prevents it from acting effectively. It has the right mission and it has ample authority. What it lacks is resources and leadership.

I read the GAO report on agency structure and I have to say, with all due respect, that there is absolutely nothing new and nothing convincing in it to warrant a change. I still support collegiality and independence.

And let me explain, I think the most important feature of a collegial body is that the Commissioners of equal policy stature debate the complex issues before the agency. And I am sitting here with people that I have arm-wrestled with for nine years, and I can guarantee you that the decisions that came out of the collective wisdom of this group was always better than any one of us would have been alone.

In my opinion, the quality of these decisions is always enhanced by the collegial process.

I strongly suspect that one of the major reasons currently being advanced for abolishing CPSC's collegial structure is that the Commissioners are constantly squabbling. And while I certainly regret that so much of what goes on these days seems to involve personal animosity, I can see no basis for changing the agency just because the Commissioners disagree with each other.

Disagreement is unpleasant, but it is usually healthy. And I find no fault with robust, vigorous policy clashes.

Mr. Chairman, you sit in a body with 100 independent decision makers of equal stature. I have seen Senate debates that I would call lively, but others might call chaotic. But what we see is not always calm and orderly, but I prefer what I see to a Senate of one.

I suggest the same principle applies to the CPSC, because it too must decide matters of pressing national importance, complex factors, and necessary tradeoffs, and never enough information. To paraphrase Winston Churchill, it is a lousy system except for the alternatives.

And I must underscore what is the most overriding concern in this whole debate: Good regulatory decisionmaking needs independ-

ence from narrow expedient political pressure. As I said before, pain and suffering from dangerous products respects no political boundaries. And decisions to reduce pain and suffering, I submit, should not be controlled by political considerations.

Health and safety agencies are not as independent as, let us say, the Federal courts, and I do not think they should be. But there must be enough independence to bar the overruling of a regulation fashioned by health and safety officials, developed over the course of several years, by a simple phone call from a distant political appointee who can invoke political convenience at the cost of consumer safety.

And I urge you to resist any efforts to fold this agency into a larger one, because if you think that ATV's gets hidden in this agency, consider the case where it is just a number on the annual report of a much bigger agency.

I think that product safety needs to be highlighted, it needs to be up front, and it needs its own banner.

Regarding the use of cost-benefit analysis in recalls, the agency's proposal is misguided. It should not be going in that direction, and I agree with your earlier comments.

I think the current Act needs an amendment to put a floor on the commission's personnel complement. The staff size is being slashed every year, and I urge this committee to put in an amendment that will limit OMB's constant weakening of the agency.

I also believe that section 6(b) should be repealed. My prepared statement goes in detail. It is inconceivable that a health and safety agency has to censor the very product safety information that consumers need. And the people who seem to be calling for no regulation, who stress giving the consumer the information and let them make up their own mind, are the very same people who argue against giving out the information because it might do a disservice to a company.

There is one last issue that I wish you would take up during your oversight hearings, and that is that the current chairman and the rest of the Commission seems to be in the verge of requiring that, when the compliance staff goes out to inspect a company to see if they are complying with voluntary standards and a company refuses entry, that the staff to come back to the Commissioners to seek approval to obtain a warrant for entry.

That is a ridiculous approach. If the agency is going along with a voluntary program, then the company ought to let the compliance staff inspect to see if they are complying with the standard. By the Commission requiring the staff to come back for approval for a warrant, in my opinion, weakens further their approach to making products safer.

And finally, regarding fixed site amusement rides. I think this agency's authority and jurisdiction over fixed site amusement rides should be restored. Either the Waxman bill or the soon to be introduced bill by Senator Simon would be acceptable. Neither restores rulemaking authority, but both would restore the recall authority.

And in conclusion, the product safety agenda is unfinished. Too many consumers are still injured and killed through no fault of their own, and the sad part of it is that much of that grief can be

prevented. Consumers need and depend on the work of CPSC being continued in a vigorous fashion.

Something is not right when the clear direction of Congress is being subverted. The statutory recipe is fine. It is the ingredients that are flawed. Too few resources and Commission leadership openly hostile to the mandate that it took an oath to enforce is a dangerous combination.

I urge you to exercise the strongest oversight possible to put this agency back on course. You are the public's last hope.

Thank you.

[The balance of the statement follows:]

STATEMENT OF R. DAVID PITTLE, PH.D., TECHNICAL DIRECTOR, CONSUMERS UNION

COST-BENEFIT ANALYSES FOR PRODUCT RECALLS

The Commission is currently giving consideration to what I believe is a seriously misguided and destructive course in implementing its product recall authority. Specifically, the Chairman and his staff appointees are promoting the use of formal cost/benefit analysis as an integral part of each and every product recall action performed under section 15.

At first glance, this seems harmless enough. After all, what could possibly be wrong about wanting to know the costs and benefits of a regulatory action? And the answer obviously is, nothing. But, there's a world of difference between an ongoing informal assessment of these factors and the kind of formal, mechanistic approach being pushed by the current CPSC Chairman. I have several major misgivings regarding Mr. Scanlon's approach, especially given the context within which he insists that it be implemented.

My first objection is that the current work on this issue from the Directorate of Economic Analysis at CPSC is not competent. I have read much of the material developed by Paul Rubin, the head of that unit. It completely ignores major factors necessary for a complete analysis, and many of the underlying assumptions are patently absurd—all of which leads to unrealistic analyses of little use except for getting into mischief. Who can forget the infamous case where his staff criticized a major trade association for overspending on a safety program? Who can take him seriously when his cost-benefit analyses completely ignore the real world in which manufacturers take safety actons based on the need to preserve good will and to avoid product liability lawsuits?

But competence aside, the product recall setting is uniquely not conductive to formal cost/benefit analysis. If done right, recalls occur before there are many injuries and before the full potential for injury or death can be calculated. Defective products are often discovered in commerce before they have caused any injuries. In this regard, let me reiterate that Congress made it abundantly clear that CPSC should not be guided by a "body count."

The lack of an accurate body count means that cost-benefit analyses will always be skewed against recall action. The Commission will almost always have a better idea of the costs of a recall than of its benefits.

I believe Congress took the right approach fifteen years ago by not requiring this analysis for actions taken under section 15. Voluntary recalls taken by cost-conscious business persons are laudable. The CPSC should not be spending its dwindling resources second-guessing and undoubtedly discouraging their decisions. I cannot help but wonder what Mr. Scanlon is trying to accomplish—it certainly isn't to enhance consumer safety.

PERSONNEL FLOOR FOR CPSC

Mr. Chairman, given the Administration's propensity for agency bashing, I believe it is incumbent on the Congress to establish a personnel floor to stem efforts by OMB to cripple CPSC. During the agency's history, it developed a competent staff of 900 scientists, engineers, epidemiologists, economists, lawyers, human factors specialists and compliance officers to fashion supportable, sensible improvements in product safety. No matter who counts or how they count or what they count, the agency's work has saved millions of consumers from death and injury. There is still a sizable agenda, and the yearly slashing of the agency's resources is ultimately a disservice to consumers. I urge you to amend the CPSC to mandate an

increase, or at least to freeze personnel levels at the agency, with an eye toward raising the floor at the next reauthorization.

SECTION 6(b)

Mr. Chairman, one of the criticisms of health and safety agencies is that they regulate rather than inform. Opponents of CPSC insist that govenment's role should be to provide information to the public and let consumers make their own safety choices.

Unfortunately, this would be difficult to implement at the CPSC. The agency stands alone among the federal health and safety agencies in being unable, as a practical matter, to provide important safety data to the public. The reason is that section 6(b) of the Consumer Product Safety Act presents a major obstacle to the release of product-specific safety information in the agency's possession. It does so by barring the release of this information unless and until the agency has sent a copy of it to the named manufacturer, allowed the manufacturer to comment on the information and reviewed the manufacturer's comments regarding the accuracy of the information and the fairness of releasing it.

The resource drain on the Commission for these procedures is enormous and unfair. Even if section 6(b) constituted good public policy—which it does not—it consumes so many staff hours and causes so many delays in the release of information, one cannot avoid the conclusion that it causes more problems than it solves. The CPSC is one of the smallest health and safety agencies. Yet, it alone must follow these burdensome procedures.

Industry knows about—and constantly exploits—CPSC's resource problems. Most manufacturers are well aware that a strong letter to the agency threatening litigation will chill the agency's enthusiasm for releasing information about them. They know that the most common reaction will be to accommodate a manufacturer's objections, even if the objections do not have substantial merit, simply to avoid a lawsuit.

But, my opposition to section 6(b) goes deeper than agency resource problems. I think it is bad policy for Congress to require a government agency to "censor" health and safety information. If the CPSC has acquired data that raises questions about a product, I think that the public should have access to the data and decide for themselves.

In this regard, I find completely unconvincing the argument by some manufacturers that merely by virtue of being the repository of information, the CPSC will inevitably be viewed by the public as having placed its imprimatur on it. A carefully worded disclaimer would easily handle this problem. I don't hold a library responsible for the content of the books on its shelves, nor would the public conclude that the accuracy of every consumer complaint in CPSC files is endorsed by the agency.

As a final point, I must say that I find it disturbing that those who argue most vehemently for giving the public information and letting them make safety decisions tend to be those most opposed to doing so in the case of section 6(b).

I urge you to repeal this section and promote the public's right to be informed.

MONITORING VOLUNTARY STANDARDS

Mr. Chairman, a recent action by the Consumer Product Safety Commission vividly illustrates just how much the agency kowtows to industry.

The Consumer Product Safety Act requires the CPSC to defer promulgating a mandatory standard whenever the agency determines that a voluntary standard will adequately reduce an unreasonable risk of injury and that the voluntary standard will be substantially complied with.

In order for the agency to make proper determinations about the level of compliance with a voluntary standard, it's often essential for the agency to gain access to a manufacturer's premises. Nothing should be more welcome for a manufacturer than the opportunity to show that it does not need to be regulated. And nothing should be more important to the CPSC than determining that an industry is living up to its safety promises.

Thus, a refusal by a manufacturer to allow the CPSC to enter its premises during a routine inspection to monitor compliance with a voluntary standard should raise the most serious concern by the agency. Yet, the Commissioners have just signalled the opposite attitude. On April 8, the Commission adopted a new policy requiring staff to get its approval before seeking warrants to gain admittance to premises of manufacturers who refuse to permit inspections for voluntary standards compliance.

This sends exactly the wrong message to those whom the Commission regulates. Given the total absence of regulation in recent years, many of us have concluded

that the Commissioners have never met—and will never meet—a voluntary standard they don't like. This latest step to encumber monitoring compliance with voluntary standards demonstrates a continuing timidity of the most extreme sort.

I must add that the Commissioners' defense of this policy is unconvincing. One member has suggested that the purpose is to strengthen the process since involving the Commissioners will ensure expeditious action. My response is that if that were the Commissioners' purpose, they should enact a policy that requires the staff to seek a warrant within a set time after the refusal of entry. Only if the staff failed to act within the time period should the Commissioners be notified.

Obviously, the Commission will not adopt such as approach because speed is not the reason for its policy. I submit that the real reason is their feeling that inspecting for voluntary standards compliance is intrusive and should be done reluctantly.

Their reasoning is faulty. Their policy is flawed.

FIXED-SITE AMUSEMENT RIDES

Mr. Chairman, in 1981, Congress, as part of an overall political compromise, removed the Commission's authority over fixed-site amusement rides. To say the least, the decision was entirely political and not based on the merits. Unfortunately, this political deal has not worked to the advantage of the millions of consumers who annually go to enjoy amusement rides. Numerous deaths and injuries have occurred—and continue to occur—on these rides. And the states, upon whom the Congress depended to step into the regulatory void, simply have not done so.

I urge you to restore CPSC jurisdiction. Either the Waxman bill or the soon-to-be-introduced Simon bill would be acceptable. Neither restores rulemaking authority to the agency. Both, however, would restore recall authority and the requirement for manufacturers to notify the agency of product defects.

The reason for restoring agency authority is not to make the Commission the preeminent enforcer with respect to amusement rides. Rather, it is to ensure that problems that crop up with a defective ride become known and dealt with in other states in which it operates. Only the CPSC can enforce across state borders. And only the CPSC has been able to collect safety and injury information on a nationwide basis.

CONCLUSION

The product safety agenda is unfinished. Too many consumers are still injured and killed through no fault their own, and the sad part is that much of this grief can be prevented. Consumers need and depend on the work of CPSC being continued in vigorous fashion. Something is not right when the clear direction of Congress is being subverted—the statutory recipe is fine, it is the ingredients that are flawed. Too few resources and Commission leadership openly hostile to the mandate it took an oath to enforce is a dangerous combination. I urge you to exercise the strongest oversight possible to put this agency back on course—you are the public's last hope.

Thank you.

Senator GORE. Thank you very much. I certainly appreciate that testimony. It was very useful.

Our final witness on this panel is Stuart Statler, Vice President of A.T. Kearney in Alexandria, Virginia.

STATEMENT OF STUART M. STATLER

Mr. STATLER. Thank you, Mr. Chairman.

Like yourself, I have always had a tough time scoring those last three frames of bowling. I get confused. And I must say, listening to the testimony of the first witness this morning, I was exceptionally confused.

It amounted to sheer obfuscation of a record of ineptitude and laxity—a record that I would be ashamed of. And that being the case, I guess I can understand why the CPSC Chairman would not want to be too clear about it.

I might share my experience with you over seven years in the role of Chief Counsel to the minority to the Permanent Subcommittee on Investigations of the Senate Government Affairs Committee.

We had a rule of standing that every witness was administered the oath of office.

If that were the case this morning you would have heard very different testimony from the first witness and the entire first panel. The fact of the matter is, things are not all peaches and cream and things are not hunky-dorey these days at the Consumer Product Safety Commission.

The situation is deplorable. It is literally a disaster waiting to be discovered. And the only reason it has not been discovered is there have not been consistent oversight hearings of the kind you are conducting today. And the media has not paid the attention that the situation deserves.

Hopefully, as a result of these hearings and the work of Congressman Florio and the minority side on both House and Senate committees, since this is a bipartisan matter, more focused attention will be paid in the future.

The fact of the matter is, there is a vacuum of responsible leadership today in the position of the CPSC chairman. As a result, the agency is beset by inertia, by ill-will, and by infighting of the most extreme sort. There is rampant disarray, there is disrespect on the part of the public that the Commission purports to serve. And from my own experience with industry, there is disrespect on the part of the affected industries which the Commission also purports to serve and is patently disserving.

Staff morale is at its very lowest point in the 14 year history of the agency. Research is stymied. Unqualified political appointees on a daily basis are interfering with, and demeaning the professional work of a committed, dedicated, talented staff.

Some of these same political appointees are currently jockeying for permanent staff positions, in violation of Reagan Administration policy and in violation of longstanding civil service guidelines.

In so many ways—and I am sure you will be familiar with this—the demise of the CPSC as a viable regulatory agency resembles the systematic dismemberment of EPA during the administration of Anne Burford. I know you were active in trying to change that around and in fact were effective.

The principal difference is that there the havoc was open and obvious; and the media, the public, and Congress, and ultimately President Reagan forcefully responded in time to save the agency from its own self-destruction. The situation at CPSC today is so foul and so fetid, that I am not at all sure that the agency can ever again regain the proud stature that it once had in its earlier years.

That being the case, I think it is important to set forth for the record that these political appointees, now in office, are reflecting an ideology that is hell-bent on proving by their own ineptitude that the agency is not needed.

In point of fact, they are proving that they are not needed, but that the agency is now, more than ever.

I would ask you, Mr. Chairman, and the minority members of this subcommittee: Do not let the agency's recent poor performance deter you. Do not let its obfuscation, its laxity, the ineptitude on the part of the chairman and his followers, so to speak—do not let that fool you.

The functions of the agency, as Commissioner Pittle has just told you, are so terribly important to the well-being of this country. And those functions must be preserved. To the point that where the agency is not functioning by virtue of statutory provisions, those provisions should be changed and modified.

And I would be happy to work with the subcommittee in that effort. I have a series of recommendations in my testimony today to overcome some of the statutory problems.

But most important of all, unlike Commissioner Pittle, I join with former Chairman Byington and former Chairman Steorts in supporting a change in the agency's structive I too served as Acting Chairman for a period at the onset of the Reagan Administration. I feel that the time has come, is long—past due, to see to it that the collegial leadership of this agency be restructured.

The statutory five-member Commission and the present three-member body should be replaced by single-headed leadership to better effectuate the important purposes of the agency. Whatever the benefits once might have been from the concept of a five-member Commission, the experience of time, coupled with a virtual halving of the agency's resources and staff, point to the wisdom of revamping this cumbersome structure.

No other single measure could do more to restore the vitality of the agency and to restore accountable leadership. Both are so lacking today. It would have the additional effect, I might add, Mr. Chairman, of necessarily causing the President of the United States to have to submit a new nominee who could be an accountable administrator of this agency, as opposed to the present leadership.

I think it is important—and Commissioner Pittle struck on this—to give you some better idea of low bad the situation has become at CPSA, against this backdrop of indirection and dereliction at the highest reaches of the agency and the devastating budget and resource slashes of recent years.

Today, CPSC is increasingly unable to assess emerging risks from new products. Staff is simply unable even to identify those risks. So many of the hazards are not receiving the attention they deserve. So many of the issues I heard discussed this morning were issues before me five, six, seven years ago, and nothing is being done. That has to change.

A fast-disappearing staff is being spread so thin with each succeeding year. Investigations are being tabled indefinitely for want of funds or lack of interest at the top.

As a result, so many more Americans will be maimed, charred and killed as a result of this laxity, until and unless this committee can begin to turn the situation around.

My specific recommendations are contained in my prepared testimony. But by comparison to today, due to CPSC's accomplishments in its glory years, one cannot even begin to contemplate how much potential litigation has been averted because there are simply fewer victims.

Nor can one begin to contemplate how many product liability lawsuits have been avoided because of the enhanced sensitivity at all corporate levels to concerns relating to risks in their products.

And by virtue of CPSC's activity when it was a viable watchdog, as opposed to its recent inactivity, we can never really tally the untold monies saved by responsive companies and industries, by government at all levels, and by grateful families across our land who have been spared tragic harm.

As I have mentioned to you, I have a series of specific recommendations relating to both statutory provisions concerning CPSC, including one involving the Federal rules of evidence.

I would ask that the Committee in its consideration pay of these concerns, one of which I find particularly important now. Some companies literally are often shying away from making corrective changes that ever they view as necessary, simply because of the use to which that information is put in subsequent civil suits.

I concur with Commissioner Pittle's comments relating to amusement rides being a matter that this subcommittee ought to pay attention to, and should correct by statute. There is no reason why, when every other consumer product is duly regulated—with the sole exception of guns on the one hand and tobacco on the other—that amusement rides stand out as something that hundreds of millions of riders each year in this country cannot be adequately protected from.

And I do endorse the bill that Senator Simon plans to introduce, which I understand is similar to his bil considered in the last Congress.

And finally, it really is so much cheaper in the long run for government and industry alike to prevent tragedies from consumer products by paying attention to risk concerns in the first place, than to pay so dearly for them as the body count invariably rises.

You have an opportunity to change that, both in terms of changes in the Agency's structure and changes you may make in the law. I commend that effort.

Senator GORE. Thank you very much.

[The statement follows:]

STATEMENT OF STUART M. STATLER

SUMMARY

Mr. Chairman, thank you for the opportunity to offer my observations concerning reauthorization of the CPSC. In short, I believe that the functions performed by this agency should be continued in the interest of the Nation but that the collegial leadership of the agency needs to be restructured. The statutory 5-member Commission (and the current 3-member body) should be replaced by single-headed leadership to better effectuate the agency's important work. Whatever benefits may have flowed from the concept of a 5-member Commission at the start, the experience of time—coupled with a virtual halving of the agency's staffing and inflation-adjusted budget—point to the wisdom of revamping that cumbersome structure. No other single measure could do more to restore vitality and accountable leadership. Both are sorely lacking today.

Against a backdrop of indirection and dereliction at the highest reaches of the agency, the devastating budget and resource slashes, CPSC today is increasingly unable to assess emerging risks from new products, or even identify them in the first place. So many hazards are not receiving the attention they demand, while investigations are tabled indefinitely for a want of funds or lack of interest at the top. A fast-disappearing staff is being spread more thin with each succeeding year. Those who remain can't effectively target new trouble spots or correct many of those already threatening. As a result, so many more Americans will be maimed and charred and killed before this Committee can even begin to turn the situation around.

By comparison, due to CPSC's accomplishments in its glory years, one can't even begin to contemplate how much potential litigation has been averted because there are simply fewer victims; nor how many product liability lawsuits have been avoided because of the enhanced sensitivity at all corporate levels to risk factors that would otherwise have resulted in countless tragedies. And by virtue of CPSC's activty when it was a viable watchdog agency, as opposed to its recent inactivity, we can never really tally the untold monies saved by responsive companies and industries, by Government at all levels, and by grateful families across our land who were spared tragic harm.

I will set forth a number of key issues which I believe this Committee should address as it considers how to rethink and improve upon product safety regulation in this country. Some of my suggestions go beyond what is currently in the Consumer Product Safety Act and related statutory authorities. Some are meant to clarify ambiguous statutory language in order to forestall prolonged litigation as to meaning and intent. All the suggestions emanate from my own personal experience:

As Special Assistant to the Chairman of the National Commission whose inquiries were responsible for creating CPSC;

As a U.S. Senate staff member involved in drafting, Committee markup, and enactment of the enabling legislation;

As Commissioner working with, and responsible for carrying out the legislation; and

As a management consultant in the private sphere now advising companies how they might best, on their own, take initiatives to reduce the potential for risks in their products and byproducts.

AGENCY STRUCTURE AND LEADERSHIP

First, the leadership functions described in the CPSA and related safety acts should be administered by one person, not five or three. This could be simply done by redesignating the Consumer Product Safety Commission to be the Consumer Product Safety Agency and mandating that the President nominate, subject to Senate advice and consent, an individual with exceptional qualifications and background to serve in this singular capacity.

The just-completed GAO report, entitled "Consumer Product Safety Commission: Administrative Structure Could Benefit From Change," supports and argues strongly for this change. The report's well-founded findings and conclusions track my own personal experience as both a Commissioner for almost seven years (August 1979–May 1986) and Acting Chairman over the critical early months of the Reagan Administration back in 1981.

Single administrators responsible for major safety regulation are by no means uncommon. They are the rule: CPSC's present collegial forum is a notable—and increasingly notorious—exception. The whole panoply of other consumer safety legislation at the federal level is presently administered by a single person. This includes food, drugs and cosmetics (FDA); automobiles and tires (NHTSA); clean air, water and environmental wastes (EPA); occupational hazards (OSHA); aircraft (FAA); boats (Coast Guard); meat, poultry, eggs and pesticides (Agriculture Department); and many more examples.

The only exception I know of, and it's not really in a strict consumer product safety context, involves regulation of nuclear power plants by the Nuclear Regulatory Commission (NRC). That area is administered by a five-member panel which, over the years, has found itself embroiled in somewhat comparable internal squabbling, delays, and inefficiencies as today pervade the CPSC.

Whatever other changes your Committee may make in the reauthorizing legislation for this Agency, nothing would do more to enhance its ability to protect the American public from unreasonable risk of injury than this one reform.

You would cut back on needless procrastination and posturing.

You would eliminate the care and feeding of high-level appointees who really arent's needed to perform what is essentially a regulatory, not an adjudicatory function.

You would promote clearer decisions that could serve to better guide affected companies, instead of what now so often evolves as mush.

You would immediately accomplish direct savings, by all accounts, in excess of $1 million.

You would achieve indirect savings—in terms of staff time and energies currently wasted, and attentions diverted from priorities—of countless more millions of dollars.

And most important of all, single-headed leadership would mean far greater accountability to the Congress, to the President, and ultimately to the American public.

What form should such an Agency take? The GAO did not address that question. The obvious alternatives would be to keep it, as now, a separate and distinct agency, not part of any other; or to merge its functions within either an existing Cabinet department (e.g., the Department of Health & Human Services) or within some other regulatory body (e.g., the Federal Trade Commission).

I strongly believe that importance of this function is such that it should be continued as a discrete agency of government and not some indistinct unit submerged within another agency or Department. The latter would necessarily entail loss of identity and would likely be perceived by industry and by the public as a sign of diminished significance that the Congress attaches to this program. Moreover, I believe it would lead to substantially diminished accountability.

For these reasons and more, I would urge as the model for this agency, albeit on a much smaller scale, the current organizational set up that characterizes the Environmental Protection Agency (EPA). It is a separate and discrete agency of government headed by a Presidential appointee serving at the pleasure of the President. I believe that there are sufficient built-in protections, associated with high visibility and media interest in key safety issues, to ensure that regulatory decisions would be based upon the merits of the particular issue rather than on any political expediency.

Second, as important as a single administrator is to effectively run this Agency, so is Congress' responsibility to make sure it is the right person—else structural change becomes meaningless. And so, apart from how the CPSC should be structured to ensure more accountable leadership, urgent attention must be given to who will lead.

Today, there is a vacuum of responsible leadership in the position of CPSC Chairman. As a result, the agency is beset by inertia, ill will, and infighting. There is rampant disarray, and disrespect on the part of the public the Commission purports to serve and the affected industries which it patently disserves. Staff moral is at its nadir. Research is stymied. Unqualified political appointees are interfering with, and demeaning the professional work product of a dedicated, talented staff. Some of these same political appointees, who could care less about the agency's mission, now are jockeying for permanent staff appointments in violation of Reagan Administration guidelines and longstanding civil service policy.

The situation at the CPSC today is regrettable. It is deplorable. It is a disaster waiting to be discovered.

In so many ways, the demise of the CPSC as a viable regulatory agency resembles the systemmatic dismemberment of the EPA during the Administration of Anne Gorsuch Burford—the principal difference being that there the havoc was open and obvious; and the media, and the public, Congress and ultimately President Reagan forcefully responded in time to save the agency from self-destruction. The situation today at the CPSC is so foul, so fetid, that I'm not at all sure the agency can ever again regain the proud stature it once enjoyed.

If this agency is to be the watchdog that Congress intended, that intent needs to be reaffirmed by holding the current Chairman and his political appointees accountable for the mess they have created. And if the structure is to be changed, to leadership by one person, Congress must be vigilant in exercising close scrutiny over whoever may be nominated by the President to "clean house." Congress must also exercise continuous oversight over the way and means by which this is done on behalf of the outstanding companies who support responsible product safety regulation, and on behalf of the American public which benefits from it.

RESTORE ENFORCEMENT EFFECTIVENESS

Third, the Committee should focus on measures to restore the effectiveness and ensure the integrity of the Commission's enforcement arm. Whether accomplished through legislation or oversight, there is increasing evidence of a concerted effort on the part of the current leadership to shackle the Agency's enforcement capability. Notwithstanding the efforts of a dedicated Director of Enforcement and a committed, talented professional staff, intrusions from on-high in recent months are both evident and ominous.

Without any justification in the statute, enforcement decisions have been impeded by ill-founded, cost-benefit arguments which often tend to be rooted in an ideological bent *not* to upset the status quo. These arguments, and calculated selection of facts and putative cost factors, reflect an antipathy toward any mandatory action at all

against a company or industry. During the closing months of my own tenure, and based on trade press accounts coming to my attention of late, the intrusion of specious pseudo-economic assertions to offset recommended compliance and enforcement actions has become rather routine. Such voodoo economics invariably makes the case for doing nothing in the face of an acknowledged hazard.

Other indications of interference with the Agency's enforcement function include:

Curtailing authority of the enforcement division to monitor compliance by firms with voluntary industry standards.

Transferring key personnel out of the enforcement division.

Eliminating altogether authority of the Director of Enforcement or his staff to be involved in the litigation of CPSC enforcement cases brought in the Federal courts; or even acting in a liaison capacity with Department of Justice attorneys representing the Agency with respect to litigation arising from enforcement division efforts. In at least one very recent situation, the agency's Executive Director—a political appointee not trained in the law, and whose personal views on the subject are known to run counter to the enforcement decision of the Commission majority—reportedly interceded at a critical juncture in the Agency's most prominent pending enforcement matter, the situation involving ATVs.

Arranging for long term details of key staff members out of the enforcement division without bringing in replacements; and, overall, often not replacing enforcement division staff who have left the Agency, leaving those positions unfilled both in headquarters and in the regions.

Deemphasizing the enforcement function in field assignments, with an accompanying overemphasis on education and information platitudes that have never proved very successful in reducing accidental injury and death from unsafe products.

There are many more subtle actions and signals from top management, all pointing in the direction of trying to ensure that the enforcement division cannot adequately fulfill its responsibility. The situation is so serious that it behooves your oversight Committee to delve deeply into this subject, and possibly take testimony under oath so as to avoid the likelihood of any further intimidation of staff from on high.

RESOURCES NEED TO BE SUFFICIENT

Fourth, the agency needs sufficient resources to do its job properly. It simply doesn't have those resources today. The devastating budget and personnel slashes over the last several years have steadily sapped CPSC's ability to respond. The past seven years saw a whopping cut—taking inflation into account—of close to 40% in funding, down from $42,140,000 in FY 81 to the current FY 87 level of $34.1 million. Those same seven years also evidence the evisceration of CPSC's staff. The current on-board strength of 519 full-time staff, which tracks OMB's mark for FY 88, represents more than a 40% swipe since FY 81 when 889 full-time staff were on board.

The bottom line is scary: both staff and funds have been slashed without rhyme or reason, beyond any semblance of what sacrifices within government may have been needed to keep down spending. Worse, now 14 years after the agency's first budget of $30.9 million in FY '74, the FY '88 operating budget mark of $33 million represents a decrease in real dollar terms of more than 50% * * * greater than half! Put another way, simply to match the agency's FY '74 budget, the '88 budget would have to approximate $75 million. Whatever additional cuts OMB has in mind in coming years will simply add salt to a festering would.

As part of this reauthorization process, your Committee—and the Congress as a whole—must determine whether it wants an effective agency or a paper tiger. Certain that it is *not* the latter, I strongly urge you to give renewed consideration to authorizing a level of expenditure and stipulating a minimum personnel level more commensurate with the vital safety role you intend this Agency to play.

CONSUMER PRODUCT SAFETY ACT AMENDMENTS

Fifth, the Committee should decide, one way or the other, whether there is a private right of action inherent in Section 23 of the CPSA by injured persons who are plaintiffs in civil litigation against a company for failure to report a "substantial product hazard" under Section 15 of the Act. This important issue goes to the original intendment of the Act and is now being litigated many times over in individual cases in State and Federal courts around the country. Taxpayer monies and precious court time should not be wasted in that way.

You, in Congress, can decide now whether you want one outcome or the other. There are sound arguments that can be summoned up on both sides. But it's fool-

hardy in the extreme to continue to tie up the courts over the next several years in determining what Congress may have intended back in 1972, especially when the issue—to my personal knowledge as one involved in Committee markup and Senate Floor consideration of the bill—was never really addressed. Now that the issue has been raised, choose whatever course appears to be the best public policy today, clarify the language accordingly, and let's get on with it.

Sixth, this Committee should also consider clearing up the reporting responsibility of manufacturers, retailers and distributors under Section 15 of the CPSA, and under the related Acts that CPSC administers. I have always felt that it is counterproductive to the goal of comprehensive, timely reporting to require these responsible parties in effect to have to submit at any stage in the process (and in particular, at a very early stage) that their product may have a defect which may present a substantial product hazard. I believe that more reporting, and more prompt reporting, of potential hazards would result if the Congress borrowed in part from the later-enacted Medical Device Reporting requirements of the Food, Drug and Cosmetic Act (21 USC 352(t); 360(i); 371(a); and 374(e)), as well as from certain commonsense lessons learned from what is now some 14 years experience with this provision.

Specifically, your Committee might consider modifying the language of Section 15 to require reporting on the part of any such party who:

"* * * obtains information which reasonably supports a conclusion that such product:

"(1) has malfunctioned and the product would be likely to cause or contribute to a death or serious injury if the malfunction were to recur; or

"(2) is the subject of a liability claim or lawsuit involving an injury or death; or

"(3) fails to comply with an applicable federal or voluntary industry safety standard; or

"(4) may contain a defect; or

"(5) otherwise may present a substantial risk of injury."

Were that to be the operative language, I believe that many more reports would be received and could thereupon be evaluated by the CPSC at a much earlier point in time.

With sufficient resources, the agency could then separate out the wheat from the staff * * * serious risk issues from the inconsequential ones * * * and encourage prompt remedial response. At the same time, while those reporting would have a more clear-cut and onerous responsibility, they would be relieved of whatever negative connotations now pertain to their reporting under the existing language.

Seventh, the Committee should consider ways of correcting a particularly troublesome situation wherein manufacturers today may be reluctant to correct a product hazard, or design or production defect, solely or principally because of the impact such remedial efforts might have on ongoing ligitation by injured parties in the courts. This is an exceedingly delicate problem involving the need to protect the public at large from further injury versus the interests of those persons already injured who are seeking just compensation. On paper, the Federal Rules of Evidence restrict the introduction at trial of information about subsequent product redesign because of its potential prejudical effect. In reality, however, exclusion of such evidence tends to be more the exception than the rule because of other provisions in the Rules of Evidence that permit introducting such information for other purposes.

On the one hand I am loathe to involve your Committee in this imbroglio. But the issue is so central to whether safety improvements will in fact be made by a company, that it really should be addressed head on. I don't offer a solution, but urge that consideration be given to enhancing the incentives for a company to make timely, corrective changes in products that exhibit such risks or defects, while at the same time not doing irreparable harm to the ability of an aggrieved party to present all the relevant facts. Something needs to be done, however, to better reflect the interest of the society as a whole to prevent still more or further injury and death from a product hazard, without unduly compromising the rights of persons already suffering harm.

Eighth, the Committee should revsist anew the fact that, of all the Federal health and safety agencies, the CPSC is most prevented from sharing vital safety information with those in need of receiving it because of Section 6(b) of the CPSA. The Commission is the only Federal safety agency which must undergo egregious delays before disclosing information which mentions a particular manufacturer or brand of a product, or from which such information might be inferred. CPSC is the only such agency hampered in alerting the public to potential hazards which, once known and understood, consumers could take action on their own to forestall further injury or harm.

My concerns in this respect are well-known and were documented in the course the last round of reauthorization hearings back in 1985. The fact is, notwithstanding the requirements of the federal Freedom of Information Act, the CPSC is so bogged down in cumbersome procedures in order to comply with the exhaustive provisions of Section 6(b), that the backlog often runs over a year. The statutory "safeguards" have become an excuse for nondisclosure of such product specific information entirely. The watchdog has been effectively gagged.

Moreover, I witnessed in my closing months at the Commission, and have noted from reports since, that the clearance procedures of Section 6(b) even for generic safety information, briefing packages, staff presentations and the rest, are occasionally being misapplied according to the deregulatory philosophy now in vogue by those in charge. They misuse the provisions so as to prevent legitimate data and staff conclusions from reaching the public, while at the same time disseminating highly questionable, biased, and "doctored information. Such information typically tends to place far greater stress on the contribution of user error, abuse and misuse to a hazard situation, while understating the role of product design or defect as a cause for concern.

EXTENDED TENURE

Ninth, while I strongly believe in regular and intensive Congressional oversight of CPSC activities, I urge the Committee to consider a more extended agency tenure coming out of this reauthorization. I am sure you're aware that reauthorization proceedings held every other year are an exceedingly intensive undertaking for the agency. Considerable staff time is expended to prepare for the complete review of enabling legislation. This year's volumes of material point up the prodigious effort undertaken within the agency to validate its performance and prepare for each reauthorization.

All this, for a small agency, is time away from progress on hazard matters. It is frustrating to the staff to see too-closely spaced reauthorization efforts slow the pace of needed safety efforts. Worse, is the impact of a biannual reauthorization on staff attitudes and morale. The process generates anxiety and turmoil as rumors of impending difficulty invariably spread. Staff morale—although it could hardly be lower than today—tends to plummet whenever the fate of the agency hangs in balance. Staffers see their substantive efforts on hazard projects sidetracked for weeks (sometimes months) on end.

An extended reauthorization period of several years—perhaps 3 to 5 years—would go far toward redressing this problem. It would give the agency an adequate period in which to dedicate resources directly to resolving critical product risks. It would imply a signal from Congress that you're behind this agency and expect that it's important mandate will be fulfilled. And all the while, as noted, Congress can and should exercise tight control over the agency through periodic oversight hearings on policy matters, as well as on specific topical concerns and emerging hazards.

CONCLUSION

In closing, there are a great many more issues—indeed many substantive product hazards—not currently being addressed by the Agency which cry out for attention. Short of "cleaning house," I don't believe that the current regime in charge of the CPSC especially cares about these items or is the least bit likely to respond to them in any decisive way.

My comments throughout are not in any way meant to reflect adversely on the outstanding efforts of Commissioners Anne Graham and Carol Dawson to fulfill their oath of office and carry out the Commission's mandate. Their mutual concern about, and responsiveness to unreasonable risks has been demonstrated time and again on behalf of the public interest and industry's best interests. But their efforts repeatedly have been met with harassment, incivility, duplicity and non-responsiveness on the part of the Chairman and those political and certain other-level appointees who curry his favor, and by so doing renege on their statutory obligation to uphold the law.

The CPSC needs to stay on top of industry trends and spot needless risks before many—or any—consumers are hurt. In its heyday, dollar for dollar, I'm not aware of any other agency in all the United States Government that returned so much benefit to American taxpayers for the relatively small sums expended. But over these last several years, the trend toward excessive cost-cutting where health and safety are at stake is not only perilous to the well being of this Nation, but costly to all segments of our society.

It's so much cheaper for government and industry alike to prevent tragedies in the first place than to pay dearly for them as the body count inevitably arises.

Senator GORE. I appreciate the contribution of each member of the panel. I have a few questions, to which I would like to get brief responses, because we are in the midst of another vote.

Should section 9 of the Consumer Product Safety Act be amended to allow the CPSC to defer to an existing voluntary standard only in situations where a standard actually exists?

It has been suggested that the procedures currently used, in situations where voluntary industry standards, like state remedies, are merely in the formative stages but do not actually exist.

Mr. PITTLE. When I was acting chairman, an amendment came up in our legislation, that would make the Commission's deference to a voluntary standard preemptive, and it was soundly defeated in the conference committee.

There was and is a concern that if the Commission defers to a voluntary standard, there may be a certain amount of compliance that won't occur. Also, there is a certain amount of additional safety that the Commission may, by a majority vote, decide isn't achievable in the context of obtaining an immediate voluntary action. It's a trade-off.

And finally, there is a certain amount of activity at the State level. The State might recognize that CPSC is not going to enforce the voluntary standard, and may not raise it to the level of safety they need. And as a result, the State will act on its own.

I would guard that very jealously. I do not think that the Commission's agreeing not to mandate a standard should have enough force to preempt action to improve safety at the State level. That would be a mistake.

Senator GORE. I would like to followup, and I would like to give other members an opportunity to respond for the record.

Unfortunately, I am going to have to go to the Senate Floor to vote. Just a very brief response to these final two questions.

Does anyone here believe that it is a good idea to put the CPSC staff to work doing cost-benefit analyses of voluntary recalls of hazardous products proposed by manufacturers?

Does anybody think that's a good idea?

Mr. STATLER. Definitely not.

Ms. STEORTS. Definitely not.

Mr. BYINGTON. I do not see any value in it.

Mr. PITTLE. Definitely not.

Senator GORE. Should Congress legislate to ban or to recall ATVs?

Mr. STATLER. I personally am of the view that Congress should take this matter into their own hands. What the remedy should be is a matter you will have to decide.

Senator GORE. Very briefly.

Mr. BYINGTON. May I make one comment? I think if the Congress decides to do that, it ought to do it very carefully, and ought to go back and take a look at what happened in cellulose insulation when it did exactly that.

Mr. PITTLE. I have not sutdied the matter fully, so I reserve my opinion. But Congress did something like that with lead-based paint poison prevention, where it said there will be a ban at some

future date unless the Commission created enough information to either convince Congress there was no need for a ban.

And I think that would be a way for Congress to approach this matter. I think you probably would have a difficult time simply banning them.

Ms. STEORTS. I think a very strong look at what the Commission is doing at this point is in order from you and the Congress. I am appalled that they have not taken stronger action up to this point.

Senator GORE. Thank you very much. I wish we had more time. We will submit our remaining questions for the record.

Our next witness will be Mr. S. Anthony McCann. I would like to express my thanks to this panel again.

I am sorry for the shortness of the time available. But we will have a brief recess and come back and hear Mr. McCann.

[Recess.]

Senator GORE. The subcommittee will come back to order.

I will not repeat my apology, only because everyone here knows what is going on on the Senate Floor. But we will come back to order.

Our witness is Mr. S. Anthony McCann, Assistant Secretary for Management and Budget with the Department of Health and Human Services; accompanied by Dr. Lowell Harmison, Deputy Assistant Secretary for Health.

Welcome to both, and please proceed.

STATEMENT OF S. ANTHONY McCANN, ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY DR. LOWELL HARMISON, DEPUTY ASSISTANT SECRETARY FOR HEALTH

Mr. MCCANN. Thank you, Mr. Chairman.

As you said, my name is Tony McCann, and I am the assistant secretary for management and budget in the Department of Health and Human Services.

Accompanying me is Dr. Lowell Harmison, assistant secretary for health and the Public Health Service.

Before beginning, I would like to thank you for accommodating our request to testify on the reauthorization of the Consumer Product Safety Commission.

We are here to present the Administration's proposal to place the Consumer Product Safety Commission in the Public Health Service.

Within the Public Health Service we propose that the Consumer Product Safety Commission, like other public health agencies and bureaus, would have a single administrator; and recommend that the administrator be appointed by the President with the advice and consent of the Senate.

The agency would retain its statutory functions and missions.

The Administration is proposing this change for two main reasons. First, to coordinate public health and safety activities of the Commission with those of the Public Health Service; and secondly, to improve management of the agency through proper executive oversight.

In my written statement which I am submitting for the record, I indicate in more detail the origins of the Consumer Product Safety Commission, which lies in—and its history in the Food and Drug Administration.

Currently, the Commission is an independent agency of the Federal Government. By statute it has five commissioners appointed by the President and confirmed by the Senate.

Its mission is to protect consumers from unreasonable risks of injury associated with approximately 1,500 everyday products.

Public Health Service is an operating agency within the Department of Health and Human Services. It is led by the Assistant Secretary for Health, and it is composed of six agencies, among which are the Centers for Disease Control, Food and Drug Administration, National Institutes of Health.

Its history goes back to 1798.

The mission of the Public Health Service is a broad one, and it includes protection of health, the advancement of the nation's physical and mental health, prevention and control of disease and disability, and the enforcement of the food, drug and cosmetic laws of the country.

During the past several years, the profession of public health has begun to view death and disability caused by violence and injury as a public health issue, subject to the same types of scientific inquiry that we give to more traditional diseases.

Injury is the leading cause of disability for children and premature death in this country.

There are behavioral, biomedical, environmental and product-related precursors to injury, factors which are subject to prevention.

As our definition of public health has broadened, the prospective roles of the Public Health Service and the Consumer Product Safety Commission have drawn closer, requiring closer coordination between the two agencies.

As the public health agency for the Federal Government, I believe that the Public Health Service is a proper location for the Consumer Product Safety Commission.

It will provide an emphasis on safety and public health, of assuring consistency of mission and enhanced coordination.

The General Accounting Office study, which has been mentioned before, concluded that the Consumer Product Safety Commission could benefit from a change to a single administrator; resources that are now being used for the Commissioners could be used for programmatic activity.

In addition, the General Accounting Office indicated that major studies, including the Hoover Commission and the Ash Commission have both indicated substantial concern with the structure of independent regulatory commissions.

Further, seven of the eight other health and safety agencies reviewed by the General Accounting Office were all headed by single administrators.

Our proposal assumes the same funding of staff levels as were recommended by the President in his 1988 budget request. Should administrative savings occur, we would propose to use those for additional programmatic activities.

The Administration is confident that the Consumer Product Safety Commission—putting the Consumer Product Safety Commission in the Public Health Service will enhance its effort to address product safety hazards.

The Public Health Service is a strong team with very visible parts and a long tradition of protecting public health.

As part of this team, the Consumer Product Safety Commission will have executive oversight necessary to ensure partiality and continued program improvements, putting all the resources of the Public Health Service immediately at hand.

Moreover, the Consumer Product Safety Commission would have the Secretary of Health and Human Services, Dr. Bowen, as a spokesman for the agency with Congress and the Presidency, giving it greater access to senior executive branch policy officials.

Upon enactment of our proposal, the Consumer Product Safety Commission would be moved intact into the Public Health Service, and sufficient resources would be made avalable to ensure a smooth transition.

In summary, Mr. Chairman, the Administration is proposing that the Consumer Product Safety Commission—excuse me, is proposing changes in the Consumer Product Safety Commission which we believe will improve the organization's current and future ability to achieve its mission.

As a new member of the Public Health Service team, led by a single administrator, the proposed organization would be better able to pursue important missions to protect the safety and health of our nation's consumers.

We urge the subcommittee to consider favorably our proposal—the proposal which we have placed before you today, and obviously, will provide any assistance that we can.

Again, I would like to thank you for accommodating us for testifying on relatively short notice, and Dr. Harmison and I would be prepared to answer any questions you might have.

Senator GORE. Well, thank you very much.

We appreciate the brevity of your testimony under these circumstances.

Let me ask you, do any of HHS's current functions concern any aspect of the consumer products which fall within the jurisdiction of the CPSC?

Dr. HARMISON. Yes, Mr. Chairman, I think we have enormous breadth and activity within the Public Health Service, that is directly relevant to the Commission.

Particularly, in the Centers for Disease Control and the injury program area, and NIOSH in the occupational area, particularly in the NIH environmental health sciences, the national toxicology program, and other data bases.

The National Cancer Institute has an enormous data base and a valuable research base that will be helpful.

The National Center for Health Statistics is an important source of information of epidemiological data that is invaluable to establishing a strong base for assessment of risk.

So that is just to name a few. There are other components, programs, that are directly relevant.

Senator GORE. All right, now if we accepted your proposal, would there be any budgetary savings of benefit to HHS?

Mr. MCCANN. We do not believe there would be any of benefit to HHS. Our proposal would be that as we restructure the agency initially, at least through providing for a single administrator, we would use the existing budget request, which is approximately $34 million.

We would reprogram that money within the Consumer Product Safety Commission.

Senator GORE. Would you like to have EPA also?

Mr. MCCANN. It was part of the department at one time. No, sir.

Senator GORE. Why not?

Mr. MCCANN. Well, initially, as the management person, that would be an extremely large agency for us to absorb, and I think it would require substantially more study before we——

Senator GORE. Any other reasons?

Well, the reason I ask is, it was separated because of concerns not having to do with management, but having to do with the independence of its decisions.

And it seems to me that similar concerns exist here. I have an open mind, but I do want to express for the record some skepticism about this particular proposal.

I respect your presentation, and do not rule it out. But I want to express some doubts about whether it is a wise policy to pursue.

Mr. MCCANN. Well, I would only observe, Mr. Chairman, that while there are obviously many disputes over specific issues, the department handles a broad range of very complex, and in some cases, very sensitive political issues.

And I think on the whole, handles them in a manner which is to our credit and to the credit of the public health service agencies that do them.

In addition to that, as has been expressed before, the Public Health Service is an organization that has got very many highly visible parts.

The institutes within the National Institutes of Health, for example, which are technically four levels below the Office of the Secretary, still have immense visibility on the Hill and elsewhere.

So I think some of the concerns, as the consumer movement emerged in the 1970s, that were not necessarily addressed in FDA at the time, may not now exist.

Senator GORE. On the other hand, we have seen a new—and what would have been in past years unthinkable—encroachment on FDA's independent judgment in the current administration.

Mr. MCCANN. Well, I understand you have some concerns about that.

Senator GORE. Yes, I do have some concerns about this proposal. But it is one that we ought to examine very carefully, and certainly one that should be given serious consideration, anytime we look at changing the structure and location of the CPSC.

I appreciate your appearance here today, both of you. Thank you very much.

Mr. MCCANN. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF S. ANTHONY MCCANN, ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman and members of the Subcommittee:

My name is Anthony McCann. I am the Assistance Secretary for Management and Budget of the Department of Health and Human Services (HHS). Accompanying me is Dr. Lowell Harmison, Deputy Assistance Secretary for Health of the Public Health Service. We are here today to present the Administration's proposal to place the Consumer Product Safety Commission (CPSC) in our Department in conjunction with the Subcommittee's consideration of the reauthorization of CPSC.

The proposal would move the CPSC to the Public Health Service (PHS) of the Department of Health and Human Services. Within the PHS we propose that CPSC would have a single administrator, appointed by the President with the advice and consent of the Senate, would retain its current statutory functions and mission. The proposed authorization levels are $34.4 million for FY 1988, and such sums as necessary for FY 1989 and FY 1990.

The Administration is proposing this change for two main reasons:

To better coordinate the public safety activities of the agency with those of relevant PHS programs with which it shares many mutual interest; and

To improve management of the agency through proper executive oversight, at the same time continuing its important rulemaking and other functions.

I will discuss these issues in more detail later in my statement.

THE CONSUMER PRODUCT SAFETY COMMISSION

The origins of CPSC lie within the Food and Drug Administration (FDA) of the Public Health Service. Specifically, product safety functions were expanded in 1968 when FDA became a part of the Consumer Protection Environmental Health Services (CPEHS) within the Public Health Service. In 1970, CPEHS was abolished and FDA created the Bureau of Product Safety.

In June 1970, the National Commission on Product Safety recommended the establishment of a separate consumer Product safety agency. Thereafter, in October 1972, the Consumer Product Safety Commission was formally established and was activated in May 1973. At that time, FDA transferred resources associated with those products covered by the Consumer Product Safety Act of 1972.

Currently, the Consumer Product Safety Commission is an independent agency of the Federal Government, directed statutorily by five commissioners appointed by the President and confirmed by the Senate. CPSC's mission is to protect consumers from unreasonable risks of injury associated with approximately 15,000 everyday products. Examples of these products are lawnmowers, toys, firework, household chemcials, heaters, and hair dryers. The risks include amputation, fire, electrocution, burns, asphyxiation and cancer.

THE PUBLIC HEALTH SERVICE

The Public Health Service is an operating division of the Department of Health and Human Services. The PHS is led by the Assistant Secretary for Health and is composed of six agencies: the Alcohol, Drug Abuse and Mental Health Administration; the Centers for Disease Control; the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; the Health Rsources and Services Administration; and the National Institutes of Health. The origins of the PHS go back to the establishment of the Marine Hospital Service in 1798.

The mission of the PHS is:

Protection and advancement of the Nation's physical and mental health;

Support and conduct of medical, biomedical, and health services research;

Administration of grant and contract support for the development of health services resources;

Prevention and control of diseases and of alcohol and drug abuse; and

Enforcement of laws which assure the safety and efficacy of drugs, protection against impure and unsafe foods, cosmetics, medical devices, and radiation-producing products.

RATIONALE FOR ADMINISTRATION PROPOSAL

During the past serveral years, our definition of public health has been expanding. We have begun to view death and disability caused by violence and injury as a public health issue—subject to the same types of scientific inquiry as we give the more traditional diseases.

Injury is the leading cause of disability for children and young adults and of premature death in this country. And as we have conducted epidemiological studies on injury, we have found that there are behavioral, biomedical, environmental and product related precursors to injury—factors subject to prevention and intervention.

As our definition of public health has broadened, the respective roles of the PHS and the CPSC have grown closer. The PHS has become more interested in accident prevention and injury control through product safety. This merging of interests has created a need for closer coordination between the two organizations.

The PHS has a long history of providing effective public health services to this Nation. During its almost 200 year lifetime, it has shown great compassion for the health and safety of our people. I believe that the PHS is a proper location for the CPSC. It will provide the proper emphasis on safety and public health while assuring consistency of mission and enhanced coordination for both organizations. The merger will result in providing better product safety and public health to all Americans.

The General Accounting Office (GAO) has concluded in its recent report that the CPSC could benefit from changing to a single administrator. Not only could resources now used to provide staff support to five commissioners be used for CPSC programmatic activities, but management could be improved. The GAO found that "all of the major studies over the past 50 years, including the Hoover Commission and the Ash Council reports, have indicated significant problems with the commission administrative structure." Further, seven of the other eight health and safety regulatory agencies reviewed by the GAO were headed by a single administrator.

ADDITIONAL CONSIDERATIONS

The Administration is mindful that it is not an every day occurrence to change the status of an independent agency. However, as the GAO's report has aptly coveyed, there are clear advantages, as well as a growing consensus, that CPSC's mission can be better served as part of an existing executive branch agency.

No budget or staff reductions are being sought. No budget savings are being sought. Should savings accrue by reducing the number of commissioners, these funds will stay within the CPSC program. Continuity would be maintained through retention of current CPSC staff.

The Administration is confident that placing CPSC in PHS will enhance, rather than hamper or delay efforts to address product safety hazards. The PHS is a strong team, with very visible parts and a long tradition of protecting the public health. As part of this team, CPSC will have the executive oversight necessary to insure impartiality and continued program improvements, while also giving the CPSC the flexibility necessary to address product safety hazards. Far more effective interaction with CDC and FDA will be one immediate advantage.

Moreover, CPSC would have the Assistant Secretary for Health and the Secretary of Health and Human Services as spokespersons for the agency with Congress and the President. Under such a system, CPSC will probably have greater access to senior executive branch policy officials than at present as a small independent agency.

Upon the enactment of our proposal, CPSC would be moved intact to PHS, where the support services and staff functions of HHS would be made available. The Administration is cognizant that some organizational details will still need to be worked out by the mandated transition date of January 1989. However, as a matter of principle, we are committed to sufficient resources being made available to assure a smooth transition to PHS, and we are committed to retaining the confidence of the American people and of Congress in the CPSC's mission of consumer protection.

CONCLUSION

In summary, the Administration is proposing changes in the CPSC which we believe will improve the organization's current and future ability to achieve its mission. As a new member of the PHS team, led by a single administrator, the proposed organization would be better able to pursue its important mission to protect the safety and health of our Nation's consumers. We urge the Subcommittee to consider favorably the proposal we have placed before you today. We will soon be submitting legislation to implement this proposal. In addition, we offer our assistance and support as you continue your discussion of this issue.

I appreciate the opportunity to testify, Mr. Chairman.

Dr. Harmison and I would be pleased to answer any questions.

Senator GORE. Our next panel is made up of Mr. Richard Gimer of the law firm of Hamel & Park, representing the United States Chamber of Commerce; Ms. Mary Ellen R. Fise, Product Safety Director for Consumer Federation of America; and Mr. Gene Kimmelman, Legislative Director of Consumer Federation of America.

If the three of you will come to the witness table, we will get this panel underway.

Welcome to the three of you. Again, because we are in this Chinese fire drill mode over on the Senate Floor, we will ask you to summarize your prepared statements, and we will make certain they are printed in full in the record.

Mr. Gimer, welcome. Would you please proceed?

STATEMENT OF RICHARD H. GIMER, COUNSEL, REPRESENTING THE U.S. CHAMBER OF COMMERCE

Mr. GIMER. Senator Gore, I will give a very abbreviated summary of our planned capsule summary to allow time to deal with some of the points that have been made by the prior panels this morning.

The prior witnesses have consisted of chairmen, commissioners, former chairmen, former acting chairs.

My perspective is not shared by any of them. It is as a private practicing attorney who has been involved with the U.S. Chamber of Commerce Committee structure concerned with the Consumer Product Safety Commission, not only since the Commission was brought into being by the 1972 statute, and with the National Commission on Product Safety, which recommended the creation of the CPSC.

And I have had the privilege, throughout the 1970s and 1980s of being involved in the Chamber's evaluations of Commission operations and participated in meetings with the Commission to raise concerns of the business community about how it was operating. The Chambers involvment included the commissioning of a consultant to study criteria intended to lead to better Commissioner appointments; a study which was eventually provided to the Senate and House committees in conjunction with appointments made in the late 1970s.

I have also had occasion to represent as many as 50 individual manufacturers in compliance and enforcement contexts involving the Commission and its statutes. This includes statutes previously enforced by the Federal Trade Commission, before the CPSC assumed jurisdiction over the Flammable Fabrics Act.

From the testimony presented this morning, I have the impression that the commissioners themselves have views of the issues being raised as either being black or white.

And perhaps to some degree, Senate and House members too, have to view these issues as black and white when, from my perspective, the overwhelming portion of these issues being raised are mostly cast in shades of gray.

I am reluctant to see us make legislative and/or regulatory decisions as if these issues and the solutions are black and white. And I would like to illustrate.

With respect to the single member versus collegial body issue, the Chamber of Commerce doesn't have a formal position at this time.

When the creation of the Commission was being considered by Congress, the Chamber of Commerce did support one of the bills that incorporated the single administrator form.

However, in the years that have ensued, the Chamber's members simply have not shown their disposition to favor strongly one form of structure over another. For that reason, it doesn't have a current position.

But having been actively involved in the evaluation of the Commission and its operations since its creation, the Chamber is strongly of the view that the problems that are identified by the GAO in its report, all of which are, in the Chamber's view, valid, do not dictate *per se,* a structural change.

The problem as we see it is not with the structure so much as it has been with the almost continuous bickering among the commissioners, and to a certain degree, the lack of mutual respect that has characterized the commissioners relationships.

This problem is not merely one plaguing the current commission. This problem goes back a long way; a problem which extends back to the inception of the Commission. Certain characteristics of good Commissioner appointees should be given more credence than they seem to be. These needed characteristics are mentioned in our formal statement.

The second issue we address is the use of economic analysis in enforcement. The testimony this morning on whether cost/benefit analysis should be used to assess voluntary recalls used the word "voluntary" as if it refers to some specific single frame of mind.

My experience is that this term does not refer to a single condition, I sense that the Senators' questions about the use of economic analysis or cost-benefit analysis with respect to proposed voluntary corrective action plans refers to a situation where a manufacturer of a product, on its own concludes, based upon its assessment of the hazard and its knowledge about the distribution of the product and its own assessment of the product's liability and other implications of the situation, chooses to make a voluntary recall. In those circustances the Chamber I Conference does not believe that the Commission should spend its time second guessing a manufacturer who comes to that kind of a conclusion.

But perhaps more than 95 percent of the remedial actions undertaken under the Commission's statutes are encompassed within the voluntary category because the only remedial actions that really do not come within that definition are mandatory orders issued by the Commission after formal administrative proceedings or court orders.

There is a vast amount of enforcement activity, which is called "voluntary", but which is in reality a product of a coercive relationship exerted by the Commission over industry.

The Chamber believes that the Commission should not be asserting, usually through its staff, those coercive influences over industry without the benefit of the best economic evaluations that are within the Commission's capacity.

In other words, just because you call some remedial action at the end of an investigation "voluntary" because it was not compelled by the result of a judge's order does not mean the economic considerations in the relief the Commission is attempting to secure should be ignored.

Finally, a comment on the matter of the use of voluntary standards. The Chamber of Commerce was very involved in the 1981 amendment process. Additionally, I was personally involved in the presenting testimony in support of amending the statute to require greater reliance on voluntary standards.

The Chamber of Commerce continues to believe that the statutory language relating to use of voluntary standards is not the problem here. The problem is with the implementation of the statutory language.

The testimony this morning suggests that there is a polarity of views on the legislative intent. Some think that if there is a promise that a voluntary standard might come into being, the agency should somehow defer to that promise. On the other hand, you have the question of whether, in order to result in a formal deferral to a voluntary standard, there should be an existing standard as opposed to the mere promise of a standard.

I think I can fairly say that when these amendments were being championed and adopted in 1981 the conception was that at all stages in the Commission's involvement with respect to a product, appropriate attention should be given to the voluntary standards system. If and when a standard existed, it was required to be judged by the formulas specified in the statute. If a standard did not exist, then the statute does not speak to it. Now, the question is when does the existence of the standard become relevant.

In my view—and here again, I believe I speak fairly for those who were involved in the formulation of this statutory language—the timing feature can be judged at any stage of what could be a lengthy rulemaking process. The Commission should not defer to a nonexistent standard in terms of its advanced notice of proposed rulemaking. But on the other hand, if the standard comes into being before there is a final decision and there is proof of the substantiality of the compliance at the time when a final decision would be made, then that should be taken into account in deter.

But you cannot defer indefinitely on a promise.

[The statement and questions and answers follow:]

STATEMENT OF RICHARD H. GIMER, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. Chairman and members of this Subcommittee, my name is Richard Gimer. I am a member of the Washington, D.C. law firm of Hamel & Park. I have been actively involved in those activities of the U.S. Chamber of Commerce which concern the Consumer Product Safety Commission ("Commission") dating back to the period before the enactment of the Consumer Product Safety Act ("CPSA") in 1972.

We appreciate the opportunity to present the views of the Chamber during this authorization hearing. While there are many aspects of the Commission's activities which could be addressed in our testimony, we take note of the Committee's expressed interest in issues relating to the performance of the Commission and the effectiveness of its enforcement activity; and, in the views of the Chamber in response to the recent United States General Accounting Office ("GAO") Report concerning the administrative structure of the Commission.

With these objectives in mind, our formal statement will deal with (1) the GAO Report on structure, (2) the use of voluntary standards, and (3) the use of economic analyses in the Commission's decisional process.

ADMINISTRATIVE STRUCTURE

In preparing the testimony for this authorization hearing, representatives of the Chamber reviewed the Report on the Commission issued by the GAO in April, 1987. As you are aware, that Report focused on several structural features of the Commission and concluded that the agency should be converted from a five-member commission form to a single administrator form.

Prior to the enactment of the CPSA in 1972, the Chamber favored a version of the legislation then under consideration which would have established a product safety agency to be headed by a single administrator rather than the multi-member independent commission form ultimately established by the CPSA. However, because the membership of the Chamber has not registered a strong preference for a structural change, the Chamber does not have a current policy on the two issues which were the focal point of the GAO evaluation (*i.e.*, the single administrator issue and the independent status issue).

Because a number of the organizations and officials whose views were solicited by the GAO in conducting its evaluation of the Commission's structure are involved in Chamber activities relating to product safety, we are aware of the comprehensive nature of the evaluation which the GAO undertook. We consider the April, 1987 Report of the GAO with respect to structure to be comprehensive and evenhanded. The Report makes a case for a structural change to the single administrator form (while deferring on the question of whether the agency should be transferred to one of the cabinet-level departments). However, many of the factors relied upon for this conclusion would appear to be as much a reflection of other problems with the Commission as indicators of failure of the structure itself. Without taking a formal position on the question of whether there should be a structural change now, we offer the following comments on the GAO Report by way of providing a perspective. We think it would be a mistake to blame the institutional structure for the shortcomings if the result would be to accept the status quo in terms of the agency's performance.

While citing staff turnover as suggesting the need for a structural change, the Report does not indicate that instability of the staff at the Executive Director level is a function of the multi-member Commission operation, although it certainly could be the reason for turnover in certain instances. The turnover rate at the Chairperson level is due at least in part to the length of the term which each chairman was given and, in any event, is not inherently a fault of the collegial structure. The appearance of high turnover has been compounded by the number of "acting" Chairpersons. For the most part, this has stemmed from delays in the nomination and/or confirmation process. We review this to be as much a reflection of the personnel selection and confirmation process as on the agency's structure itself. It is, in any event, a problem which might have plagued this agency irrespective of its structural form.

The consistency of views between the Chairperson and the individual Commissioners documented in the GAO Report does not dictate the conclusion that the Commissioners were mere surplusage, because votes on the ultimate issues mask the process by which the decisions were reached. Moreover, the analysis was based upon a sample and did not purport to focus on the particular decisions in which the benefits of the collegial form might have been most evident. If the diversity argument for the collegial body form were present, then the degree to which the Chairperson ended up voting in the majority should not be considered an adverse reflection on the structure itself.

While the Chamber does not have a present policy position on whether the collegial body aspect of the Commission's structure should be abandoned in favor of the single administrator form, it is of the strong view that there are now, and nearly always have been, serious flaws in the brand of collegiality practiced at the Commission. From the outset, there have invariably been too many Commissioners covetous of being Chairperson at any given time. This has been a divisive force which, at times, has brought disrespect to the Commission from many quarters; and it appears to have rendered the Commission ineffective for significant periods over its existence. The public interest has suffered as a consequence.

The criticisms of the collegial structure attributed by the GAO Report to the high-level officials interviewed during its investigation mirror our observations of Commission decision-making; but certain of the criticisms (*i.e.*, lack of understanding of

technical issues, competitiveness, and the tendency of the Commissioners to micromanage) may also indicate problems with the appointees rather than the structure.

While it is true that these shortcomings might be avoided by converting to a single administrator form (assuming appointment of an ideally suited Chairperson), it would be a mistake exclusively to link needed improvements in these areas to a structural change. There are other solutions, and they deserve attention now irrespective of legislative change. In this regard, the Chamber believes that so long as the Commission is a multi-member agency, it should be comprised of individuals with (1) an appropriate diversity of professional experience (considering the mission and operations of the agency), (2) sufficient competence and experience to merit the respect of the other Commissioners, and (3) the temperament to serve in such a body.

USE OF VARIOUS FORMS OF ECONOMIC ANALYSIS IN COMPLIANCE AND ENFORCEMENT

Since the creation of the Commission, the Chamber has been concerned about the role of economic analysis in Commission decision-making. As early as December 3, 1974, the Association Advisory Group on Product Safety (an *ad hoc* group associated with the Chamber) met with the full Commission to present a review of its first 18 months of operation. At that time, the Advisory Group stated it was most concerned that in promulgating consumer product safety rules, the Commission might be losing sight of the requirements of § 9 of the CPSA. We pointed out that this section requires that the Commission make appropriate findings to support its rules with respect to the need of the public for the products in question and the probable effect of such a rule upon the utility, cost, or availability of such products to meet such need; and any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of commercial practices. We emphasized that the CPSA indicates that the Commission was expected to balance the probability that risk will result in harm and the gravity of such harm against the effect on the product's utility, cost, and availability to the consumer. In addition, we indicated that the legislative history of the CPSA shows that no standard would be expected to impose added costs or inconvenience to the consumer unless there were reasonable assurance that the frequency or severity of injuries or illnesses would be commensurately reduced.

During these discussions with the Commission, we stressed the view that the Commission must make a serious attempt to determine effectively the relationship between the need for promulgating new consumer product safety rules and the direct effect of anticipated rules on competition or disruption of commercial practices and added costs to be born by consumers as required in CPSA § 9. Although no final standards had been promulgated at the time of this initial conference, the Chamber representatives expressed doubt that the level of effort being devoted to economic analysis as to the standards which were then in process would meet the statutory prerequisites. We said then that it appeared the Commission had not structured itself to make the required effort to measure the total impact of its proposals on all parties.

In the years which have intervened, the apparatus to make these types of assessment (whether referred to as economic analysis, cost analysis, cost-benefit analysis, or some other term) has been enhanced; the statute has been amended in such a way as to make it even more clear that economic analysis in various (and sometime specific) forms is essential to the decisional process relating to standards-making and banning action;[1] and we understand that economic analysis is now being used in making some decisions. However, the internal debate continues over (1) the quality of the analysis provided, (2) limitations on the use of economic analysis (particularly cost-benefit analysis) in making compliance and enforcement decisions, and (3) limitations on the scope and content of such analyses where they are solicited, offered, or provided.

In preparing for these hearings, we have reviewed the voluminous Briefing Package now being circulated within the Commission relating to the use of cost-benefit analysis in compliance activity. While virtually every Directorate of the Commission is involved in one way or another, it appears that the central issue now is whether the Directorate of Compliance ("DC") will be allowed to dictate the form of cost-benefit analysis being provided to it by the Directorate of Economics ("DE") in certain types of enforcement contexts.

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[1] For certain rulemaking purposes, the statutes administered by the CPSC require comparison of costs and benefits. *See e.g.*, CPSA § 9(f), FHSA § 3(i) and FFA § 4(j).

The Commission's DC objects to the version of cost benefit analysis performed by the DE. In essence it contends DE's analyses (1) ignore unquantifiable benefits of compliance actions, (2) depend on assumptions but purport to be definitive guides for decision-making, and (3) substitute economic judgments for complex legal and policy determinations. The DC also contends that CPSA § 15 does not call for cost-benefit analysis and the applying cost-benefit analysis to CPSA § 15 matters would create additional delays in developing corrective action plant.

The DC has developed a list of what factors should be considered in making compliance and enforcement decisions, and it proposed that the DE be precluded from proceeding beyond these boundaries in its analyses. As we understand it, at the present time a cost-benefit analysis is carried out on the proposed options being considered for use in corrective action plans under CPSA § 15. Restrictions are imposed on the content of such analyses, and in developing the analyses the DE staff is not to provide a recommendation on disposition of the CPSA § 15 case in question.

In general, we do not believe that the alleged shortcomings of cost-benefit analysis can justify its exclusion from the information to be considered by the Commission, whether the object of the decisional exercise is a standard, a ban, or a proposed enforcement action.

The Chamber would not be so presumptuous as to pass judgment at this juncture on whether any particular economic analysis (or cost-benefit analysis) performed with respect to any specific proposed enforcement action is fair, accurate, or sufficiently comprehensive. But we do believe, from past experience, that the economic perspective should be an integral part of the decisional process not merely in the Commission's standards-making and/or banning activities under CPSA §§ 7-9 but also in compliance and enforcement activities, such as recalls and similar actions undertaken under CPSA § 15, as well. When the Commission orders a recall of some product, the implicit assumption is that consumers will benefit from the recall and that benefits of additional safety will outweigh the costs of the recall. We think the quality of result will be improved if the implicit assumptions the Commissioners presumably entertain in deciding to proceed are stated explicitly in order that they can be criticized or questioned and changed if they need to be.

The need for such evaluations is well illustrated in the context of standards which the Commission now enforces that were promulgated prior to the 1981 Amendments. Many of the standards or bans promulgated in the 1950's, '60's and '70's (including a number adopted by other federal agencies under the Transferred Acts) would not have been promulgated under the present provisions of the CPSA, which prescribes regulatory analyses, mandates findings relating to prevalency of the injury, requires risk identification and a determination of the efficacy of each provision in a proposed standard in alleviating identified priority risks; and which mandates findings relating to the efficacy of private-sector voluntary standards efforts. Moreover, the priorities which resulted in promulgation of many of these old standards are at variance with those applicable today. Still others of these standards or bans have at least some provisions which would not have been included in CPSA-based standards.

Too often in the past, the Commission has automatically applied what it perceived as its enforcement powers to alleged violations of these standards without giving adequate thought to the range of relevant factors. Economic analysis (including cost-benefit analysis) is one way in which the Commission can assess the appropriateness of applying the remedial powers (*i.e.*, recalls and similar actions) it has today under the CPSA in the context of enforcing standards adopted in a different era and context.

The textile flammability standards promulgated under the Flammable Fabrics Act are prime examples of the problem referred to above. Each of these standards prescribes a destructive test which is to be applied to representative samples of textile production. Federal government officials have repeatedly testified that due to the inherent variability of textiles and the features of the flammability test methods prescribed in federal standards, it is a virtual statistical certainty that test failure will occur and that an acceptable level of quality includes a percentage of such materials. The Commission itself has acknowledged that such failures do not *per se* indicate a safety problem requiring remedial action. *See, e.g.*, 16 C.F.R. 1115.10(b); 16 C.F.R. § 1630.81. We believe cost-benefit analysis should be an integral part of the process of determining whether enforcement action in the form of notice or recall should be initiated in these circumstances.

The Briefing Package on the use of cost-benefit analysis in compliance activities indicates that the DC contends that cost-benefit analysis (in the formal sense of that term) not be used in determining whether to initiate enforcement or remedial action under CPSA § 15 or in connection with decisions on whether particular remedial

measures will be sought through consent settlements or corrective action plans. Admittedly, the language of CPSA § 15 leaves room for argument about the extent to which economic considerations are to be taken into account by an administrative law judge (or ultimately the Commission upon review) in determining whether to order notice or retroactive remedial measures (*i.e.*, recall, repair, or replacement) under CPSA § 15(c) and (d). Nevertheless, the various features of these statutory provisions have implicit cost and benefit features suggesting that it is only the methodology for cost-benefit analysis which is unspecified.[2] These factors lead us to conclude that evidence of the relative costs and benefits of these remedial options would normally be considered to one degree or another in formal enforcement proceedings under CPSA § 15. As a matter of policy, the Chamber does not believe the agency should initiate formal legal actions to secure the imposition of remedial orders without having made some assessment of the relative cost and benefits of the relief being sought; nor should the Commission seek to coerce acceptance of settlements obligating respondents to take particular remedial actions voluntarily without regard to their reasonableness. Without suggesting that all such analyses need to be equally comprehensive or that a completed (as opposed to partial) analysis be a prerequisite to initiation of any action, we submit that information of this nature (coupled with conclusions from officials competent in this type of analysis) should be an integral part of most compliance and enforcement decisions.

USE OF VOLUNTARY STANDARDS TO ACCOMPLISH THE COMMISSION'S MISSION

As originally enacted, the CPSA gave voluntary industry standards (as well as federal agency and certain other standards) a unique status. This status was manifested in two primary respects. In initiating a standards-development proceeding, one mandatory aspect of the Commission's Notice was that it set forth "information with respect to any existing standard known to the Commission which may be relevant * * *" CPSA, § 7(b)(3), 15 U.S.C. § 2056(b)(3). Additionally, as an alternative to standards-development through what was to prove to be a time-consuming, cumbersome, and expensive "offeror process," the Commission was authorized to publish an existing voluntary standard as a "proposed consumer product safety rule" where such standard "would eliminate or reduce the unreasonable risk of injury associated with the product * * *" CPSA, § 7(c), 15 U.S.C. § 7(c).

Notwithstanding this Congressional "nudge" in the direction of voluntary standards, the Commission was, from the outset, antagonistic to this means of carrying out its standards-development responsibilities under CPSA § 7. For whatever reasons, the Commission declined the opportunity to acknowledge openly the safety benefits which could flow from widespread or universal voluntary acceptance of standards developed by various industry groups and generally considered the statutory alternative of relying heavily on voluntary industry standards as the basis for the substantive content of "proposed product safety rules" unacceptable. Instead, the Commission appeared to go out of its way to dredge up offerors under CPSA § 7(d)(1) to develop standards.

Almost from the outset, that process proved to be a failure. But rather than acknowledge the fact that its poor record under CPSA § 7 was due in large part to its steadfast refusal to rely to any extent on the existing voluntary standards, the Commission pursued another course. It encouraged and secured the amendment of the CPSA to clarify and/or expand its authority to develop mandatory standards in-house, once again turning a deaf ear to those voices urging greater reliance on the work product of the voluntary standards system. P.L. 94-284, § 7(b); P.L. 95-631, § 3.

With the passage of time and in the face of increasing criticism over its lack of productivity, the Commission eventually determined that it had to give at least lip service to the work product of the voluntary system. But upon close scrutiny, that deference was more cosmetic than real. From the Chamber's perspective, the Commission tended to bully and intimidate the private-sector organizations with whom it purported to be cooperating in developing 100% of what the Commission wanted in a standard as the price for considering it as the basis of a proposed rule.

From the outset, Congress comtemplated (as reflected in CPSA § 7) a standards-development procedure in which the privately developed standard could be published as a "proposed rule" if it met certain prerequisites. Under the statute, no such "proposed rule" could have been promulgated as a final rule without compli-

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[2] The definition of a "substantial product hazard" includes factors which concern costs and benefits; under § 15 recall orders the respondent determines whether to repair or replace the product or give a refund; and economic considerations are also obligatory in determining appropriate penalties for violation of § 15 orders.

ance with the notice and comment requirements of 5 U.S.C. § 553, plus the additional requirement that the Commission afford all "interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions". CPSA § 9(a)(2), 15 U.S.C § 2058(a)(2). Additionally, no existing voluntary standard was capable of being transformed into a mandatory rule unless the Commission could make the findings with respect to its necessity, adequacy, and public interest which are the prerequisites for promulgation of any consumer product safety rule, irrespective of its origin (offeror, existing standard, or the CPSA itself). CPSA § 9(c), 15 U.S.C. § 2058(c). In short, even in its original form, the CPSA provided a means for the Commission to rely heavily on the private sector (through reliance on existing voluntary standards) without compromising its independence; tilting excessively or inappropriately toward the private sector; or depriving any segment of the public of the opportunity to express its views as to the adequacy or inadequacy of any particular proposed rule. In all instances, the statute contemplated standards-development would afford the interested public (and the interested federal agencies) the opportunity of participation in the rulmaking process historically conveyed by the Administrative Procedure Act (5 U.S.C § 553) in traditional federal agency rulemaking and then some. Yet it did not work.

While Congress had provided a statutory scheme which the Commission could have employed to take maximum advantage of the existing genius of America (embodied in hundreds of existing voluntary product safety standards), the Commission turned a deaf ear to all appeals that it carry out its §7 responsibilities in this manner. By 1981, the Chamber had concluded that an eight-year-tryout had been long enough. Accordingly, the Chamber testified then as to its belief that the Commission would never give due deference to existing voluntary standards systems without an amendment to its basic statute.

Considering the Commission's poor track record in this area, the Chamber urged that Congress provide explicit direction in two distinct contexts: (1) the circumstances under which voluntary standards are sufficient to obviate the need for mandatory regulation considering such factors as the substantial compliance with voluntary standards; and (2) the circumstances under which mandatory standards, if any, should be predicated upon the substantive content of existing voluntary standards, with such modifications as may be justified based upon an appropriate rulemaking record.

In response to testimony such as that offered by the Chamber, Congress, in 1981, amended the CPSA so as to mandate reliance on voluntary consumer product safety standards (rather than on mandatory safety standards) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and whenever it appeared likely that there would be substantial compliance with such voluntary standards. CPSA §§7, 9, P.L. 97-35 amending CPSA §§7, 9.

The Chamber strongly support the concepts contained in the 1981 Amendments relating to voluntary standards. We recognize that there are critics of the legislation and/or of the Commission who content either that the concept was and is flawed and/or that the Commission itself is shirking its responsibility (while hiding behind these statutory requirements).

The Chamber is not usually in a position to conclude whether a particular standard or a ban should or should not be adopted as to a particular product or risk, and we do not propose to offer any opinions of that nature in this testimony. However, it is unarguable that (1) the Commission did not give adequate attention to the work-product of the voluntary sector before the 1981 amendments were enacted and (2) the Commission was generally ineffective with respect to the mandatory standards and bans pursued or promulgated by it during the 1970's prior to the 1981 Amendments. It is the position of the Chamber that if the mechanism through which the Commission is to carry out its standards-making and banning responsibilities is not yielding the proper results, the fault is not with the statutory provisions under which these functions are to be carried out but in the implementation.

CONCLUSION

In summary, the Chamber is of the view that (1) irrespective of its structural form, there are improvements which can and should be made in the decisional process and operations of the Commission; (2) economic analysis (including cost-benefit analysis) should be an integral part of the decisional process applying to enforcement actions, as well as the standards-setting or rulemaking function; and (3) the statutory provisions which dictate the deference to be paid to voluntary standards should be retained.

Thank you.

QUESTIONS OF SENATOR GORE AND THE ANSWERS

Question. CPSC inaction is alleged to have sent a signal that industry can relax its voluntary safety efforts. Would you agree with that assessments?

Answer. Whether an agency is relatively "active" or "inactive" during a given period of time is usually a more complicated assessment than first meets the eye. Initially, it involves deciding what counts, *i.e.*, lawsuits, consent settlements, recalls, rules, proposed rules, policy statements, etc. Without question there have been a number of government-wide developments (Gramm-Rudman considerations, general emphasis on deregulation, etc.) that have caused industry leaders to assume that mandatory regulation (on most fronts including the CPSC) is less likely now than it was in the 1970's. We have no basis for assuming that this broad perception would lead industry in general to relax voluntary safety efforts. Considering the relatively few products under the CPSC's jurisdiction, such are subject to Federal mandatory safety standards we assume that at any given time the voluntary safety efforts of most consumer product manufacturers are independent of the CPSC's actual or perceived level of activity. It is true that any given industry group may be influenced in its approach to voluntary industry actions (such as standards-setting) by its notion of the likelihood mandatory regulation by a government agency is a serious possibility.

Question. Should section 7 of the Consumer Product Safety Act be amended to allow interested persons the right to request immediate agency review, with subsequent judicial review, of CPSC reliance on voluntary standards? Would the same response apply to a similar proposal to amend the Federal Hazardous Substances Act?

Answer. CPSA § 7, as amended, reflects the broad-based Congressionally-approved policy concerning CPSC reliance on voluntary standards rather than (mandatory) standards, together with the conditions under which this policy is to be applied. However, the step-by-step procedure by which the CPSC is to implement this policy and decide whether mandatory regulation (based upon the language of the voluntary standard or otherwise) is appropriate or inappropriate is contained in CPSA § 9, as amended. Actions of the agency (with respect to rulemaking) which are subject to review are those taken under CPSA § 9, and as to them the statute already provides for judicial review.

The question put to us admits of another construction, one relating to the timing of review. We would oppose statutory amendments which would encourage interlocutory appeal of a decision to identify an existing voluntary standard in the ANPR (§ 9(a)), or a decision to use an existing voluntary standard as the basis for a proposed rule (§ 9(b)), or a decision to use an existing standard as the frame of reference for a regulatory analysis (§ 9(c)). Where these processes are employed in such a way as leads to a decision to formally defer to an existing voluntary standard, and that deferral is to be given preemptive effect, judicial review should be available. The Chamber has, in the past, supported amendment of the CPSA to make it clear that judicial review is available under these circumstances.

By contrast, a general policy decision (whether expressed or implied through absence of formal action) not to seek mandatory regulation of a product or risk (or not to seek such regulation at a given time), should not be reviewable. Allowing the public to appeal any judgment of the Commission not to regulate would amount to a throw-back to previously-revoked provisions of the original CPSA which provided (1) that interested parties could petition the Commission for commencement of rulemaking proceedings; and (2) that denials of such petitions were reviewable by the courts. Even then, the reviewing court's authority was limited to compelling the Commission to initiate a rulemaking proceeding. *See* 15 U.S.C. § 2059, repealed by P.L. 97-35. Government agencies should be run by those appointed, not by individual citizens, citizen's groups, private lawyers, businesses, or judges. Congress admittedly has the power to require the Commission to regulate a particular product or risk through legislation, and that it do so with a prescribed time period. That power should be rarely employed, if ever; and it should not be extended to third parties or to the courts.

Question. Should section 9 of the Consumer Product Safety Act be amended to allow the CPSC to defer to an existing voluntary standard only in situations where a standard actually exists?

Answer. Under the present law, the requisite pedigree of the voluntary standard which is a candidate for CPSC deference depends upon the stage of the proceedings. It is evident from a reading of the statute that less is required at the ANPR or Pro-

posed Rule stage than at the point of final decision. In the final analysis, under CPSA § 9(f)(3)(D), the Commission is barred from promulgating a mandatory rule unless it finds (in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have *adopted and implemented* a voluntary * * * standard) that compliance (with the voluntary standard) is (1) "not likely to (sufficiently) reduce the risk" or (2) "unlikely to enjoy * * * substantial compliance." In our view, it was not intended that the Commission formally defer to a voluntary standard without sufficient record upon which to predicate the specified findings.

Conversely, the statutory provision which requires, as a prerequisite to promulgation of a mandatory rule, that the Commission affirmatively find that there is no regulation-blocking voluntary standard—is also to be predicated on the evidentiary record in the proceeding. So, while the Commission can give some credence to a draft standard or a not-yet-implemented standard at the ANPR and Proposed Rule stages, promise would need to become reality—and in short order. This is so because the finding of the absence of a rule-blocking voluntary standard (which must virtue of the statute be both *adopted* and *implemented),* is also a decision to be made on the basis of the formal record. If the record is closed before promise becomes reality, that would be the industry's problem. The product manufacturers would be left to request a reviewing court for leave to adduce additional evidence. CPSA § 11(b).

In summary, while the Commission can given some degree of deference to a new, implemented, voluntary standard in the early phases of a proceeding looking toward regulation of a risk, (1) it cannot formally defer to anything other than a standard determined likely to be effective on the basis of the record (consisting of its staff research plus public comments); and (2) it is not precluded from imposing a mandatory rule as a result of the belated (post-record) development and implementation of a voluntary standard. So, there is a relatively narrow window envisioned within which a group interested in self-regulation must either produce or risk mandatory regulation. The statute does not envision a Commission waiting indefinitely for promise to become reality in any situation where the risk itself was such that an ANPR was justified.

Question. Should section 7 of the Consumer Product Safety Act be amended to require that any voluntary standard deferred to by the CPSC be developed through consensus procedures to assure that interested parties are afforded an opportunity to participate in the development of such standards?

Answer. We are aware that some argue that for a voluntary standard to be eligible for Commission deference during any or all phases of a proceeding under CPSA § 9, it should have to be a national consensus standard. We disagree. Under the CPSA as originally enacted, where standards were developed by "offerors", notice to and participation by third parties was required. These requirements (once contained in CPSA § 7(d)) were revoked in 1981. *See* P.L. 97-35. CPSA § 9(d)(2) now provides that rules are to be promulgated by resort to 5 U.S.C. § 553, with the additional right (of interested parties) to make oral presentations assured. This provision obviates the need to require the pedigree of an existing standard to include a "consensus" in its development, etc., in order to serve as the basis for a possible mandatory rule (or as a voluntary standard deferred to by the commission).

Question. Should section 9 of the Consumer Product Safety Act be amended to require that a time limit be imposed between the time an advanced notice of proposed rulemaking is published and the proposed rule?

Answer. During the 1970's a number of statutes were enacted by Congress which attempted to mandate the schedule applicable to agency rulemaking from start to finish. *See e.g.,* Noise Control Act of 1972, 42 U.S.C. § 4901, *et seq.* Due to technical, budgetary, legal and other factors, the responsible agencies frequently were unable to meet the schedule; and litigation often followed. From our perspective, the most likely consequence of imposing a time limit between the publication of an ANPR and publication of a Proposed Rule (after which publication there is already a mandated schedule), would be to reduce ANPR's to the absolute minimum. Conceptually, CPSA § 9 is presently designed to require very substantial regulatory analysis once the rulemaking process has begun. One must seriously question whether this Commission could reasonably be expected to complete such tasks within arbitrary time frames; and whether it is in the public interest to create a situation in which the Commission would be discouraged from publishing an ANPR in the first instance where it had doubts about its ability to meet a series of deadlines which would be automatically triggered by such publication.

Senator GORE. I think that is another useful point. I did not have a chance, because of the time constraints, to pursue that with Mr. Pittle. But I think that the distinction you make is a useful one.

And do not read my question as an endorsement of that specific amendment. I think it is a question that has to be asked merely because the standard in the law has not been applied in the correct way, in my view, by the current Commission.

I also agree with the implicit statements today that you do not want to have a structural solution for a problem that is mainly individual or has to do with the people who are there. And I think Mr. Pittle, incidentally, agrees with you on a lot of that, and others do not.

Ms. Fise and Mr. Kimmelman, are both of you testifying?

Mr. KIMMELMAN. We are prepared to consolidate our remarks, Mr. Chairman.

Senator GORE. All right. If you could summarize it, then we will try to do that at this time.

We do have a vote. How many minutes do you think it will require?

Mr. KIMMELMAN. We can put it in five minutes.

Senator GORE. Well, I think that it would probably be discourteous to ask you to do it in less than that, and it would have to be in less than that. So let me have another brief recess and then we will come back and pick up at that point.

[Recess.]

Senator GORE. The subcommittee will come back to order.

Ms. Fise, Mr. Kimmelman, how do you wish to proceed?

STATEMENT OF GENE KIMMELMAN, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA, ACCOMPANIED BY MARY ELLEN FISE, PRODUCT SAFETY DIRECTOR

Mr. KIMMELMAN. If we may, we would like to consolidate our remarks.

On behalf of the Consumer Federation of America, we really appreciate this opportunity to appear here today. I have a report which we have just completed which, if we may, we would like to submit for the record.[1] It is mentioned in our written statement.

Senator GORE. Without objection, that will be included in full in the record. I have had a chance to look at it and I appreciate your making that available.

Mr. KIMMELMAN. Thank you.

Mr. Chairman, as you know, we have been here many times before you and before your colleagues in the House of Representatives, and we have asked for a much stronger Consumer Product Safety Commission. We have asked for a much better funded agency. And we still believe that this should be done.

But we are here today really with a much more limited focus and frankly, with, a more conservative message for you. We believe the CPSC is undermining the Congressional mandate to promote product safety. We believe the agency is wasting taxpayers' money, and we believe the agency is costing society billions of dollars.

[1] The report is in the Committee files.

We think this is government waste at its worst and we want you to help us clean it up. The CPSC is taking Congress' direction to pressure the private sector to take care of safety problems and subverting private sector incentives to clean up the market by using every excuse imaginable to avoid regulation, letting industry know that it has no reason to act quickly and no reason to invest money for safety.

The result is hundreds of unnecessary deaths, tens of thousands of injuries that could have been avoided each year, and increased litigation, wasting judicial resources and running up the tab for legal fees that could have been avoided. In short, Mr. Chairman, by failing to flex its regulatory muscle the CPSC is weakening private sector safety incentives and costing our society billions and billions of dollars.

We say enough is enough. We recommend that you reign in this agency; that you make it impossible for the agency to hide from safety hazards; and that you make the agency respond strongly and quickly to eliminate unnecessary product dangers.

We want your help to make this agency more efficient, and more cost effective, providing the American people the maximum product safety that their tax dollars can buy.

At this point I would like to leave the rest of my time to Mary Ellen Fise, our Product Safety Director, who will give you some examples of inappropriate agency action identified in our report.

Thank you.

Ms. FISE. I would like to summarize some of the glaring examples of CPSC's inaction and undue reliance on voluntary standards. In our report we highlight seven different problem areas, and I would like to go through just some of those right now.

First, we have heard today that a voluntary standard can be developed so much more quickly than a mandatory standard, and that is one of the advantages of a voluntary standard. Well, that may be the case. It is not always so, particularly when CPSC is involved.

If you look at what has happened with all terrain vehicles, you find it has been two years since the ANPR. They have been waiting and waiting for this voluntary standard. The standard that was produced is inadequate and, after two years, we still have not solved the problem by means of a voluntary standard.

Another case example is home playground equipment. Thousands of children get injured seriously enough to be taken to the hospital emergency room each year. A voluntary standard was begun in 1979, and today that standard has not gone through final balloting. Yet, the Commission has been willing to sit back and wait.

Turning to another problem, the Commission has deferred to inadequate standards or standards that do not address the risk. For example, there is a voluntary standard for cigarette lighters. 200 people die every year from cigarette lighters.

But that voluntary standard does not address child resistance, and 125 of the 200 people who die each year are young children. So that is just one example where the Commission is willing to sit back and acquiesce to a voluntary standard that does not address the risk.

The third problem I would like to talk about is a reliance on the non-existing voluntary standards. And in your questioning you have alluded to this problem whereby the Commission is sitting back and waiting until the standard gets developed. A good case example of this is swimming pool covers.

In 1980 CPSC became concerned about this issue. They received two petitions in 1983 requesting a mandatory standard. In the meantime, they were having discussions with the industry: in effect asking them, would you develop a voluntary standard?

In April of 1986, six years later, the industry came back and said: We have decided we are not going to develop a voluntary standard at all. The Commission is now in a position where, if they want to do something, they would have to start the whole regulatory time clock running.

They have never published an ANPR. Had they done that a long time ago, we would be much further along and hopefully have solved this problem.

And finally, we want this committee to look at the deferral to non-consensus developed standards. There are examples documented in our report where the Commission has deferred to standards developed solely by industry. If you look at the legislative history of the 1981 amendments, it refers to nationally recognized consensus standards, including all the interested parties: consumer groups, retailers, manufacturers, academics who have done research, bringing all these parties together.

We have documented this problem in the case of bunk beds and in the case of pressed wood (formaldehyde emissions), where the Commission has deferred to a standard developed solely by industry without any input from other interested parties. And we allege that these standards are also inadequate.

I will stop right here and be happy to answer questions. But I would like to just point out that the examples that we have included in our report should not be seen as the only problems. We have used these because they illustrate the problems very clearly. There are others that exist at the Commission.

Thank you.

[The statement and questions and answers follow:]

STATEMENT OF MARY ELLEN FISE, PRODUCT SAFETY DIRECTOR, CONSUMER FEDERATION OF AMERICA

Mr. Chairman and members of the Subcommittee, I am Mary Ellen Fise, Product Safety Director for the Consumer Federation of America. CFA represents over 200 national, state and local consumer organizations with a combined membership of more than 30 million people.

I want to thank you for the opportunity to present our views on reauthorization of the U.S. Consumer Product Safety Commission (CPSC).

As the nation's largest consumer advocacy organization, CFA has carefully watched—with great dismay—the significant decline of a critical health and safety agency. By dragging its feet and increasingly avoiding regulatory intervention, the CPSC has signalled to industry that it need not act expeditiously or even effectively to address consumer safety problems. Adequate safety measures have been sacrificed by an agency eager to defer to industry—apparently at almost any cost.

Once considered among the government's most cost-effective agencies, the CPSC's recent track record reflects an agency frustrating its very purpose and squandering taxpayer dollars as a result.

CFA is presenting today a report entitled "The CPSC: Guiding or Hiding From Product Safety?" We urge the Subcommittee to examine the findings of the report

and to carefully consider CFA recommendations in the course of agency reauthorization.

"THE CPSC: GUIDING OR HIDING FROM PRODUCT SAFETY?"—A CFA REPORT

A product of careful examination by CFA, "*The CPSC: Guiding or Hiding From Product Safety?*" finds an agency failing in its mission to protect consumers from exposure to hazardous products. The report documents the recent unwillingness of the CPSC to either regulate or enhance private sector safety initiatives and the resulting costs to this nation.

Over the past six years, the CPSC has demonstrated an increasing reluctance for regulatory intervention. Rulemaking has drastically diminished; in fact, the report finds that the *agency has not promulgated a final rule under the Consumer Product Safety Act (CPSA) since 1984.* By removing this threat of government intervention, the incentive for timely private sector response has been quickly lost. So, while the agency drags its feet waiting for industry to act, thousands of people continue to be injured and killed by hazardous products that remain needlessly in the marketplace.

Productivity and efficiency within the CPSC have also dropped accordingly. Commission consideration of safety issues has plummeted in the past six years, evidenced by the alarming cancellation rate of Commission meetings and the number of safety issues considered. 1986 witnessed a *650% increase* over 1979 in the *number of meetings cancelled* by the Commission. In 1979, the CPSC considered 237 agenda items; in 1986, only 80.

In 1981, Congress amended the CPSA to permit agency deference to voluntary standards, with the intent of spurring private sector initiatives for product safety and avoiding duplication. Yet, the agency's current over-zealousness to defer to voluntary standards—apparently at nearly any cost—has resulted in its failure to effectively and expeditiously address dangerous consumer products. This can hardly be what Congress intended in 1981. Nor is it feasible to believe that Congress intended the consequent costs of such inaction: thousands of lives and tens of thousands of serious injuries, billions of dollars, and increased product liability litigation. But that is where we find ourselves today.

A DISTURBING RECORD OF CPSC INACTION

CPSC's recent disturbing record is best illustrated by the products it has failed to regulate.

All Terrain Vehicles (ATVs) have *killed* more than *700* people and seriously *injured* over *298,000* since 1980. Sales of these motorized vehicles have jumped dramatically over the past several years. Their popularity however has been accompanied by a staggering increase in deaths and injuries, with nearly half of the victims estimated to be under 16 years of age. As the chart below graphically demonstrates, injuries treated in hospital emergency rooms have skyrocketed from 4,929 in 1980 to 86,400 in 1985. The death toll too has risen dramatically: in 1980 there were 6 deaths; in 1985, 244 deaths.

ATV CAUSED DEATHS AND INJURIES

	Deaths	Injuries
1980	6	4,929
1981	1	6,008
1982	26	8,585
1983	82	26,900
1984	140	63,900
1985	244	85,900
1986	195	86,400
1987 (through Mar. 2)	9	[1] 15,400
Total	703	298,022

[1] Through Mar. 31.

It is hard to imagine a better case for swift intervention by the agency. Yet CPSC has refused to take strong regulatory steps, waiting instead for industry to act. The wait for a voluntary standard has been long and perhaps for naught, as CPSC's own staff now appear to consider the proposed industry standard inadequate. Thus, two

years after publishing an Advance Notice of Proposed Rulemaking (ANPR), these highly dangerous vehicles remain on the market—sold, without restraint.

The CPSC failure to intervene and to push industry for expeditious and adequate protection reflects the agency at its worst, where its pattern of excessive delay an inaction has resulted in continuing deaths, injuries, and costly product liability litigation. In the first three months of 1987 alone, 15,400 more people have been severely injured by ATVs. How much more time must pass and how many more people must die and be injured before the agency regulates effectively and efficiently?

Disposable (Butane) Cigarette Lighters Kill an estimated 200 people every year, including 125 children under five years of age.

These young children die because there is no standard which directly addresses the risk posed by these lighters. Yet rather than intervening to render these lighters child-resistant, CPSC has waited for industry response. None has been forthcoming. And, despite the findings of its own staff, CPSC has *still not undertaken even* the very basic step of issuing an ANPR.

Deferral to an inadequate standard and failure to push industry for effective action mean that children's deaths and injuries continue to mount. Just last week, in Paducah, Kentucky, a four year old child set fire to her house with a disposable lighter; the result: one more person dead and two more people severely injured.

Swimming pool covers have been responsible for 26 deaths, when people have drowned under partially removed covers or in water that accumulated on top of the covers. Many of these covers are marketed as "safety" covers, yet consumers are not warned of the hazards of walking on or swimming under them.

CPSC has been *aware of these hazards since 1980.* But, "hoping" that the private sector would someday develop a responsive safety initiative, the agency has deferred action to what is best characterized as a "non-existing standard." Six years later, CPSC is *still waiting* for industry to act. There is neither a mandatory standard nor a voluntary one to prevent more injuries and more deaths.

Accordian-style baby gates have killed at least 8 young children, when their heads or necks became trapped in diamond-or v-shaped openings of the gates.

Manufacture of these gates was halted in early 1985. Yet approximately 15 million of these gates remain available for use by parents, unaware of the hazards. Despite the danger posed, CPSC has never taken action to recall these gates. This is but another example of CPSC inaction despite the fact that use of its regulatory authority is warranted and critical. Without CPSC intervention, there is no other hope of effectively protecting thousands of toddlers from being killed or maimed by these gates.

COST OF CPSC INACTION

Reviewing these and numerous other examples, the report concludes that CPSC inaction has meant a waste of taxpayer dollars and needless costs to this nation of thousands of lives, tens of thousands of injuries and billions of dollars. The agency's failure to act appropriately has also spawned increased litigation. There are now over 350 cases of ATV-related litigation alone, costing millions in litigation expenses, lawyers fees and damages awarded. CFA strongly believes that these costs may have been prevented by appropriate regulatory intervention, if the CPSC carried out its mandate.

The agency must be reigned in and steps taken to improve its practices and procedures to prevent its continued foot-dragging and avoidance of adequate and timely protection. In addition to careful scrutiny of CPSC action by Congress, CFA also urges amendments to the Consumer Product Safety Act that:

Allow agency deferral only to voluntary standards already in place;

Allow deferral only to standards devised with consultation from all interested parties;

Place reasonable time limitations for reviewing the need to issue proposed rules; and

Allow the public to challenge agency delays in its evaluation of private sector initiatives.

Without rigorous oversight and effective streamlining, CPSC will continue to squander taxpayer dollars as an ineffective public safety agency.

INDOOR AIR QUALITY: MUST BE A CPSC PRIORITY

Indoor air pollution represents the number one hidden environmental health threat to our society—each year killing thousands of Americans and injuring millions more. The CPSC authority to set standards for consumer products plays a most critical role in controlling home exposure to indoor pollutants. Consumer products

such as pressed wood (formaldehyde), kerosene heaters, paint strippers (methylene chloride), household cleaners and asbestos-containing products, just some of the major contributors to indoor pollution, are within the CPSC jurisdiction.

As our report today illustrates, formaldehyde emissions from pressed wood are yet another example of the CPSC failure to take regulatory action. Despite the adverse health effects of this probable human carcinogen, the agency still defers to an inadequate voluntary standard.

Indoor air pollution warrants the careful attention and resources of CPSC. To this end, CFA has requested the agency to designate indoor air pollution as a priority for FY 1989. CFA also strongly believes that the seriousness of indoor air pollution coupled with the agency's recent failures to initiate rulemaking warrant the rigorous oversight of this Subcommittee in the course of reauthorization. We urge Congress to carefully scrutinize the agency's actions and to direct the agency to proceed expeditiously to reduce consumer exposure to the hazards of formaldehyde, asbestos, methylene chloride and other dangerous chemicals.

AMUSEMENT PARK JURISDICTION

CFA also urges this Subcommittee in the course of reauthorization to expand CPSC's jurisdiction to include fixed-site amusement park rides. The current law gives CPSC jurisdiction over rides that travel from location to location, but not over fixed-site rides. This inconsistency unnecessarily places consumers in greater danger.

There are approximately 600 fixed-site theme and amusement parks that attract over 200 million people every year and in the past, many park visitors have been treated to tragedy rather than the thrills and fun they sought. Over 10,000 serious injuries related to amusement park rides are recorded every year. In the last decade, nearly one hundred people have died as a result of amusement park rides. These injuries and deaths resulted from faulty door latches and restraints, defective parts and improper maintanance.

When federal jurisdiction over fixed-site amusement rides was repealed in 1981, the burden of protecting consumers fell on the states. Unfortunately, *22 states still provide no protection at all.* Expanded CPSC jurisdiction is also needed over the 28 states that do have requirements, since these regulations vary widely, with many states merely requiring insurance coverage.

Amusement park ride safety is a nationwide problem which requires nationwide solutions. We urge Congress to restore full authority to the CPSC to investigate *all amusement park hazards,* in order to prevent needless deaths, injuries and expensive litigation.

SECTION 6(b) REQUIREMENTS INFORMATION DISCLOSURE

Since 1981, Section 6(b) of the Consumer Product Safety Act has severely limited timely CPSC response to Freedom of Information Act (FOIA) requests, by involving the agency in a cumbersome, costly and unnecessary morass of disclosure requirements.

Section 6(b) provides a manufacturer with substantial rights to limit the Commission's response to a FOIA request for information which could reveal the identity of the manufacturer. Before information can be released to the public, the CPSC must contact the manufacturer, provide 30 days within which the manufacturer may comment on the information and then review both the information and manufacturer's response for accuracy. This arduous process has resulted in delayed CPSC response to the FOIA requests. According to the agency's own statistics, it is now able to process only about 60% of FOIA requests within the statutorily mandated 10 day period, taking months and sometimes years to process 100% of all FOIA requests. *No other federal health and safety agency* is subject to these restrictive limitations imposed by Section 6(b).

The *result:* The burdensome provisions of Section 6(b) have dramatically slowed the release of often critical safety information to the public. This failure to release safety information and alert the public to potential hazards in a timely manner only increased the potential for additional serious injuries.

We urge this Subcommittee to review the time-consuming and ultimately costly restrictions of Section 6(b) and amend this section so as to assure *timely* release of safety information in response to a FOIA request. This will enable the agency to use its time and limited resources on safety-related activities.

AUTHORIZATION AND PERSONNEL FLOOR

In 1981, the CPSC had nearly 900 FTE's and a budget of more than $42 million dollars. Over the past six years, the CPSC has witnessed drastic reductions in its budget by an Administeration intent on abolishing the agency or at least bleeding it to death. The consequences has been a 30% reduction in CPSC funding since 1981.

CFA urges Congress to prevent any further budget reductions for this agency and where appropriate, restore cuts to increase agency effectiveness. CFA urges this Subcommittee to stop the hemorrhaging of this agency.

Cessation of further funding cuts must be coupled with cessation of further personnel cuts. While Congress has signalled through its appropriations that it will not tolerate further crippling of the agency, resisting this deeper cuts proposed by the Administration, the Office of Management and Budget (OMB) continues to bleed the agency nontheless by cutting personnel. Since 1981, there has been at least a 40% reduction in full time staff at the CPSC. What OMB could not do through the front door (budget process), it has done through the back door (staff cuts).

CFA urges Congress to intercede and stop the decimation of this agency by setting a personnel floor at least at current levels. Although an extraordinary Congressional step, it is a measure fully warranted by the circumstances if there is any hope at all for CPSC success. Any additional cuts in funding and personnel would assure the inability of this already battered agency to respond to emerging product hazards and to threats to public health and safety.

To preserve the integrity and very purpose of this agency, CFA recommends that the reauthorization bill passed by this Subcommittee prohibit any cuts in agency authorization and preclude any personnel cuts by setting a personnel floor for CPSC at current levels.

CONCLUSION

Mr. Chairman and members of the Subcommittee, CFA believes this reauthorization is critical opportunity to reign in this agency and to offer this nation effective health and safety protection. The recommendations presented today are reasonable steps to that end. We urge this Subcommittee to seriously consider these recommendations in order, to put this agency back on track as an effective watchdog for consumer safety. Thank you.

QUESTIONS OF SENATOR GORE AND THE ANSWERS

Question 1. Under current law, parties are required to admit, in effect, that their product may have a defect when they report a potential hazard to the CPSC. Should this be changed and why?

Answer. Consumer Federation of America (CFA) believes that the notification and recall provision of section 15 of the Consumer Product Safety Act represents one of the most important tools that CPSC can utilize in order to protect consumers from unsafe products. The key words in your question are "may have a defect." Section 15 of the CPSA requires that manufacturers report to CPSC when they obtain information which reasonably supports the conclusion that the product contains a defect. The regulations interpreting this section state that: "Information which should be or has been reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard." [See 16 C.F.R. sec. 1115.12(f)] Further these regulations state that: "A subject firm in its report to the Commission need not admit or may specifically deny that the information its submits reasonably supports the conclusion that its consumer product is noncomplying or contains a defect which could create a substantial product hazard within the meaning of section 15(b) of the CPSA." [See 16 C.F.R. sec.1115.12(a)]

CFA believes that section 15 and its corresponding regulations do not place any undeserving burden on manufacturers. Rather, the purpose of the act and regulations is to facilitate timely and adequate reporting. Former Commissioner Stuart Statler has advocated (in testimony before this Subcommittee) an expansion of the incidences that would trigger a report by a manufacturer, including:

Malfunctioning products likely to cause or contribute to death or serious injury if the malfunction were to recur;

Products that are the subject of a liability claim or lawsuit involving a death or injury;

Failure to comply with federal or voluntary safety standard; and

Product contains a defect or otherwise presents a substantial risk of injury.

CFA believes that the manufacturer's right to specifically deny that the information it submits reasonably supports the conclusion that the consumer product contains a defect addresses Mr. Statler's concern that responsible parties will fail to report because of an admission that the product may have a defect.

Like Mr. Statler, CFA strongly supports other changes that would serve to expand the number of reports of unsafe products. In addition to the suggestion discussed above, one way of accomplishing this would be for the Commission to be directed to issue a substantive rule under section 16(b) that specifically enumerates when section 15 reporting is required. The current regulations [contained in 16 C.F.R. sec. 1115] are interpretive and therefore do not carry the same weight. A substantive rule regarding reporting would significantly increase reports since everyone would be required to report and the fear of being the first to report would be eliminated. CFA strongly urges the Subcommittee to consider this recommendation. Without a strong early warning system, CPSC will be months (and possibly even years) behind the deaths and injuries that result from products that need to be recalled.

Question 2. How do you justify your criticism of the CPSC's deference to such standards, given the emphasis in the 1981 Consumer Product Safety Act amendments on the importance of voluntary standards?

Answer. CFA believes that voluntary safety standards play an important role in protecting consumers. We do not oppose the development of voluntary standards and we do not oppose CPSC's deference to them as outlined in the 1981 Amendments. However, CEA believes that CPSC has not applied the 1981 amendment regarding voluntary standards in the manner and spirit envisioned by Congress when that change was made.

As we testified and as our report on CPSC (The CPSC; Guiding or Hiding from Product Safety?) indicates, CFA believes that the Commission has used the requirement to defer to voluntary standards as an excuse to do nothing. Inordinate delays, hundreds of deaths, and hundreds of thousands of injuries have occurred while CPSC has waited and waited for voluntary standards to be developed. Weak voluntary standards that the Commission's own staff have admitted do not address the risk of injury have been deferred to, as have been standards developed solely by industries that refuse to have public participation.

CFA believes that the 1981 amendment on voluntary standards was intended to be one that would allow the agency to save scarce resources and one which would allow safety problems to the addressed in a more expeditious manner, thereby saving more lives and preventing more injuries. Unfortunately that has not been the case; but, that does not have to be the case in the future. CFA believes that the changes it has suggested to tighten up sections 7 and 9 along with a provision to allow any interested party to challenge undue reliance, coupled with rigorous oversight by this Subcommittee can get this agency back on track again.

Question 3. Do you agree with those who contend that the CPSC coerces "voluntary" action by manufacturers and that cost-benefit analysis would inject more fairness into the process?

Answer. CFA strongly disagrees with the contention that CPSC coerces "voluntary" action by manufacturers and we strongly disagree with the notion that cost-benefit analysis is the soluation.

CFA believe that voluntary remedial actions, such as corrective action plans, serve the purpose of notifying the public more expeditiously of a substantial product hazard. CPSC does not cavalierly initiate such voluntary remedial actions, but rather bases its action on evidence it has collected as to the hazardous nature of the product and the need to take action to reduce the risk to consumers. If a manufacturer chooses not to enter into such an agreement, CPSC can then issue a complaint. The option to agree is the manufacturer's; if he does not believe the case is warranted, he can refuse. CPSC is an agency with severely limited resources, particularly in light of the fact that it oversees over 15,000 consumer products. CFA does not believe that frivolous cases without merit are being initiated. Manufacturers are not being coerced, but ratehr are being told to ccmply with the law.

CFA opposes the use of formal cost-benefit analysis in section 15 actions. While informal consideration of costs and benefits as one of many factors taken into account is not objectionable, we do not support the type of analysis proposed by the current CPSC Associate Executive Director for Economics. The undercalculation of benefits due to factors inherently unknown at the time of the section 15 action will result in recommendations against such action. Further, such formalized analysis would have a chilling effect on voluntary actions initiated by manufacturers. Given the change to supply data on the cost of a recall or other corrective action or the opportunity to take the change that the numbers come out in their favor, manufacturers will be disinclined to initiate measures on their own. All in all, recalls are

likely to decrease or be significantly delayed under a system that requires a formal cost-benefit analysis. The CPSA does not require such analysis in section 15 actions and this has proven to be an area that needs no change.

Senator GORE. Thank you very much. I appreciate it.

In other words, you believe that the deference to voluntary standards by the current Commission has been inappropriate in several respects?

Mr. KIMMELMAN. We believe it does not further safety, because there is no stick behind it. A voluntary standard can work well if there is an incentive to develop it, if there is a need to do it quickly, if there is a reason to invest the money in improving the product.

As far as we can see, the message from the Commission to industry reads: do not worry, we are not going to regulate you. You can discuss problems, we can talk about voluntary standards, but do not worry; there is no need to act.

And we think that is inappropriate.

Senator GORE. Mr. Gimer, you essentially agree that the prospect of a mandatory standard can be used as a part of the process to encourage a better voluntary standard, and when the system is working then the industry is more forthcoming and those irresponsible members who may not want to come forward with an adequate standard can still be presented with the prospect of a mandatory standard as part of the process, correct?

Mr. GIMER. That is correct, Senator. The statutory scheme contemplates an advance notice phase concept, an internal analysis phase, and a final rulemaking phase; and it provides that the judgment about the existence of and adequacy of a relevant voluntary standard is something that has to be looked at at each stage.

And by definition, when you start the process with the advanced notice of proposed rule making it can have as an outcome a mandatory standard.

Senator GORE. As I understand it, you three are in essential agreement that the 1981 amendment on voluntary standards is not really at fault in the current situation; it is the way the law is being applied, am I correct?

Mr. KIMMELMAN. That is correct, Mr. Chairman. We can see ways in which the law could be used as a valuable resource to promote safety and to make voluntary standards work. Because of the way the law has been misapplied, however, there is a need for Congress to step in.

It appears that just asking the agency to interpret the law in the way we believe Congress meant for it to be interpreted is not enough.

Senator GORE. Well, that is a different point, though. If you had a Commission that was interpreting the law correctly and implementing it correctly, you might not need any statutory change. But if you come to the reluctant conclusion that the Commission is simply not going to do its job well, then you face a choice of continuing to plead with them or trying to encourage them to do it right, or else coming to the point where you just take statutory action.

Mr. KIMMELMAN. That is correct, Mr. Chairman. There are instances—the swimming pool cover example—where the Commis-

sion denies a petition for a rulemaking, and then turns around to say that it would like to see industry develop some kind of a voluntary standard.

Well, from our perspective that does not quite send a signal of dire need to do something, the Commission having already acknowledged that it is not going to do anything in a regulatory proceeding.

Senator GORE. Well, I would like to pursue a number of issues with the three of you, but because of the time constraints and because our other witnesses have been waiting so long, I am going to submit those other questions for the record, as will my colleagues.

Senator GORE. I would like to thank all three of you for excellent testimony. I think it has been very helpful. We appreciate it very much.

Our final panel is invited to the witness table at this time: Ms. Ann Brown, Chairperson of the Consumer Affairs Committee of Americans for Democratic Action; Mr. Alan Isley, President of the Specialty Vehicle Institute of America in Arlington, Virginia; Dr. John Morris, Director of the Division of Trauma with Vanderbilt University Medical Center in Nashville, Tennessee; and Mr. Douglas Thomson, President of the Toy Manufacturers of America in New York City.

I would like to welcome all of you and again, if you could summarize your prepared statements, we would appreciate it.

I will call witnesses in the same order I called you to the table, and that means we will begin with you, Ms. Brown. Without objection, the prepared comments of all of the witnesses will be included in full in the record.

STATEMENTS OF ANN BROWN, CONSUMER AFFAIRS COMMITTEE OF AMERICANS FOR DEMOCRATIC ACTION; DR. JOHN A. MORRIS, DIRECTOR, DIVISION OF TRAUMA, VANDERBILT MEDICAL CENTER; ALAN R. ISLEY, PRESIDENT, SPECIALTY VEHICLE INSTITUTE OF AMERICA; AND DOUGLAS THOMSON, PRESIDENT, TOY MANUFACTURERS OF AMERICA

Ms. BROWN. Thank you. I am Ann Brown, Chairperson of the Consumer Affairs Committee of Americans for Democratic Action. I am going to very briefly summarize.

We have been involved in toy safety and product safety for 15 years and have done a toy survey at Christmastime which has been a very valuable service to consumers. So I represent the actual folks who are out there. We have been a watchdog over the Consumer Product Safety Commission for this amount of time, but we are now not a watchdog over anything, not even a pussycat.

The present CPSC is impotent and ineffective. It lacks the will to do even the most basic protection of consumers, especially the protection of consumers who are children. We must realize that we have to speak up for children especially because they cannot speak up for themselves.

The only kind of concern that the agency really seems now is to put the burden on parents and toy purchasers. The only action that they take is to educate, warn or cajole. I do not know if you have ever been in the Toys "R" Us at Christmastime and tried to re-

member your own name plus a lot of toy warnings, but it is almost impossible in that hectic atmosphere.

During, Commissioner Scanlon's remarks at the Holiday Safety Press Conference held in 1986 at the elegant Willard Hotel, he talked about the deaths of 148 children just from balloons, small balls and marbles alone. Commissioner Scanlon courageously said, as parents and guardians, it is up to you to make certain accidents of this nature do not occur. Proper toy selection and supervision are a must."

The *New York Times* quoted Commissioner Scanlon again upon opening National Baby Safety Week. Commissioner Scanlon stressed that the ultimate responsibility rested with the parents. He said the aim of that week was to emphasize to parents and expected parents the need for increasing their awareness of product safety by careful selection, maintenance and use of nursery equipment; not a word about how to protect the babies at all except on the parents' part.

Commissioner Scanlon loves to hold press conferences with the associations of those he regulates. This happens with the Juvenile Products people and, of course, with the Toy Manufacturers of America. It was a regular horse and pony show at the TMA Commission-sponsored press conference. This year they had dancers, really, since there was not much to report about in the way of toy protection.

In many cases, the CPSC is so lethargic that even the industry is a step ahead of the agency. In response to our report we brought out about a toy with sharp edges manufactured by Lash Tamaron industries—it had a little comb given to children which had a sharp and lethal point—we called Toys "R" Us because Lash Tamaron manufactures it exclusively for Toys "R" Us. Upon our telephone call, Toy's "R" Us removed the toy from their shelves, all of their shelves all over the country. They did not question why. They thought when a respected consumer group had concerns, that was what should be done immediately, was to remove it. They did not hesitate for a second.

Because of the inaction of the CPSC, we are an avenue of consumer complaints. We are a veritable repository of them now. Consumers do not really know what ADA is. They think we are the American Dentistry Association, or the American Dietetic Association, but they know they get results, and that is what they are looking for.

We received one complaint about a doll, the Koosa doll which is the stuffed animal of the Koosa family. A child had put it around her neck, and its collar was designed so that when you pulled the collar it just held still. It did not release. We immediately investigated this complaint by a Californian. In our investigation, we recommended and reported that it was a danger to have such a designed collar.

Ms. Pickart, the one who complained to us, wrote to the CPSC, and they sent back a form letter to her with the not-very-encouraging salutation "dear correspondent'. The letter asked her to check the facts of her complaint. She was immediately discouraged, and she wrote us.

Coleco changed the design of the collar so that they now have a collar that you can whip open just like this. They were much more responsive than the CPSC.

Another potential danger of namby-pamby hazards that we found is Comfy Seat. The package says "ideal for high chair, bathtub or stroller. We found that this seat is flammable". It is a fire trap for children. The package shows a happy baby. That was before the baby was burned. They recommend that you put it in the stroller or the high chair, but then it says on the back "caution, sponge materials, flammable, keep away from fire and open flame." So, in fact, to have this in the kitchen in a high chair or near a parent who smokes is devastating. It should never be allowed to remain on the market at all.

Finally, there are so many areas about which there are concerns. Baby walkers are one. What you see right here is a baby walker, and most parents put their babies in this. Dr. James Downey, a prominent Chicago pediatrician, said if God meant little kids to roll around he would have put little wheels on their feet. Not a year goes by that we do not see a broken leg or a fractured skull on kids that are in these walkers. They result in injury, hospitalization and a terrible experience for parent and child.

Not only that, the literature tells us that children in walkers do not develop as well as children who are not in walkers. What is the CPSC doing about this pressing problem where their own statistics show over 123,000 injuries in 1984 from these? A voluntary standard is being worked on by the CPSC and the JPMA and the ASTM. But at this point we have been told it has been worked on for several years and we do not know when it will be adopted.

What is out there on the market now? This week we could buy unlabeled toys that should not be there. This is a little block in a matchbox. First of all, toys should never be in a matchbox as a precedent for children. They are smaller than the CPSC's own small parts standard. They are out there in the Washington area toy stores right now with no age warning on the label at all.

Another toy exactly like that, purchased at a Washington area toy store this week, with small balls and toy soldiers in it, no warning, and it is right out there.

We have a very dangerous situation, Senator, for your children and all the children of America.

[The statement follows:]

STATEMENT OF ANN BROWN, CONSUMER AFFAIRS COMMITTEE, AMERICANS FOR DEMOCRATIC ACTION

I am Ann Brown, Chairman of the Consumer Affairs Committee of Americans for Democratic Action. I am also Vice President of Consumer Federation of America. and Chairman of the Board of Public Voice.

The Consumer Affairs Committee of Americans for Democratic Action has been a watchdog of the Consumer Product Safety Commission for lo these fifteen years. Our Committee has been involved in many aspects of product safety, especially the safety of children's toys and children's products. For the past fifteen years, we have released at Christmas time a much noted and needed Toy Quality and Safety Report.

This watchdog, however, is watching over a shadow, a ghost, not even a pussycat.

The present CPSC is impotent and ineffective. It lacks the will to do even the most basic protection of consumers, especially consumers who are children. We

mustn't forget that of all the world's consumers, those that need the most protecting are those that can't speak for themselves—babies and children.

This Consumer Product Safety Commission does only what it is forced to do. When there are a pile of dead babies, when there is a dead body, the agency will take some action—sometimes. Otherwise, this CPSC is more concerned with protecting the business interests than protecting the safety of children.

For example, our Committee sent to the CPSC a report we published detailing the dangers of infant pacifiers. One paragraph of their answer to our Committee read as follows:

"Through consumer complaints, the CPSC has become aware of a problem of the nipples and handles separating from the shields of pacifiers. CPSC staff has been in touch with the importer of one brand that was frequently reported as having this problem, and we believe the problem has been corrected through redesign of the pacifier. No deaths involving these pacifiers have been reported."

Thus—no deaths—no action.

This agency's primary concern is to put the burden on parents and toy purchasers. The only kind or real action they do is to try to educate, to warn, to cajole.

I don't know how many of you have been in a toy store at Christmas time, but I know that the Consumer Product Safety Commissioners cannot have been there recently. Don't try to remember safety warnings at Christmas time in a Toys "R" Us. In that hectic atmosphere, try to remember your own name. It's a challenge.

Here are some quotes from Commissioner Terrence Scanlon's remaks at the Holiday Safety Press Conference held on November 18, 1986, at the very elegant Willard Hotel under the crystal chandeliers in Washington, D.C.

In talking about, the death of at least 148 children just from balloons, small balls and marbles alone, Commissioner Scanlon courageously said, "As parents and guardians, it is up to you, to make certain accidents of this nature do not occur. Proper toy selection and supervision are a must."

Commissioner Scanlon went on to say "over 123,000 accidents were associated with toys last year. Fortunately, the vast majority of these were minor. Roughly ⅔ of all reported were only lacerations, contusions and abrasions. Generally speaking these were the result of children falling off, over or into a toy." This time the blame is on the kid, not on the parent.

Finally, in talking about the 22 children who died last year as a result of accidents involving toys, Commissioner Scanlon admitted, many of these accidents could have been prevented.

He went on to say, "misuse, carelessness, lack of understanding and a whole host of other things can cause accidents as well. What it suggests is all of us, we at the CPSC as well as parents, can't relax for a moment when it comes to toy safety."

The only problem is, the CPSC has not only relaxed, it has become anesthetized. This is not a matter of lack of money or however many commissioners the CPSC has. This is simply a matter of lack of will.

On Wednesday, September 10, 1986, the N.Y. Times quoted Commissioner Scanlon's remarks upon opening National Baby Safety Week. Commissioner Scanlon stressed that ultimate responsibility rested with the parent. He said the aim of the National Baby Safety Week was "to emphasize to parents and expectant parents the need for increasing their awareness of product safety by careful selection, use and maintenance of nursery equipment." He was speaking at a news conference co-sponsored by the Commission and the Juvenile Products Manufacturers Association, a group that represents the makers of playpens, strollers, cribs and similar products.

Commissioner Scanlon loves to hold press conferences with the associations of those he supposedly regulates. Juvenile products is one area that the CPSC is supposed to regulate.

The other area, of course, is toys. Commissioner Scanlon held a Christmas Toy Safety Press Conference in conjunction with the Toy Manufacturers of America last year and this year.

This year the press conference held at the Willard Hotel in Washington, D.C., was a veritable horse and pony show. The idea of holding a press conference with the heads of the industry you are supposed to regulate is surely being in bed with that industry. The TMA donated both press kit covers and the dancers who danced for the assembled reporters. Why the reporters needed dancers, or why there needed to be a Santa Claus at the press conference I cannot imagine. Perhaps it was to make up for the lack of news of actual protection. True, there were plenty of warnings, but very little consumer protection.

Commissioner Scanlon said that holding these press conferences is a wonderful way to gain industry cooperation with the CPSC. But when the CPSC filed a complaint against Johnson & Johnson seeking the recall of 1.6 million stuffed crib toys,

that had caused the death of two babies, Johnson & Johnson refused to voluntarily recall the crib toy. The CPSC had to go to court for the recall of the crib toy. How is that for cooperation?

In many cases, however the CPSC is so lethargic that even Industry is a step ahead of the agency. For example, the 1986 Toy Report of the Consumer Affairs Committee, found a beauty set with sharp edges and a dangerous point, manufactured by Lash Tamaron Distributors. This is a product that is manufactured exclusively for Toys "R" Us. Our Committee telephoned Toys "R" Us to inform them about this beauty set which had a long and potentially dangerous point on the toy rattail comb. The package said "Caution, not recommended for children under 3 years old." Despite the warning the question was—Why give any child a toy that has a pointed dagger?

Toys "R" Us didn't hesitate for a second. The officials immediately recalled the Beauty Set from its shelves, all of its shelves, all over the country. Their philosophy was—if a respected consumer group thought this toy was dangerous let's get the toy off the shelf first and debate later. This is certainly not the attitude of the CPSC.

Another toy that our Consumer Committee noted could be potentially dangerous this year was the Stack and Pop Toy manufactured by Discovery Toys. Discovery Toys are the Tupperware of the toy industry, an up and coming and aggressive company that sells toys in the home. They are also a very safety-conscious company.

Our Committee has become the repository of consumer complaints because of the dissatisfaction consumers find with the CPSC. Therefore, they turn to a small grass roots committee, such as ours, who they know will do something about their complaints.

We received several complaints about the Stack and Pop Toy. Our experts decided that, in fact, this colorful stacking item, when the plunger is pressed and released, has plastic objects that go flying off the plunger with considerable force and could pose a potential danger to any child's eyes and face.

Lane Nemeth, the President of the company, was horrified to find her toy on the ADA list and requested and had a personel meeting with me. She did not agree that the toy posed a danger, but in fact, agreed that although they were going to sell the few remaining Stack and Pop toys that were in the warehouse, they would not repeat the manufacture of that toy again.

In yet another example of industry activism and concern, Six Party Favors, Jet Plane #8883, manufactured by Unique Industries, were noted to be dangerous because they were easily broken. Because they were so cheaply made and were made of inferior plastic, the jagged edge created by the breakage became a small part that could cut a child or be ingested. In the blister packages that the jet planes come in, the tails were broken off before the blister seal was broken.

The attorneys for Unique Industries wrote to contest our report on behalf of their client. Our attorney replied that the planes were cheaply made and easily broken. Unique Industries then sent to our toy safety experts for our opinion, some examples of a new design of their product made of stronger plastic. Clearly this Company was concerned with safety and will to do something to correct a problem.

In a horrifying memo from Paul H. Rubin, a staff economist of the CPSC on the subject of cost benefit analysis, Mr. Rubin writes about applying cost benefit analysis to human life. This is simply an economic rationale for doing nothing. Cost benefit analysis can apply to economic matters; it cannot apply to life and death, or health and safety situations. How can one put a price on a child's life or a child's limb?

In his February 25, 1986 memo to the Commissioner, Mr. Rubin talks about the problem of recliner chairs. Says Mr. Rubin: "According to information available to us, there have been eight deaths and one case of severe brain damage (which we will treat as being equivalent to a death) since 1973, associated with the entrapment of children's heads or necks in reclining chairs."

However, Mr. Rubin goes on to put some faulty cost benefit analysis to this and decides "it is our recommendation that nothing be done besides mentioning this product, along with others that lead to entrapment, in safety alerts. The deaths are injuries that have occurred are certainly tragic. However, the incidence is extremely small and it is not clear any remedial action could be cost effective."

The Furniture Manufacturers Association and the recliner chair designers have a little more humanity than Mr. Rubin and his economic staff that support this chilling proposal. The American Furniture Manufacturing Association has put out an Industry Guideline, albeit only 2 sentences, stating that recliner chairs should have a smaller opening and that a caution label be put on recliners. This is surely a minimal response, since no performance criteria were specified. But at least, it is some response!

Because of inaction on the part of the CPSC, other avenues are sought for help for consumers with their problems. Many consumer complaints come to our Committee. Most consumers don't know or care whether ADA stands for the American Dietic Association or the American Dentistry Association. They know they get action!

Our 1985 Toy Quality and Safety Report, showed that the design of the collar on the Koosa doll, the stuffed animal of the Cabbage Patch line of toys, made this a potentially dangerous toy. The potential danger of the Koosa collar was brought to our attention by Tarmara L. Pickart of San Rafael, California, whose 6 year old daughter Amy had a terrifying near miss, luckily in a dentist's office while 2 adults were nearby. Amy removed the collar of the Koosa, wedged it around her neck, and then couldn't remove it. She got panicky, her neck swelled up, and the collar got tight around her neck. It had to be removed with surgical shears by the dentist who luckily was in the room.

Ms. Pickart wrote the CPSC and our Committee about this. The CPSC sent back a form letter to Ms. Pickart, with the encouraging salutation "Dear correspondent." The letter asked her to check the facts of her complaint—certainly not a very encouraging reply.

Ms. Pickart wrote us and we proceeded to do a full investigation into the collar and to ask for its recall. Ms. Pickart sent a letter to Coleco Industries, who also realized that the collar as it was designed was dangerous. Coleco changed the design of the collar. The CPSC did nothing.

A similar situation occurred when Wallis Davies, a pediatric specialist at the Home Hospital in Lafayette, Indiana, contacted our Committee about some complaints on multi-piece pacifiers. Several complaints had come in to her that the multi-piece pacifiers were breaking and there were several near misses of babies who almost ingested the broken pieces.

Debbie Wager of our Committee then did a full study, talking to former CPSC commissioners, and other experts became an expert herself on the subject of multi-piece pacifiers. The Consumer Affairs Committee released a report on pacifiers in March 1987 in conjunction with the Children's Hospital National Medical Center, Washington, D.C. This report warned parents of the dangers of pacifiers made in more than one piece and recommended one-piece pacifiers for babies who had to use pacifiers. Furthermore, it recommended that hospitals stop giving parents makeshift pacifiers because these had caused deaths as well.

This is another example of where consumer complaints can lead to advocacy and action. In fact it is often easy to anticipate where danger will lurk before we have a death or many injuries.

Before the release of our 1986 Toy Report Survey, the CPSC was inordinately anxious for us to divulge to them the dangerous toys that we had found. On October 9 and on November 25, we received special delivery letters from the Commission. The October 9 letters said: "As consumers prepare to make their purchases of products especially for children, we want to do everything possible to identify potential hazards now. Therefore, I am requesting that you provide us with any information you may have regarding potential product hazards associated with items on the market so we may take appropriate action." The CPSC was very anxious to have our information. They wrote us again on November 25 again urgently requesting our information about dangerous toys.

For us to give our information about dangerous toys to the CPSC would be like throwing it down into a dark hole, never to be heard from or seen again. Our Press Conference is the most effective way to inform consumers about potentially hazardous toys we are able to find on the market. We could even hope to prod the CPSC into some kind of action by means of the press that we get.

Instead of worrying about us our press conference and spending their time and resources sending us special delivery letters, the CPSC should spend its energy checking store shelves, following up consumer complaints and working on mandatory standards. We are basically a volunteer group and that is what we do. We go to stores, we talk to parents, we follow up complaints, we test toys with relevant experts and children under tightly controlled conditions. Our people aren't paid. Their only motivation and energy come from the goal of protecting children from injury.

Just before our press conference we released the toys that we had found to be potentially dangerous to the CPSC.

On December 11, 1986, I wrote the Commission, "As per our conversation of December 5, I would be interested in having all the results and CPSC findings on the toys that our Committee determined potentially dangerous. We would like this information as soon as possible and will be glad to cooperate in any way we can with this."

On April 29, I wrote another letter in which I said: "we submitted these toys on December 1, 1986, and have been anxiously awaiting some notice or even sign of life. We are especially concerned about what is being done about the flammable Comfy Seat manufactured by Pansy Ellen and are also concerned about the other toys. Thank you for your prompt attention."

From January 5 until May 8, I telephoned the Commission every two weeks and asked what was happening with the potentially dangerous toys that we had brought to the Commission.

For five months I was told that "something was happening" and a letter detailing what that was would be sent to me. It surely sounded like "the check was in the mail."

On May 9, I received a letter dated May 8, probably prompted by these hearings. It gave the sketchiest kind of information about the status of the toys and some amount of excuses about why the letter could not reveal more—this from a Commission that in November had been badgering our committee for our safety data.

The letter did reveal pitiful action concerning the toys the CPSC did agree posed imminent danger and violated applicable safety requirements.

Let me illustrate the potential danger of CPSC mamby-pamby inaction. One of the children's products we found that was particularly hazardous was the Comfy Seat made by Pansy Ellen. The Comfy Seat is an "all purpose slip resistant seat for babies 6 months to 6 years" says the package—"ideal for high chair, bathtub or stroller". However, there is a warning in small print on the back of the throwaway plastic that it comes in. "Do no use Comfy Seat in cribs, carriages or playpens. This is not a toy. Sponge material is flammable. Keep away from fire and open flame." We tested the Comfy Seat by holding a lit match close to the sponge—it caught fire immediately.

The seat is a fire trap. The instructions say use in high chair or stroller—where is a high chair most likely to be?—in the kitchen. What if the high chair is made of wood? Why should any product for use by children be flammable?

The Comfy Seat should have been recalled immediately, a warning sent out and all others like it withdrawn from homes, schools, and stores. Instead, the CPSC letter informed us that "for one other product for which you expressed concern about its flammability, the firm involved has modified its product."

On May 10, 1987 additional Comfy Seats by Pansy Ellen were purchased by the Consumer Affairs Committee. The original Comfy Seat with a picture of baby and "Ideal for High Chair, Bath Tub or Stroller" with the small warning on the back "Sponge Material is flammable. Keep away from fire and open flame" was still available.

A newly designed Comfy Seat by Pansy Ellen was also available. The foam rubber is a slightly paler yellow and still goes up in flames at first strike of a match. The plastic wrapper still pictures a delighted baby sitting on the seat. The package still says "IDEAL FOR BATH TUB, HIGH CHAIR AND STROLLER" and "all purpose slip-resistant seat for tender bottoms." The new package does *not* say 6 months to 6 years of age however. There is no age labelling on the new package. This is the only discernible difference.

Monday, May 4, 1987, we purchased a Safety Bath Ring at Toys "R" Us. The durable plastic ring supposedly helps children sit more securely on a slick surface. However, it includes in it a sponge to make the seat more comfortable for babies 6 months and up. Let me show you what this sponge does. When you put a match to this sponge it too goes up in flames. So on the market is another product much resembling the Pansy Ellen Comfy Seat. The Safety Bath Ring is also manufactured by Pansy Ellen. CPSC inaction not only has allowed a fire trap seat to remain on the market but it has not identified another fire trap seat that is also on the market, made by the same manufacturer.

Let us see what other kinds of things we were able to purchase during the week of May 4, 1987 at toy stores in the Metropolitan-Washington, D.C. area. How effective is Consumer Product Safety Commission monitoring? Here are small blocks purchased at a local toy store manufactured by Juri. There are no age warnings on them and they do not pass the CPSC's own small parts test. They are so tiny and extremely dangerous if ingested.

Here's another toy, a bowling toy made by Borbo Productions. Borbo Bowling Toy is a darling painted set of soliders and balls in an egg—all of them too small to pass the small parts test. They, too, are on market right in Washington, D.C. with no warning on the label.

Here are some crayons made in England by Reeves—10 triangular crayons that say nothing about being non-toxic. They were also purchased at a Washington, D.C. toy store.

Here are barnyard animals packaged in a box that looks like matches. This is a bad concept—to have a child play with something in a box that looks like a matchbox. Furthermore, all are smaller than the small parts test and can easily be ingested.

What should be done? The problem is not to find the area in which things should be done but to choose among the worst of many.

Let us take one area, that of baby walkers. Dr. James L. Downey, a prominent Chicago pediatrician, said "if God meant little kids to roll around he would have put little wheels on their feet. Not a year goes by that we don't see a broken leg or fractured skull on kids that were in these walkers. They result in injury hospitalization and a terrible experience for the parents and child."

In one case, Dr. Downey says, the baby spent 3 weeks in the hospital with a skull fracture and he may have suffered permanent neurological damage.

Baby walkers are a disaster. Our 1985 toy survey warned that baby walkers are involved in an enormous amount of injuries. In 1984, the CPSC's own figures showed 15,623 reported injuries to babies from baby walkers.

In 1984 the Canadian Pediatric Society issued a warning that 40% of children in baby walkers are involved in some type of mishap ranging from finger entrapment to tip overs to falls down stairs producing head injuries. This is just the tip of the iceberg.

In a three year study of childhood injuries regarding baby walkers in the state of Massachusetts, 54 children who fell down stairs on babywalkers either went to the hospital emergency rooms or were hospitalized.

Parents believe baby walkers aid a child's development. This is a misconception. Dr. Downey says what is often overlooked is that a walker can disrupt a child's development. "In the first year the baby learns to roll over, sit up, pull himself up, stand alone, and finally to walk. This is a process that is ongoing that takes anywhere from 3 to 7 months and is the result of combined physical, emotional and intellectual development. If you interfere with this, specifically as the walker interferes with the physical milestones, then it makes logical sense that you may be interferring with the emotional and intellectual aspects too."

Another article by two prominent pediatricians backs this supposition. Not only are walkers dangerous but in fact they slow down the baby's development. Pediatricians Joseph Greensher, M.D. and Howard Moffenson, M.D. in an article entitled "Injuries At Play", published in February 1985 say: "Regarding the influence of walkers on early ambulation, a study of twins found that infants not using walkers were walking slightly earlier than their siblings using walkers." They went on to enumerate some of the potential hazards having to do with baby walkers and go on to say: "Walker-related injuries result in high 'minor' trauma and, more worrisome, a high prevalence of significant injury." * * * "The potential for injury is a generic problem, although some brands differ considerably in their stability."

What is the Commission doing about this pressing problem? The CPSC has been working on a voluntary standard with the ASTM and the Juvenile Products Manufacturers Association for "several years." There is an old mandatory standard that basically says that baby walkers should not pinch or amputate little fingers.

If and when a voluntary standard is ever adopted, the CPSC and JPMA want to abolish the mandatory standard.

Thus we have a backward step advocated by the CPSC. Further discouragement is that the voluntary standard has been worked on "for several years" and the Commission still "doesn't know when" it will be adopted.

Finally, a voluntary performance standard is totally inadequate for a product that is "generically" dangerous. Ideally, such a product should be banned. At the very least a mandatory performance standard to prevent tipping dangers should be enacted. That would be the stance of an activist CPSC.

A third area that has become a total scandal has been the area of toy labelling. Toys labelled "for 3 years and older" invite a situation that is invidious and hazardous. There are many cheap, unimaginative and poorly constructed toys with hazardous small parts that are obviously intended for the very young child. However, by carrying the "3 and under" label, manufacturers circumvent the law and protect themselves.

Here are two examples that simply illustrate the problem. Fashion Doll Accessories, manufactured by Toy Time, Inc. are flimsy, cheap, plastic accessories for Barbie, Miss Sergio Valente and Brooke Shields Dolls. "Over 100 pieces" for $1.97 proclaims the package. These accessories are tiny and junky, but little kids would love them for their dolls—and love to mouth these pieces as well. The manufacturer protects themselves by a "for ages 3 and up" label.

My Little Pony, Baby Pony With First Tooth, manufactured by Hasbro, is an accessory set that includes Baby North Star. It is geared for the very young child, but is labelled "Ages: 3 and up". It is so labelled because it contains small parts, even though it appeals to younger than 3 year olds.

The CPSC should immediately take a position that toys directed toward the very young cannot avert liability by labelling "for 3 years and over". The "over three" label has become a smokescreen behind which the manufacturers shamefully hide. And the CPSC knows it.

What a travesty! What a calamity! Our nation's children go unprotected by a useless and inept Consumer Product Safety Commission.

Senator GORE. Thank you very much. We will hold questions.

I am going to change the order just a little bit. Dr. Morris, I would like you to go next, if you would.

Dr. Morris, welcome. If you would proceed.

Dr. MORRIS. Thank you, Mr. Chairman. First of all, thank you for inviting me here today to share my thoughts with you about ATV vehicles.

As you know, my practice is solely limited to the trauma patient, the patient who has undergone severe injury. The facts about ATVs are clear. The ATVs are a hazard. This is well documented in the medical literature, well documented in the CPSC's ATV task force report, and the facts are that over 700 people have died in the last four and a half years. A disproportionate number of these people are children.

In our series in Nashville, 40 children have been seriously injured in the last two and a half years, 50 percent of those children are under the age of 12, 25 percent are under the age of eight; seriously enough injured to be in a major trauma center.

The facts are that despite the deaths, the large number of deaths, what is overlooked is an equal, if not larger, number of permanent disabilities. Permanent disability is a nice word for vegetable. Permanent disability is a 13 year old with 140 days in the hospital, $350,000 worth of hospital bills, who went home on a breathing machine. The only way that he is able to communicate with his mother is by blinking his eyes.

Permanent disability is an 11 year old with 70 days in the hospital and $140,000 worth of hospital bills, and all he can do is track with his eyes.

The facts are indisputable, Mr. Chairman. The progress has been negligible. We need a clear, concise, pointed message from the Federal level to be disseminated not only to the people but to the State legislatures, and that message needs to read that all-terrain vehicles are imminent hazards in the hands of children.

Thank you.

[The statement and questions and answers follow:]

STATEMENT OF JOHN A. MORRIS, JR., M.D., VANDERBILT UNIVERSITY MEDICAL CENTER

Mr. Chairman, thank you very much for this opportunity to appear before the subcommittee to present our concerns about all-terrain vehicles. From my perspective as the Director of the Division of Trauma and a practicing trauma surgeon at Vanderbilt Medical Center, I see first-hand the deaths and injuries attributed to all-terrain vehicle use, especially among children. I am encouraged that your subcommittee has given priority to ATV safety.

There are three points I would like to make before the subcommittee today: (1) the medical community has recognized for some time the seriousness of the injuries resulting from ATV accidents and has published numerous articles describing its concerns; (2) the data at Vanderbilt suggests that for every death there is almost

one disabling injury, the impact of which has not been widely discussed; and (3) despite extensive media coverage of the dangers of these vehicles and an extensive review of ATVs by the Consumer Product Safety Commission, to my knowledge, there has been no federal response to this problem.

For the record, ATVs are motorized three-and four-wheel cycles with balloon-like, soft tires intended for off-road use. They are designed to be ridden by a single person with a seat to be straddled by the operator and handlebars for steering control and braking. ATVs typically have gasoline-powered engines of between 50 and 500 cubic centimeters displacement. The largest vehicle is capable of speeds between 90 and 100 miles per hour. They are designed for use in sand, open fields, mud and other terrains. They are used primarily for recreation although there are competitive events staged in some parts of the country.

All-terrain vehicles were introduced in this country in 1971. They have enjoyed enormous popularity, especially in rural states such as Tennessee. The Consumer Product Safety Commission estimates that at the end of 1986 there were approximately 2.3 to 2.4 million ATVs in use in this country. Although they have been advertised as a form of fun, exciting, safe recreation for all ages, it is clear from the data that they are far from safe, especially for young riders.

Reports of trauma associated with ATVs first appeared in the medical literature as early as 1983. Physicians, especially those practicing in rural states, began to note an increasing number of injuries associated with ATV use. In 1983 McDonald and Stribling reported that 45 patients were seen in a four month period in Jackson, Mississippi hospitals. Seven of these patients were admitted with major fractures. There were no fatalities in this series. During a 12 month period in 1984, 17 patients were hospitalized in LaCrosse, Wisconsin for the treatment of injuries sustained in three-wheeler accidents. Again, long bone fractures were the most common injury, with no deaths occurring in these patients.

However, as the popularity of these vehicles grew, the literature began to report not only an increase in severity of injuries but also deaths, especially in the pediataic population. Haynes, Stroud, and Thompson (1985) reported that in 1984 sixty children were seen at the East Alabama Medical Center as a result of three-wheeler accidents. Ten of these children required admission to the hospital with severe injuries including a ruptured liver, fractured sternum, head trauma, and long bone fractures. Ten children with serious injuries following ATV accidents were admitted to the Arkansas Children's Hospital over a 12 month period; two additional children died before reaching a hospital (Golladay et al., 1985). During an eleven month period, five victims between 7 and 18 years of age were admitted to the Spinal Cord Injury Care System at the University of Alabama. Of these five cases, three resulted in quadriplegia an two in paraglegia.

A study published last November in *pediatrics* highlights for the first time severe head injuries among children and the long-term sequelae associated with these injuries. A study of 93 consecutive cases admitted between July 1979 and July 1985 to the Gillette Children's Hospital Pediatric Head Injury Service and to the St. Paul Ramsey Medical Center were reviewed. Of these, six received disabling injuries and one died. The following table describes the seven cases:

Case No.	Age (yr)	Experienced Driver	3- or 4-Wheel Vehicle	Length of Coma	Outcome and complications	Length of Hospitalization
1	14	Passenger	3	8 mo	Nonverebal, nonambulatory 4+yr.	
2	9	?	3	Until death	Death	1 d.
3	14	Yes	3	3 d	Meningitis	51 d.
4	15	Yes	3	1 d	Meningitis, hearing and vision deficits.	63 d.
5	16	Yes	3	2 d	Learning disabled	22 d.
6	12	No	4	12+mo	Vegetative state	12+mo.
7	16	Yes	3	10 d	Learning disabled	53 d.

The data from St. Paul parallel the experience at Vanderbilt with respect to the serious nature of the injuries. Between September 1984 and 1987, 39 pediatric patients, all under the age of 18, were admitted to the Vanderbilt Trauma Center as a result of all-terrain vehicle accidents. Seven children died. Their ages were 6, 8, 10, 12, 13, and two 14 year olds. Another six of these childern are permanently disabled

as a result of their injuries. This data represents an almost equal number of disabling injuries to deaths, the impact of which has not been widely discussed.

The human cost and the cost to society of these types of injuries cannot be underestimated. To begin with the average cost of the *initial* hospitalization for the these six children was $118.452.18. This does not include physician services. Of far greater significance is the include physician services. Of far greater significance is the long-term cost of caring for these children. Assuming that each lives to age 65, the lifetime cost per child is estimated to be $2,995,200, or a commulative cost of $17,971,200.

This estimate casts a new light on the data published by the Consumer Product Safety Commission. As of November 1986 the Commission had reports of 644 ATV-related deaths which occurred between 1982 and 1986. If the Vanderbilt ratio of deaths to disabilities is applied to the CPSC data, the resulting cost to society of injuries already in the system is in excess of 1.5 billion dollars. Despite an overwhelming preponderance of evidence that ATVs are not safe for children, extensive media focus on this problem and a 12,000 page report from the ATV Task Force of the Consumer Product Safety Commission, there has been no definitive federal action in this area. Very few states have enacted legislation to protect children from serious or fatal injuries associated with the use of ATvs. I can tell you that one person will die every other day between the months of March and September from an injury resulting from these vehicles until effective action is taken.

QUESTIONS OF SENATOR GORE AND THE ANSWERS

Question 1. Are ATV injuries suffered by children the result of any particular aspect of the vehicle?

Answer. We have seen considerably more injuries as the result of three wheel vehicles as opposed to four wheel vehicles. There is considerable information in the engineering literature to suggest that the four wheel vehicle is more stable than its three wheel counterpart. However, I contend that children do npt have the strength, maturity, or judgement to drive either type of vehicle.

Question 2. How do ATV injuries compare with other consumer product injuries in terms of frequency and severity?

Answer. In our experience, the number and severity of ATV injuries dramatically outweigh any other group of injuries in children with the exception of motor vehicle accidents. This data reflects injuries that are severe enough ot warrant admission to the hospital and not reflect the less severe group of injuries which can be treated on an outpatient basis.

Senator GORE. That was a very strong statement.

Mr. ALAN ISLEY. Have I pronounced your name correctly?

Mr. ISLEY. That is correct.

Senator GORE. President of the Specialty Vehicle Institute of America.

Please proceed.

Mr. ISLEY. Mr. Chairman, Members of the Subcommittee, good morning. I am Alan Isley, President of the Specialty Vehicle Institute of America—a non-profit national safety organization founded by the four major U.S. distributors of all-terrain vehicles. In my remarks today, I will be addressing the ATV industry's efforts to work with the Consumer Product Safety Commission on matters related to ATV safety.

The Institute was founded by the four major U.S. distributors of all-terrain vehicles in 1983, a full year before the CPSC became involved with all-terrain vehicles. We have been actively pursuing the voluntary standards process in cooperation with the CPSC as well as our own expedited standards.

To expedite this process at the beginning, we separated the standards into those that could be achieved on an expedited basis and those that were going to require additional research. We are

proceeding on those two phases, phase one and phase two, concurrently in order to speed up the process.

The ATV industry has been actively pursuing the voluntary standards process in cooperation with the CPSC. Our efforts began in April 1985 with a joint meeting involving the SVIA and the CPSC staff. The particular voluntary standards process preferred by the CPSC is a time-consuming one, and I should explain. As you heard earlier here, this is a nationally recognized consensus standard. While it has not moved as quickly as we originally hoped largely due to the complexities of the process itself which requires consensus of over 40 nonmanufacturers, we have almost completed phase one at this time on controls, equipment and labeling, and we are continuing to work on phase two, performance standards.

We felt that while working diligently under the longer process it was important for the industry not to stand by passively. Instead, the industry quickly and unilaterally adopted some of the initial draft standards, including consumer labeling, age labeling, standardization of controls and standardization of user information.

The draft phase two performance standard was circulated for the first consensus draft last November. Only after that draft was circulated did the Commission formally authorize its staff to participate fully in the standards development process. With these developments and the progress made at the last voluntary standards meeting on April 21, we are hopeful that phase two standards can be agreed upon expeditiously.

Now, although the Commission made voluntary standards its initial priority, we informed it that, in our view, a wide variety of education and information programs along with comprehensive State ATV laws would have a greater impact on reducing injuries.

Our safety programs include a nationwide public awareness and advertising campaign; a toll free 800 safety hotline; information about safety in every owners manual and in all SVIA and individual company publications; safety-oriented hang tags on all ATVs; safety videotapes in every dealership; and more than 1,000 all-terrain vehicle instructors qualified to teach a one-day hands-on course or present either 50-minute or two-hour safety seminars through community organizations.

Unfortunately, we have not had the enrollment in our four-and-one-half to six-hour hands-on training courses that we expected due to the lack of rider interest. Therefore, in addition to continuing our efforts for hands-on training, we have stepped up our other education programs in hopes of reaching as many riders and potential riders as possible.

We also firmly believe that State safety certification legislation is the most promising long-term solution. Our industry has drafted model ATV legislation for State use and is actively pressing for its enactment. Our model legislation requires State certification for ATV riders and supervision of children. It requires helmets and prohibits riding on roads, carrying passengers or using alcohol while riding. Eleven states have passed ATV legislation, and bills have been introduced this year in 20 additional states.

We believe that quality safety programs combined with State regulation can reduce injuries significantly. Since the industry began its safety programs, the ATV use adjusted accident rate has

declined by 11 percent in 1985 and an additional 13 percent in 1986.

The industry is committed to continuing its safety programs to reduce the level of ATV-related injuries even further. These programs are specifically aimed at rider practices that cause a majority of ATV-related accidents. These unsafe practices include: riding recklessly; carrying passengers on machines that are only intended for one person; riding under the influence of alcohol; riding on paved surfaces; riding without helmets; and, most importantly, allowing children to ride adult-sized ATVs that are specifically labeled not for their use.

We believe that ATVs are safe products when they are ridden appropriately. We will continue our efforts to assure that riders are properly instructed and supervised and function as knowledgeable, responsible and safe participants in ATV riding. Our programs are proving successful, and we plan to continue and accelerate our campaign to reduce further the rate of injuries associated with ATVs.

We are also willing to reinforce our commitment to work with the CPSC to achieve the common goal of reducing ATV injuries through responsible actions and effective programs.

Thank you.

Senator GORE. Mr. Thomson

Mr. THOMSON. Mr. Chairman, I appreciate the opportunity to come down here, and I will consolidate my remarks and leave written comment for the record.

There are three things I think I would like to address that have come up in your hearings here. One is the question of organization, the question of a single administrative versus a collegial body. The Toy Manufacturers of America support very strongly a collegial body, and we do that for a couple of reasons.

Number one, we are frankly quite frightened of the idea of a single administrator based on some of the people who we have seen run the CPSC up to this point, and we have been watching it for 10 years.

Senator GORE. I am, too, but for different reasons.

Mr. THOMSON. I understand from your first remarks. I see that.

Senator GORE. Well, if Mr. Scanlon was appointed the single administrator you might like that, but I would not.

Mr. THOMSON. I am not saying I would like it, but I can tell you I would not have liked Mr. Statler. I think he had a heck of a nerve coming up here and talking the way he did based on his performance for seven years. He was never on the right page for seven years.

Senator GORE. Well, he does not have an opportunity to respond to an ad hominem.

Mr. THOMSON. The point, I think, is that a single administrator who is not properly trained, not properly trained in delegation of authority and the running of an agency I think would be a problem. I think at least having three gives a balance wheel, and I believe that is important to industry.

Included in that comment, too, Senator, is the issue of selection. I do not think that Congress can expect the CPSC to run the way you expect it to when we persist in putting people who have been

heads of inauguration committees, lawyers who have never had any business expenience or anybody who has not had some commercial understanding of world manufacturing processes and the complexities of consumer products

You heard Mr. Pittle. Mr. Pittle was the one person in the nine or 10 years I have watched this agency who had a basic understanding of the processes. I think I recommend very strongly to Congress that you look at the selection process and only confirm those people who are capable of understanding the processes of manufacture of the commercial world so that they can handle these issues properly.

The second issue I would like to address is one of voluntary standards. We have heard a lot of adverse discussion here. The toy industry is probably the most regulated of all the children's products in this country. We support very strongly voluntary standards. We have a very elaborate voluntary standard which goes far past the mandatory standards, and I believe we have been responsive to the CPSC in their requests.

We have, in recent years, put voluntary standards in on toy chests, nitrosamines, pacifiers, DEHP and a number of other things. Anytime that they brought the facts to us and we have been able to look at the facts, we have addressed ourselves to it.

My mandate from the 250 members who represent 90 percent of all the toys and games put into the market place is to do everything possible to produce safe toys. It is bad business to have unsafe toys. It is not only a moral obligation as parents and grandparents, but secondly, the financial incentive to produce safe toys is very strong. We have to develop in the minds of our consumers the idea that our brand names are good toys, good play value, good financial value and are very safe for the children. We want to put products in the hands of the children that the consumer can be quite sure are going to be alright if used properly.

So voluntary standards can and do work. I am inclined to think I am the only person you have heard today who has ever put one in. I can put a voluntary standard in and have put it into our industry, within a month and a half or two months and received complete cooperation from every single member.

The last issue that I think I would like to address is the performance of the CPSC, which has been widely criticized. I am frankly not interested in whether the commissioners argue among themselves. That is not the heart of the Commission. The Commission is the talented, capable people at the staff level. We see no diminution of their activities or their willingness to step up the problems. Commissioner Scanlon mentioned 53 recalls in the toy industry. That would suggest to me that they did their job in 1986.

Much has been said about the fact that we have had press conferences and we have worked with them. I see nothing wrong with that. I have been in business for 37 years in the manufacture of plastic and rubber products at every level, and I see nothing wrong with working with our government agencies to produce a better product. It is good business. Everyone should do it. If you do not do it, you are a damn fool. I find that the CPSC staff has been most helpful to us.

We have also run a number of training sessions. We have another one coming up to address some of the issues that Ms. Brown brought up in which retailers are going to out to the Far East and buying items directly from contract manufacture's. They bring them into the marketplace, going around the TMA manufacturers. We are running a joint safety seminar with the CPSC on May 28, and I see nothing wrong with them coming up and assisting us and assisting those manufacturers and retailers who do not understand the standards to perform better.

I thank you very much for your attention.

[The statement and questions and answers follow:]

STATEMENT OF DOUGLAS THOMSON, PRESIDENT, TOY MANUFACTURERS OF AMERICA

My name is Douglas Thomson. I am the President of the Toy Manufacturers of America, (TMA) the trade association representing 250 toy and game manufacturers, designers, and importers who distribute about 90% of all toys and games sold at retail in the United States. I am also the President of the International Committee of Toy Industries, (ICTI) a coalition of toy and game associations from all of the major marketing and manufacturing countries of the world. We appreciate the opportunity to comment on the issues and performance of the CPSC.

Let me preface my specific remarks with an overview of the nature of our toy safety standards. The toy industry is perhaps the most regulated of all children's products. In addition to the mandatory standards on small parts, sharp points, sharp edges and lead-in-paint, electrical-thermal, rattles, pacifiers, toxic and highly toxic substances, flammable and highly flammable substances, irritants and sensitizers, we have elaborate voluntary standards which go far beyond the legal regulations. Our voluntary standards are reviewed regularly and in 1986, an update was completed through the American Society for Testing and Materials—a process which brings into play manufacturers, retailers, consumers and regulators to consider and strengthen the standards based upon all available information and experience. Too, our International Committee has agreed upon a harmonized version in order to communicate to the manufacturers, testing laboratories, buyers and distributors world-wide. Recent voluntary standards improvements have embodied toy chest, nitrosamines in rubber pacifiers, plasticizers in vinyl teethers and pacifiers, increasing the sizes of certain rattles, teethers, and squeeze toys and more consistent age labels. *Safe toys are a moral obligation and a financial requirement of continuity of business.*

While we have our critics, the facts indicate that with over two billion toys sold in the United States each year, multiplied by the enormous number of play hours, toys are among the safest products introduced into the household. Analysis of data indicates that the vast majority of accidents associated with toys are not serious and are caused by falls, children being hit by toys, and the general enthusiam and lack of experience by children. According to reports there are anywhere from six to ten other common household items which cause more injuries—for instance home furniture, personal use items, household appliances, packing and containers.

The first issue I wish to address is the question of the organziation of the Commission with a single administrator in charge or managed by three or more Commissioners. Based upon our substantial experience with the Commission, it is our considered opinion that three commissioners is a more effective organization than either five commissioners or a single administrator. Our reasons are as follows:

The vast array of consumer products makes it difficult for the Commissioners to be even generally knowledgeable for some of the commercial and technical aspects. Three Commissioners gives the agency more opportunity to understand the various products, especially if the appointments were made with more attention to general background helpful to understanding the complicated constructions and uses of products.

With a single administrator, there is a risk that that individual might not have the drive or knowledge to properly insist upon needed compliance or, at the other extreme, might be too narrow to effectively assess the need or implication of potential regulation. With a single administrator, there is the risk of either a particular political leaning or excessive zeal in either direction.

Five Commissioners appear to be an unneeded expense and cumbersome. Three gives better balance and insures a majority vote to go forward, assuming that three constitutes a quorum.

The second point to be discussed is the enforcement activity of the Commission. Much has been said by the critics about the reduction in the CPSC budget and the resultant effect on its activities. We do not support that view and believe that those who are not close to the agency have little knowledge of the day-to-day activities and use budget constraints to make their cases. This industry supports the need for firm action to meet Gramm-Rudman goals and the most necessary reduction in the Federal deficit. We have seen no diminution in the compliance activity on toy products based upon the number of recalls or the requests for action by Commission staff. This latter point, requests for action by the Commission, to us, is by far the most important of all activities. The Commission, has in the past couple of years, emphasized the need for voluntary action, and I believe the toy industry has been responsive on all those items on which the facts would indicate required action—toy chests, rattles, teethers and nitrosamines to name a few. And I reiterate that toy safety and consumer confidence is paramount to do business. Too, voluntary standards are the most expeditious way to move with technical knowledge, fast communications and professional follow-up, while still giving the agency the ability to require compliance on all imprtant points.

A third point is one which the CPSC has picked up for emphasis. Analysis of recalls in recent years has indicated that may products directly imported by either retailers or small importers outside of the scope of the TMA have been the biggest offenders. While these represent a relatively small volume they are worrisome. The CPSC has increased import surveillance and the TMA is offering a special safety seminar this month to these retailers and importers to train them deeper in the requirements of both the mandatory and voluntary standards.

We have also been pleased to find the Commissioners and staff cooperative in bringing forth detail, visiting our toy fair and participating in our regular safety seminars to communicate experience and techniques to the industry. That is not to say that we have not had arguments over different points of view about suggested changes or compliance action. We have had these both as individual companies and as a trade association, but I tend to see these as part of the give and take of the democratic system and see no serious problems.

There is one area in which we have consistently commented and sought better understanding. The CPSC is regularly called upon to release figures to the press on accidents and fatalities associated with toys. With a nation of over 250 million people spread so widely geographically, these numbers are very difficult to come by (unlike, say, automobile accidents which go through official police channels). Thus the public receives an extrapolated figure of accidents associated with, no caused by toys. Under this system, when a child falls on a toy, it is a "toy accident." When a child rides a tricycle down the cellar stairs, into a swimming pool or into the path of an automible, that is a "toy fatality." We even find on the list young and older adults electrocuted while trying to remove kites or planes from high tension lines. While we do not disagree that consumers need better education on these points, both the press and the self-styled toy experts never analyze the numbers and generalize, leaving consumers with the impression that toy products are unsafe and require more regulation. For example, the 1985 toy fatality list from the CPSC announced that there were 22 reported fatalities; 16 of these are known to have been caused by situations other than toy design or were by exempt products.

So we have regularly called for the CPSC to be more careful in announcing accident and fatality figures, since once out, the press repeats the figures, usually without explanation, leaving an erroneous impression with the public and regulatory authorities. Let me be very clear; we do not beg the issue in any way that we are totally responsible for the manufacture of safe toys and the communication to our consumers on how to select, use and maintain these products. We simply want to be sure that the CPSC's communication to the public properly reflects the true picture. They have been responsive to our suggestions since you will note in recent years that the CPSC message has urged proper toy selection and supervision of children as the best way to contribute to toy safety.

To conclude my remarks, let me pose what I believe to be the best indication of the safety of toys and the effectiveness of the CPSC in regulating. I ask each member of the Subcommittee to answeer the question "Tell me about the serious accident you, a brother or sister or any of your children ever had resulting from the design of a toy."

QUESTIONS OF SENATOR GORE AND THE ANSWERS

Question. CPSC inaction is alleged to have sent a signal that industry can relax its voluntary safety efforts. Would you agree with that assessment?

Answer. No. The CPSC has continuously encouraged industry to develop or revise voluntary standards. Representatives of the Commission have in recent years participated in the development or the revision of the industry's safety standards for toys, ASTM F963, a new safety standard for toy chests, and a standard fixing maximum levels for DEHP and nitrosamines in certain children's products. Chairman Scanlon has reorganized the Commission to provide greater emphasis on the use of voluntary standards, upgrading the efforts through the creation of the post of Voluntary Standardards Coordintor in the Office of the Executive Director. The staff of the Commission continues to encourage the toy industry to develop or improve its voluntary standards when risks of injury associated with its prouducts have been identified.

Question. Should Section 7 of the Consumer Product Safety Act be amended to allow interested persons the right to request immediate agency review, with subsequent judicial review, of CPSC reliance on voluntary standards? Would the same response apply to a similar proposal to amended the Federal Hazardous Substances Act?

Answer. The answer to both questions is "No." Section 7 allows the Commission to rely upon a voluntary consumer product safety standard rather than promulgate a mandatory consumer product safety rule whenever (a) compliance with such voluntary standards would eliminate or adequately reduce the risk of the injury addressed and (b) it is likely that there will be substantial compliance with the voluntary standards. Whether these requirements have been met is essentially a determination of fact which the Commission has made in several instances. One good example is the voluntary standard developed by this industry for toy chests after the staff had identified certain risks of injury associated with toy chests and proposed a method of risk reduction.

The adoption by the Toy Manufacturers of America of an adequate voluntary standard for toy chests, and subsequent Commission determination of compliance, indicated that in excess of 95% of the toy chest industry was in compliance with the new standard. Judicial review of factual issues of whether a risk is adequately addressed by a standard or the extent of compliance with the standard would only serve to present issues of fact to a court of appeals. These issues are traditionally resolved by the agency acting in its capacity as trier of facts and should not be reviewed de novo by an appellant court.

Question. Should Section 9 of the Consumer Product Safety Act be amended to allow the CPSC to defer to an existing voluntary standard only in situations where a standard actually exists?

Answer. No. In the case of the voluntary standard for toy chests referred to above, the toy industry, although it represented only two of the dozen or so manufacturers of toy chests, was able to develop a safety standard with the participation of all of the manufacturers, after the staff of the Commission had identified the need for a voluntary standard for toy chests. No prior toy chest standard existed. The standard was developed in a short time, and substantial compliance by the entire industry was demonstrated in a period of less than 12 months after the Commission and the staff had called for such development. Industry should be given an opportunity to develop an adequate voluntary standard and to demonstrate substantial compliance with it even if such a standard does not exist at the time the Commission identifies a risk of injury and the need for a standard. The Commission has always taken approximately four years to develop a mandatory standard or rule. Nothing is lost and everything is gained by permitting industry to develop a voluntary standard and demonstrate compliance therewith in a shorter period of time.

Question. Should Section 7 of the Consumer Product Safety Act be amended to require than any voluntary standard deferred to by the CPSC be developed through consensus procedures to assure that interested parties are afforded an opportunity to participate in the development of such standards?

Answer. No. Often consensus procedures drastically prolong the period of time during which a standard can be developed. A recent experience of the toy industry indicates that the industry was able to adopt voluntary standard setting maximum levels for nitrosamines in latex nipples within a matter of two or three months after a potential risk of illness had been identified. Similarly, the industry was able to do the same with a voluntary standard regulating the use of DEHP in rattles, teethers and pacifiers after the final report of the Commission-appointed Chronic Hazards Advisory Panel enables the Commission to conclude that no formal regulatory

action was required to regulate DEHP. These actions, if undertaken through consensus procedures, could have taken years to implement. As a matter of fact, after the voluntary standard for nitrosamines was adopted, it was submitted to ASTM for consensus review. This review continued long after the standard was developed and implemented and has not yet resulted in the adoption of a consensus standard.

Question. Should Section 9 of the Consumer Product Safety Act be amended to require that a time limit be imposed between the time an advanced notice of proposed rulemaking is published and the proposed rule?

Answer. No. Experience has shown that the Commission, when confronted with any mandatory time period, has always extended the period of time. Thus, although the original Consumer Product Safety Act called for the development and implementation of mandatory safety standard rules within 120 days, the statutory provision allowing the Commission to extend such period for good cause shown was always exercised. As a result, notwithstanding the mandatory time limit originally prescribed for the development of consumer product safety standards or rules, the Commission repeatedly extended the period and all CPSC standards took about four years to promulgate.

Senator GORE. Thank you very much. I appreciate your appearance here today.

Mr. Isley, what are the companies that make up your association?

Mr. ISLEY. Our member companies are Honda, Yamaha, Suzuki, and Kawasaki.

Senator GORE. Honda, Yamaha, Suzuki, and Kawasaki.

Mr. ISLEY. Right. These are the United States distributors for those companies.

Senator GORE. And what is the maximum speed of one of these ATVs?

Mr. ISLEY. They come in several different classes. The smallest all-terrain vehicle, the one that is recommended for children from 6 to 12 years old, comes from the factory preset with a speed limitor at 8 miles per hour.

Now, at a later time, the child's parent, with tools, can increase that to as much as 12½ miles per hour.

The larger ATVs, depending on whether they are for utility use, for general recreation purposes, or for racing competitive use, can have speeds ranging anywhere from the 20 to 30 mile an hour range for general purpose, to over 50 miles an hour for a competitive racing machine.

Senator GORE. Well, the ones I have seen must have been the competitive racing machines. They all seem to go pretty fast.

Mr. ISLEY. The use of the vehicle, of course, has to be controlled by the operator, depending on the environment they're on.

Senator GORE. So a child who decided to go too fast would be behaving irresponsibly, and thus, if an accident occurred due to that child going too fast, it would be the fault of the child, in your view; is that right?

Mr. ISLEY. It is hard to say what is too fast. We believe that the child should have supervision, and we would rely upon state law as well as all the consumer education and information that we put on the vehicle itself, and in the owner's manuals.

Senator GORE. Do you think a law is needed?

Mr. ISLEY. Yes, we do propose state law controlled use of all-terrain vehicles.

Senator GORE. Is it easier to write those state laws?

Mr. ISLEY. Is it easier?

Senator GORE. Is it easier to deal with the state laws?

Mr. ISLEY. The states were selected because they have the traditional responsibililty for performing licensing functions for automobiles and enforcement functions.

Senator GORE. Let me come back to the question. Let's say you have an 8-year-old child, who has been sold a machine that is capable of going 50 miles per hour.

Would it be your view that that child should ride at much slower speeds?

Mr. ISLEY. It is our view that that child should have never been allowed to purchase or sold that machine.

Senator GORE. They commonly are, aren't they?

Mr. ISLEY. No, we have all machines labelled, all adult sized machines that could achieve anywhere near that speed clearly labelled on the machine, in the owner's manual, and on all of the safety literature that is available at the dealership, "not for use by children under 14 years old."

Senator GORE. There seem to be examples of your dealers telling customers that it is okay for young kids to ride these. And there seem also to be advertisements. I have seen them myself, and they seem targeted at young kids.

Mr. ISLEY. Senator, our industry does not condone irresponsible sales procedure, and we will act immediately to contact anybody who is found misrepresenting the intention of the manufacturers.

The advertising was the concept——

Senator GORE. How many times has that been done?

Mr. ISLEY. I personally have done it four or five times in the last two months.

As my name becomes more well known, and people like yourself will bring these things to my attention.

But the manufacturers as a regular course of business will——

Senator GORE. Four or five times since the "60 Minutes" show. Any before then?

Mr. ISLEY. Well, my personal involvement began with the exposure on that show. Now the manufacturers have regular field sales personnel that call on dealers regularly.

And one of their responsibilities—as a matter of fact, this is the subject of a service bulletin that goes to dealers—and one of the things that a dealer has to be convinced of is the responsibility for fulfilling their sales responsibility.

Senator GORE. Who else has responsibility besides you for monitoring the dealers' compliance with the manufacturer's suggested standards?

Mr. ISLEY. The distributors for those products.

Senator GORE. The distributors are supposed to enforce that?

Mr. ISLEY. Yes.

Senator GORE. How many people do they have assigned to enforce those standards?

Mr. ISLEY. To give you an accurate answer——

Senator GORE. Any? Any?

Mr. ISLEY. Oh, yes, certainly. They all have extensive field forces. Some of them are specifically trained, and their job description is a safety department.

Senator GORE. How many dealers have had their dealerships revoked, or their franchises revoked?

Mr. ISLEY. That was asked of me before, and I cannot say that.

Senator GORE. None?

Mr. ISLEY. No, there have been cases.

Senator GORE. How many, roughly?

Mr. ISLEY. I don't know roughly.

Senator GORE. One?

Mr. ISLEY. I would have to supply[1] that from the records of our member companies.

Senator GORE. Well, you were on national television, in a very embarrassing position, and asked that question.

It would seem to me that you might, since that experience, and coming before the House, coming before the Senate, it would seem to me not an unreasonable thing to expect that you would have an answer to that question.

Mr. ISLEY. Well, Senator, I have been informed that because of the franchise laws that exist at the State level, that this is a matter that is subject to litigation; and the companies have not been willing to share that information with me.

Senator GORE. Well, that's unfortunate, is it not? Because you are there spokesman here before Congress, and you are trying to make their case, and they will not give you the information that you feel you need in an effort to try to persuade us that they are doing anything.

Mr. ISLEY. Senator——

Senator GORE. And the question is, are they doing anything by way of strong action to enforce these standards. And you say, you cannot give us that information because the companies will not give it to you.

That is a pretty weak case that the industry makes, it seems to me.

Mr. ISLEY. Senator, you are mischaracterizing what I said. I can give you all the information about enforcement and safety preparedness for the dealers, except that which has been a matter of litigation.

Senator GORE. Which happens to be the only thing with any teeth in it. How do you enforce it? If you are not willing—if the manufacturers or the distributors are not willing—to enforce it with dealers, it has no meaning.

You understand, they have an economic incentive to sell as many as they can, right?

Mr. ISLEY. They have an economic incentive to sell as many in an environment that does not produce injury.

Senator GORE. There have been 7,000 injuries.

Mr. ISLEY. Yes, sir. That is a monthly figure that I think you are quoting from this morning.

Senator GORE. That is correct. There have been 30,000 since 1982?

Mr. ISLEY. There have been more than that.

Senator GORE. Excuse me, 300,000 since 1982, and 700 deaths.

And you still cannot cite a single instance of a dealer being the object of any enforcement action by the manufacturer for violating these standards?

Mr. ISLEY. Senator, the occasion of a salesman purposely misrepesenting the product has not been significant enough to set up a formal enforcement procedure

Senator GORE. The occasion of children being killed has been quite frequent.

Mr. ISLEY. Yes, and we are addressing that through many, many programs.

Senator GORE. Twenty people per month, half of them children. And a lot more than that suffering from total paralysis, loss of function, permanent disability.

I am sure that bothers you a lot.

Mr. ISLEY. It bothers us, and it bothers all of the people in this industry. This is what we have committed our entire association to since 1983.

Senator GORE. Is it a profitable industry?

Mr. ISLEY. I do not have access to the profits of this industry. We represent——

Senator GORE. Just in rough figures, is it making a lot of money?

Mr. ISLEY. As a matter of fact, I presume, because of other economic factors, that this industry is not profitable.

Senator GORE. Oh, gee, why do they keep selling these things, then?

Mr. ISLEY. The profitability has not been brought up as a matter of question for our association to handle.

Senator GORE. I thought they were making a lot of money. I saw the figures somewhere. I do not have them here, but there are some 2.5 million ATV's currently in use.

The point I am trying to make is that even if it concerns people in the industry that all these kids are being killed and injured, there are certain forces that keep the irresponsible activity going on.

And when you come here and say, well, we have our own plan to rein these forces in and get it under control, then you cannot even answer a basic question about whether or not a dealer has ever had his franchise taken away, and you do not know the profit figures, why do you think the conservative Republican members of this CPSC, which has done virtually nothing, say that your industry has been extremely irresponsible?

Are they wrong about that? Are they just too consumer oriented, and do they have an extremist view of what your industry has done or not done? Is that how you explain their statements?

Mr. ISLEY. Senator, I believe their statement is incorrect that this industry has been recalcitrant. We have moved even faster than their process allows.

Senator GORE. No, I would like you to speculate on the reason why they would make what in your view is a rash and inaccurate statement.

Do you think it stems from their inherent consumer activism? Do you think that is why they would mischaracterize you in your view?

Mr. ISLEY. Senator, it seems to me they were under considerable pressure today.

Senator GORE. So they were bending to pressure from Congress to say something about your industry that, in your view, is inaccurate?

Mr. ISLEY. I would like the record of our industry's safety activity to stand on its own and not become involved in a dispute with the Consumer Product Safety Commission.

Senator GORE. Well, I think the record of your industry is just appalling. It is just appalling. And I think that these four companies—Honda, Yamaha, Suzuki, and Kawasaki—these four companies ought to be ashamed for continuing to allow this many deaths and permanent disabilities of children and others to continue, month after month, week after week.

It is appalling. And then to come and argue that nothing should be done by the Consumer Product Safety Commission; that a voluntary action by the industry is sufficient; I think it really—you know, it is 1987; it is not 1897.

Mr. ISLEY. I am saying, Senator, that this industry is strongly motivated to take all effective means at their disposal to stop these injuries and these deaths. And we are doing it through state law; through labeling the machines; through educating the dealers and the parents.

We are taking what we consider to be very active and effective safety approaches to a problem that we do not want to continue.

Senator GORE. Are you in court trying to stop the section 12 action?

Mr. ISLEY. We are not involved in that action at all.

Senator GORE. Have you filed any briefs or statements with the Department of Justice on this matter?

Mr. ISLEY. In order to be clear about that, Senator Gore, we are an independent trade association representing the safety interests of these companies. We do not represent them in litigation, so we are not involved as the agency they're working with and dealing with that issue.

Senator GORE. Well, the matters involve safety. Have the four companies that you represent filed briefs or statements with the Department of Justice in an effort to prevent an imminent hazard action under section 12?

Mr. ISLEY. To my personal knowledge, and through my association, no, they have not. However, I have read probably what you have, that those have taken place somehow independently from our association.

Senator GORE. Okay, so your association is the one who comes before the public and says, we are trying to shape up. But they have other representatives who try to keep anything from happening?

Mr. ISLEY. No, as a matter of fact, I believe they have independent legal counsel that represents them before the Department of Justice.

Senator GORE. Yes, other representatives who try to stop the enforcement action.

Mr. ISLEY. We are not qualified to practice law.

Senator GORE. And you are not informed by your clients about legal actions that are directly relevant to safety?

Mr. ISLEY. We are not informed about the current action that is taking place. We are informed about the safety procedures that they want implemented.

Senator GORE. I see. So really, you do not know what legal actions they are taking with respect to safety standards.

Mr. ISLEY. That is correct.

Senator GORE. You do not know, because they will not tell you about any actions they may have taken with regard to dealers who may have violated their standards.

Mr. ISLEY. Not when it involves litigation.

Senator GORE. So we really ought to take your testimony with a big grain of salt, should we not? Because you do not know what your clients are doing that might affect their performance on safety?

Mr. ISLEY. Senator, I would take exception with that, and say you are trying to somehow cross over the legal representation with the safety representation.

We are highly involved in the very thing you are here to hear about, reducing injuries and reducing deaths.

Senator GORE. Well, if your argument is that a voluntary standard will suffice, and nothing more is needed——

Mr. ISLEY. That is not our argument; of course not. We believe in strong State laws, controlling ATV use. We believe in consumer and public information. We believe in dealer's responsible sales practices.

We have acted in all of these areas.

Senator GORE. Well, in the area of dealer responsible sales practice——

Mr. ISLEY. Yes.

Senator GORE [continuing]. If you rely on that as a principal means for enforcing safety, and a dealer doesn't go along with your standards, then the only recourse is for the companies to terminate their contractual relationship.

It seems to me the question of whether they have ever done that is not irrelevant to the mission you have been assigned.

And if the companies refuse to provide you with that information, then as I say, we really ought to take your testimony with a grain of salt.

Because they are using you as a front, as a mouthpiece, as someone to present a good impression and try to put a nice face on 300,000 injuries, and 700 deaths.

I mean, that is your job.

Mr. ISLEY. I disagree with you totally.

Senator GORE. And anything that is inconsistent with that, that is secret; that is not available; that is not public. And you are not to be privy to that.

Mr. ISLEY. But that comes up so seldom that there would ever be a case in litigation.

Senator GORE. Well, that is my point. They may never enforce their standards with a dealer.

Mr. ISLEY. They may never have a problem that goes to such an extreme that it requires termination of a dealership.

Senator GORE. They may never get tired of making as much money as they do on selling these things to the parents of young children. They may like to continue making a lot of money on it, and they may decide never to revoke a dealer's franchise.

That may also be part of the motivation for fighting tooth and nail against any kind of Federal action.

Mr. ISLEY. Senator Gore, I believe it is that characterization of a profit-minded industry that gets in the way of productive work between the private sector and the government.

Our industry has been very responsible in addressing safety concerns.

Senator GORE. Almost no one agrees with you on that. Even the members of this CPSC do not agree. Even Mr. Scanlon disagrees with you.

Mr. ISLEY. Would you be willing to keep an open mind as we started this hearing today, and take a look at the effective materials and programs and successes we have had in reducing the rate of injuries for the last two years?

Senator GORE. How many riders have you trained?

Mr. ISLEY. The hands-on one-day training course is something that I think has been overemphasized here because——

Senator GORE. How many have participated in that training?

Mr. ISLEY. Because—about 10,000 people to date have enrolled in that course.

Senator GORE. Ten thousand? How many riders are there?

Mr. ISLEY. There are over six million riders that we address through other information and education campaigns.

Senator GORE. There are six million altogether, and 10,000 of them have had the hands-on training course?

Mr. ISLEY. Have had the one-day hands-on training course.

Senator GORE. Is that, one-fifth of one percent, something like that?

Mr. ISLEY. Again, your making the leap——

Senator GORE. Is my math correct on that?

Mr. ISLEY. Your math is correct.

Senator GORE. Well, is that a figure that you are proud of?

Mr. ISLEY. The figure that we are proud of is delivering the capability to train tens of thousands of riders. The difficulty with the one-day hands-on training course, we have discovered, after making a good faith effort to make it available to all consumers, is that the riders will not voluntarily enroll in that course.

Therefore, we have developed safety seminars, which do not involve a full day; which involve one hour or two hours. We have developed a 20-minute videotape, which is available at every dealership in the country.

We have set up a toll free 800 hotline where people can call for mail safety information.

Senator GORE. Do you have an age limit on the children that you recommend as riders of ATVs?

Mr. ISLEY. Yes, the ATVs themselves are labelled, the adult sized models, everything from 90 cc and larger, are labelled "not for use by children under 14".

The youth models, 70 and 80 ccs, are labelled, "not for use by children under 12."

And the children's model, the smallest, slowest one available, is labelled "not for use by children under six."

There has been an exemplary safety record, by the way, for the children's model that is labelled "not for use by children under six."

Senator GORE. But six years old is when you start them?

Mr. ISLEY. Excuse me. That is not when we start them. The label says not for use under six. Now, we also caution that the parent's supervision is necessary and the decision on whether to allow anyone from six on up to ride rests with the parent.

The industry does not recommend that all six year old children can ride all ATV's.

Senator GORE. Do you require—you do not require training before purchase?

Mr. ISLEY. No. We label the machines and we give the owner safety information to work with. And we have training available.

Senator GORE. Dr. Morris, did I read your prepared statement correctly that you estimate that the cost to society of ATV injuries ranges as high as $1.5 billion?

Dr. MORRIS. If you extrapolate the number of permanent disabilities that we are seeing from this industry today, yes, that is correct, Senator.

Senator GORE. $1.5 billion, that is an expensive industry.

Well, I am concerned about this, and my questions have been sharp and pointed to Mr. Isley because I think a lot of people are really appalled at this industry. And it is sorely inadequate to try to remedy a situation as grotesque as this one by having you before a committee and trying to get you to realize that this is just an appalling situation.

That is why we have a CPSC, to enforce meaningful standards and try to prevent people like the ones that you represent from continuing business practices that result in a continuing record of death and serious injury.

And this hearing is not specifically on your industry, and you are in a tough position and I understand that. You do a very good job in trying to represent an industry that I think has behaved extremely irresponsibly, and I think most people agree with that.

And I do not think there is a lot of disagreement in the country, really, except from people who are in the industry. There are a lot of people in the industry that feel that the situation ought to change as well.

But I am sure you are embarrassed at having to defend this kind of record. The CPSC is the one that has to respond with affirmative action, and this record is relevant to the need for changes in the CPSC and that is why I pursue it.

I guess like a lot of parents of young children, I respond even more strongly when so many young children are involved. And you hear the kind of testimony that Dr. Morris presented and it certainly does make your blood boil.

Mrs. Brown, how does the leadership of the current CPSC compare with earlier Commissions that your committee has dealt with over its 15 year history?

Ms. BROWN. It is extremely laggardly compared to other Commissions. I would not even deign to call it real leadership at all.

Senator GORE. Did you want to comment on Mr. Thomson's testimony briefly?

Ms. BROWN. No, sir. I did not want to comment on Mr. Thomson's testimony.

Senator GORE. That is fine.

I have gone way over the time for the hearing. I will again ask each of you if you would be willing to respond to questions for the record.

Dr. Morris, let me give you a chance to respond to what you have heard about the ATV situation. You deal with this on a regular basis. How many patients do you see each month, would you say?

Dr. MORRIS. Well, it is difficult to say. Quite honestly, Senator, we have a window of opportunity right now. The summer months are coming. If we could do something immediately, we could interrupt the cycle at a time when it is absolutely critical, because we know we are going to see a tidal wave in the next four months.

But I am afraid that there is nothing that we are going to be able to do about that except after the fact.

Senator GORE. What would you do?

Dr. MORRIS. We have to get that message out. The fastest way to get that message out to parents is for the government to take an unequivocal stand. We have reviewed this body of information, these 12,000 pages that the ATV task force has put together, a very reasonable, scientific, document.

The Federal government should state: We have reviewed this isue from the Federal perspective and we think ATV's are a major problem. That message needs to be crystal clear. It does not need to be diluted in 12,000 pages. It needs to be concise.

And then maybe we can start reversing the trend of deaths, not reversing the trends the way my colleague has said, in user-related miles, which means that the number of deaths still go up because there are more vehicles out there; so it looks as if we are making progress.

We are not making progress when you get down to the microcosm level, when you get down to the individual family, when you get down to the individual lives that are wasted.

Senator GORE. I did not understand that Mr. Isley's statement was crafted that way. I got the impression that the number of injuries and deaths were going down.

Dr. MORRIS. Perhaps I misquoted him.

Mr. ISLEY. The number of injuries apparently for the last two years has stayed relatively level, while the number of vehicles in use has gone up. This is a turn-around time which we hope to capitalize on and do exactly what the doctor would like to have done.

In fact, I can privately perhaps suggest some remedies in his specific area that we can work with him to bring those number of injuries down. We have done it in other areas.

Senator GORE. But actually, the deaths and injuries have not come down, is that right?

Mr. ISLEY. The numbers have remained constant for 1985 and 1986.

Senator GORE. Well, I think we have exhausted the subject. But we are going to stay very involved in this. Many of us are interested and others have taken the lead on this issue, but this subcom-

mittee is going to be very, very concerned and interested about this.

And I just wish that Honda and Yamaha and Suzuki and Kawasaki would do more, and I wish the CPSC would do more.

Anyway, we have had a long day and I want to thank everybody for bearing with the subcommittee under these unusual circumstances. And I appreciate all the witnesses agreeing to respond to follow-up questions in writing, because my colleagues will have a number and I will have some as well.

So with that, the hearing is adjourned. Thank you.

[Whereupon, at 2:07 p.m. the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. PAUL SIMON, U.S. SENATOR FROM ILLINOIS

I want to thank my distinguished colleagues for allowing me the opportunity to submit this testimony this morning. During the course of re-authorization of a government agency as vital as the Consumer Product Safety Commission, it is fitting to address an issue over which the CPSC should have authority—fixed site amusement park rides.

Sometimes it takes tragic circumstances to propel us into action. Since 1981, amusement park attendees have had no guarantee that fixed-site rides have been inspected because of a little-publicized exemption that the amusement park industry won in the budget reconciliation process. In 1984, a dozen people died senselessly. In 1985, the CPSC estimates that 3,110 people were injured at fixed site amusement parks. Unfortunately, updated statistics were not available on this important topic.

Amusement parks attract thousands of excited children and parents each year. A trip to Disneyland or Great America may be the highlight of the summer. Amusement parks are designed to entertain, delight, and thrill us. Danger has no role within amusement park gates. Unfortunately, without any guidelines for preventing and eliminating danger, there is mayhem on the midway. The screams of excitement can now all too easily turn into screams of terror.

Far too many amusement park related injuries have occured. With the increase in popularity of water-slides, the number of injuries has doubled in the last couple of years. The question is, "Can these fatalities and injuries be prevented?" To that, I answer a simple "Yes."

Prevention is the kay to promoting safety. I am planning to introduce a bill which would provide a three-pronged approach to assure the public of a carefree day at the amusement park.

1. The bill would permit federal engineers to investigate serious accidents or fatalities that occur on fixed site rides.

2. The bill would authorize the Comsumer Product Safety Commission to inspect fixed site rides only if the State in which the ride is located does not have an inspection program.

3. The bill would create a national clearinghouse within the CPSC to collect information on defective rides and notify other manufacturers of the same ride. This would prevent a defect in a ride in one state from affecting a ride in another state.

Discussions with the industry have resulted in a change that I will incorporate into my bill. To strengthen the prevention logic of the bill, federal pre-operational inspection would occur for new rides, if the state does not have an inspection program.

As of today, twenty-eight states, including, I am pleased to say, Illinois, have passed laws which provide some sort of inspection of amusement park rides. The industry has repeatedly stated that they would like the states to have jurisdiction over their operations. I strongly support this idea and encourage all states to pass comprehensive laws. However, the citizens of California—where no state agency has jurisdiction—deserve the same assurances of safety as the citizens of Maryland whose safety program is excellent.

The House Committee on Energy and Commerce, in its 1984 report, addressed an objection raised by the amusement park industry regarding the reporting of routine repair work. The Committee clarified the bill's intent by explaining that it does not expect the industry to report routine maintanance. My proposal mirrors this clarification.

Commissioner Terrence Scanlon testified during a hearing in August 1984 in the House of Representatives that the CPSC had neither the expertise nor the manpower to investigate the problems associated with amusement park rides. How many more children or men or women must die before the CPSC realizes that priority must be given to amusement park rides?

Other proposals suggest instituting an eighteen month commission to study the current laws and make a recommendation as to who should perform the oversight

of the industy. How would we answer the parents of a child who has been paralyzed, while awaiting the suggestions of yet another commission. We have the opportunity to prevent more injuries and more deaths. We do not need more studies; we need action.

No industry should be exempt from oversight. Allowing the amusement park industry to investigate itself is like asking a naughty child to devise his or her own punishment. The airlines, a highly technical and intricate industry, do not police themselves. Should amusement park rides, some of which are more complex and sophisticated than some aircraft, be exempt from inspection? Of course not.

Some years ago Hollywood treated us to a flurry of thriller movies: "Airport," "The Towering Inferno," "Jaws." A movie called "Rollercoaster" was also produced. As you can imagine, the plot focused upon a horrible accident in an amusement park. In the interest of the citizens of this nation, let us leave such dangers to the movie screen.

Mr. Chairman, again, I thank you for this opportunity to bring the issue of amusement park safety to the attention of the committee.

STATEMENT OF THE ART SUPPLIES LABELING COALITION

The Art Supplies Labeling Coalition (Coalition) strongly supports the re-authorization of the Consumer Product Safety Commission (CPSC) with sufficient funding to effectively carry out the regulation of potential chronic hazards in art materials, in addition to their ongoing regulation of acute hazards posed by some products. The Art Supplies Labeling Coalition is a group of consumer and industry organizations interested in art materials labeling and includes Artists Equity Association, The Art & Craft Materials Institute, Hobby Industry Association of America, National Art Materials Trade Association, Pencil Makers Association, and Writing Instruments Manufacturers Association.

CPSC recently issued an advisory opinion which indicates that chronic hazards in household chemical substances, including art materials, are subject to the automatic labeling requirements of The Federal Hazardous Substances Act (FHSA). (Exhibit A) We urge that CPSC be given strong Congressional support to bolster its effort to protect consumers from chronic hazards in household products.

The Coalition materially assisted in the development of ASTM D-4236, a national consensus standard for chronic health hazard labeling of art materials, the first voluntary standard we know of to address chronic toxicity.[1] It was passed in 1983 and has gained 85-90% compliance among the industry, yet if faces extinction if state governments continue to pass conflicting legislation or if CPSC does not take the lead in regulating chronic hazards in art materials. Six states [2] currently have laws which are being administered differently and four more states are proposing conflicting bills.

ASTM D-4236 provides for uniform health and use labeling to the consumer at a reasonable cost to manufacturers and thus ultimately to the consumer. This voluntary standard also allows for the use of a certifying organization so that smaller manufacturers can bear the cost of compliance more easily and which keeps labels and labeling procedures uniform. Two members of the Coalition, the Art & Craft Materials Institute, Inc. and the Pencil Makers Association are such certifying organizations and currently certify art materials to ASTM D-4236.

In fact, the Art and Craft Materials Institute (Institute) has sponsored a certification program since 1940, certifying that children's art materials are completely nontoxic,[3] and that many meet standards of quality and performance. This certification program has received the endorsement of experts in the field of toxicology and has been called one of the finest industry programs in existence. It has been a responsive program, evolving to meet new challenges and to include more products. Most recently, in 1982, the program was expanded to include a broad spectrum of adult art and craft materials, ensuring that health and use labels are affixed where appropriate, in accordance with ASTM D-4236 and FHSA.

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[1] By way of background, in the late 1970's, there were claims made by several professional artists to the effect that art materials were not adequately labeled to disclose potential chronic health hazards. Federal legislation was introduced but its Congressional sponsor persuaded the artists and the industry to develop a national voluntary standard in lieu of legislation.

[2] California, Oregon, Illinois, Tennessee, Florida, Virginia.

[3] By non-toxic, the Institute means that the product has been evaluated and found to contain no substances that would pose either a chronic or acute risk of injury.

The Institute has a consulting toxicologist, Woodhall Stopford, MD, of Duke University and a Toxicological Advisory Board. The Toxicological Advisory Board is composed of three eminent toxicologists to act as review board on matters of toxicity and to review the criteria used by the Institute toxicologist. Product formulas for every product in the certification program are submitted by the manufacturers to the toxicologist for his evaluation as to whether a product is non-toxic or needs cautionary labeling. These formulas undergo an extensive toxicological review and testing as deemed necessary by the toxicologist. Currently over 80 members of the Institute have certified more than 15,000 art products and the process is continuing. Toxicological evaluation under this program proves that only 15% of art materials require hazard labeling and most of these already carried acute warning labels.

The Institute also conducts annual random testing of products to ensure that they continue to be as represented to the Institute. Moreover, the Institute has an ongoing record of banning or restricting ingredients prior to any governmental action and has been in the forefront of chronic hazard evaluation and labeling.

The U.S. Public Interest Research Group (PIRG) claims that children in grades K-6 are "routinely" exposed to hazardous art materials in the classroom and contends that children are using hazardous art materials. Its claim is, we believe, based on faulty data, derived from faulty methodology. The PIRG groups surveyed school purchasing officials to determine what is purchased by the schools rather than surveying children in the classroom to determine what art materials they actually use.

The Coalition believes that the surveys are grossly misleading and challenges its assertion about the use of hazardous products by children. We do not believe that kindergarten teachers or teachers in grades 1-6 permit their pupils to use hazardous materials of any kind. Moreover, the PIRG surveys do not differentiate whether such products are used in elementary grades, secondary grades, or by teachers themselves after students have left the classroom. If toxic substances such as rubber cements, solvents, fixatives and lead glazes are actually reaching grades K-6, these products already bear strong acute cautionary labeling and the words "keep out of reach of children."

Based on our experience, we do believe that children in grades K-6 principally use the following art material products:

1. Crayons,
2. Tempera paint,
3. School paste,
4. Pencils and colored pencils,
5. Modeling clay,
6. Chalks,
7. Pastels,
8. Markers, and
9. Finger paints.

For more than forty years these products have been evaluated for toxicity potential in the Institute program and found to be non-toxic. The art material industry knows of no serious injury in that period of time arising from the use of these products.

A "serious injury" under the program is one requiring medical treatment. We know that children, particularly in the pre-K and K grades, may put crayons or paint in their mouth. The products are not intended as food products but, aside from some temporary discoloration from the pigment, no child to the best of our knowledge has ever been hospitalized for the intentional or inadvertent "ingestion" of these products for acute or chronic illness. Generations of students, perhaps even members of this Committee, have benefited from the use of these products through the stimulation they provide to children's imaginations.

We also know that many elementary school districts or elementary school purchase officials specify the use of "CP or equal" or "AP or equal" for art material products. The same frequently specify pencils with the PMA certification mark or equal.

To be meaningful to the consumer, we believe national uniform labeling is paramount and, since CPSC has long regulated art materials for acute hazards, we encouraged CPSC over the years to become further involved in regulating chronic hazards. CPSC staff monitored the development of ASTM D-4236, but when we urged adoption of ASTM D-4236 as a mandatory standard to gain preemption, CPSC was unable to do so as it was required by statute to defer to an effective voluntary standard which has substantial compliance.

On March 19, 1987, CPSC issued Advisory Opinion No. 309 which stated that household products with chemical substances that may cause chronic health hazards are subject to the FHSA. It further declared that these products must be la-

beled in accordance with Section 2(p)(1); that products labeled in accordance with ASTM D-4236 comply with Section 2(p)(1); and that Section 2 (p)(1) preempts inconsistent state requirements addressing the same risk.

Regulation of potential chronic hazards in art materials by CPSC will allow the extensive toxicological evaluation and health hazards labeling accomplished by the vast majority of the industry to remain in place and not be wasted. A list [4] of those products evaluated by the Institute under ASTM D-4236 is enclosed. Large manufacturers such as 3M, Borden and Gillette, are complying with it independently. CPSC regulation will bring into compliance that small minority of art products that are not yet evaluated and labeled. It will also provide for national uniform health and use labeling and avoid conflicting state-by-state labeling. Finally, it will allow individual manufacturers to be regulated by one agency for both acute and chronic health hazards.

We have urged CPSC to develop evaluation criteria for chronic hazards, which we feel will parallel those already in use by the Institute and others certifying compliance and will provide an efficient way to monitor the remaining 10-15% of art materials not complying with ASTM D-4236, without creating an unwieldy product-by-product review. Review based on criteria would allow for a flexible program, able to keep up with new and changing procedures for each product.

The Consumer Product Safety Commission studied the art materials industry in the late 70's and completed a fairly broad study of art material labeling in 1981-82. The Commission has on more than one occassion stated that it has not found any significant art material problem to justify its listing as a priority project for the Commission, despite the claims of the various PIRG groups.

CPSC has the legislative authority to act to prevent acute and chronic hazards, particularly to children under both the Consumer Product Safety Act and the Federal Hazardous Substance act. We believe the Commission should be given an opportunity to do so. There is no demonstrable problem of national proportion to require new legislation now. At the same time, we believe that if CPSC does not act in a reasonable time to establish uniform toxicological criteria for chronic toxicity labeling, that it may be appropriate to consider national legislation to prevent the development of a hopeless conflict among State laws and regulations and their administration.

Any such Federal legislation should only require that CPSC be the regulating agency, that labeling and evaluation be national in scope, and that states be preempted from addressing the same risk with conflicting criteria or labeling—all things we already have under the voluntary ASTM D-4236 standard. We believe that CPSC's implementation of its chronic hazards labeling program should be allowed to proceed and oppose any legislation unless this implementation does not take place. We fear that any legislation introduced to accomplish what is already available might further delay this process and deprive consumers of the benefits they already have.

Statement of Barbara Hackman Franklin

Mr. Chairman and Members of the Consumer Subcommittee of the Senate Committee on Commerce, Science, and Tranportation, I very much appreciate the opportunity to present this statement in connection with these hearings.

I was privileged to be one of the orginal members of the U.S. Consumer Product Safety Commission, serving from its creation in May of 1973 until February 1979, nearly six years of a seven year term. I was the Commission's first Vice Chairman and served an additional term as Vice Chairman during the time I was a Commissioner.

Currently, I am Senior Fellow at the Wharton School of the University of Pennsylvania and Director of the Wharton Government and Business Progrm. I am also President and Chief Executive Officer of Franklin Associates, a Washington based management consulting firm specializing in strategic planning. In addition, I am a director of five publicly held corporations: Aenta Life & Casualty, The Dow Chemical Company, Westinghouse Electric Corporation, Black & Decker Corporation, and Automatic Data Processing, Inc. My experience, therefore, has given me the perspective of one who served at the Commission in its early years and whose day-to-day activities since have centered in the business world.

The Commission has suffered a good deal of turmoil in recent years—at least if one is to believe the press accounts. This has led to questions from Congress and

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[4] The list was not reproducible.

other about what ought to be done to improve matters. The Consumer Subcommittee is to be commended for this oversight hearing.

I would like to address two major issues: whether the Commission ought to remain independent and whether a collegial body is its best form or organization. Before commenting on those issues, I have some observations to make about this relatively young agency.

The Commission deserves to be judged on its record of accomplishment and not on rhetoric or criticisms about its current leadership. The key question is: are consumer products markedly safer today and have lives been saved as a result of its efforts? The clear answer, in my view, is yes.

The Commission has had many specific successes over the years. I'm proud to have participated in many of them. To recount a few: child fatalities from accidental poisonings are down by two-thirds. Children's products—toys, cribs, strollers, playground equipment—are demonstrably safer. So are chain saws, power lawnmowers, power tools, upholstered furniture, and countless other products. Since 1973 more than thirty million units of unsafe product have been recalled and corrected under Section 15 of the Consumer Product Safety Act. In numerous cases, a recall affecting one brand has triggered development of an industry-wide voluntary standard which has improved the safety of every unit produced. Notable cases in point are hand-held hair dryers and automatic coffee makers.

But, the most significant accomplishment is the one most often obscured—the very existence of the Commission and its visibility has stimulated producers and sellers of consumer product to become more safety conscious. It is this accomplishment which I see clearly from the business perspective.

Responsible companies now have in place processes to design safety into new products, to ensure better quality control in manufacturing, to label products more precisely, to provide better instructions for consumers, and to respond more quickly to problems. Many companies have toll-free hotlines for consumers and mechanisms for swift recall of unsafe products. Boards of directors have created committees on health and safety to oversee the safety mechanisms management has put into place. I serve on such committees for two corporations and can attest to the very serious nature of their deliberations.

In short, product safety in now part of the culture of a majority of U.S. companies. Responsible business leaders understand that it is just good business. This new climate probably would not have evolved without the prodding and muscle-flexing of the Consumer Product Safety Commission.

It is also worth noting that these results have been achieved without a large expenditure of taxpayers' dollars. CPSC's budget of $34 million this year is, in real dollars, less than the budget we had fourteen years ago. The staff—always dedicated and loyal—are considerably fewer today. My conclusion: the CPSC has been a good "buy" for U.S. consumers and taxpayers.

INDEPENDENCE: THE KEY TO VISIBILITY

Critical to the Commission's success has been its visibility to the public. That visibility, in my judgment, is a direct and important result of its independence.

When the Commission makes a decision, it has the authority to implement it. There is no need to clear that action with any other government official. There are no cabinet secretaries, under secretaries, or others to conduct a "policy review."

A recent report by the General Accounting Office suggested that Congress, in creating the Commission as an independent agency, was concerned that it be insulated from economic and/or political pressures. The more crucial concern is whether, despite any such pressures, the Commission still has the freedom to reach its own decisions, go public, and implement them. Preserving that freedon is important.

Some have suggested placing the agency in a larger department. That would only weaken it. The Commission would become hostage to the interminable turf and policy battles that bedevil every agency in every administration, and between every agency and every White House. Cabinet secretaries, far from defending the Commission, would be forced into compromises so as to save or expand programs to which they assign higher priority. And, the Commission might never be heard from again. The Commission's visible presence is essential to keeping the emphasis on consumer product safety.

COLLEGIAL BODY VS. SINGLE ADMINISTRATOR

My preference is for a collegial body, for two main reasons. First, I think the resulting decisions are better; and second, such a process permits greater involvement by those concerned with the outcome.

The deliberative process which occurs when a group of serious individuals discusses a potential regulatory action in which all share responsibility tends to be more thorough and thoughtful.

Over the years, I have noticed that it is usually the chairmen who prefer the single administrator form. The first Chairman was fond of saying that a collegial body should have an odd number of members—and "three is too many." To be sure, the collegial form of organization is somewhat cumbersome. The Chairman and Commissioners are equal and independent when it comes to substantive areas of deliberation, but the Chairman has the added responsibility of administering the agency. The Commissioners do not report to the Chairman, nor is he/she specifically responsible to them. To make the agency work harmoniously with so many independent voices, the Chairman must take time to counsel with the Commissioners and keep them abreast of how he/she is running things. This can be time-consuming and frustrating; many Chairmen simply do not want to bother. When they don't, tensions with the Commissioners inevitably flare over all kinds of administrative matters, often because the Commissioners feel they are in the dark about how the Chairman is exercising his power. Nonetheless, the extra effort needed to make collegial organizations work is worth it—given the better quality of substantive decision-making that results.

Collegial organization also permits greater access to the decision-making process by outside interests—be they consumer or business. They have opportunity for input at the staff level and then again at the Commission level to each Commissioner. In contrast, the single administrator system places more power squarely in the hands of the staff. Decisions are closer to being a "fait accompli" by the time they reach the administrator's desk, and private sector interests have much less opportunity to participate in the process.

If Congress is truly concerned about keeping the Consumer Product Safety Commission strong, vigorous, and effective, it can best achieve those aims by leaving the agency's organization structure alone. It is not broken and therefore does not need fixing.

Thank you for the opportunity to present these views.

STATEMENT OF FRANKLIN FRAZIER, ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GAO

Mr. Chairman and Members of the Subcommittee:

As requested, we are pleased to submit for the record the following testimony on the administrative structure of the Consumer Product Safety Commission (CPSC). We issued a report [1] on this subject to Chairman Henry Waxman, Subcommittee on Health and the Environment, House Committee on Energy and Commerce, on April 9, 1987.

Chairman Waxman requested that we (1) evaluate the current CPSC organization and administrative structure, considering reductions that have occurred in the agency's budget and staff and changes in its mission approach, to determine whether CPSC's functions could better be carried out by a single administrator, and (2) consider whether CPSC should remain a separate agency or be placed within another regulatory agency or an executive department.

GAD FAVORS THE SINGLE ADMINISTRATOR STRUCTURE FOR CPSC

Although we could find no objective criteria to measure the effectiveness of one administrative structure compared with another, we did find several indicators that suggest CPSC—as a regulatory agency responsible for protecting citizens' health and safety—could benefit from changing to a single administrator.

The rationale for establishing independent commissions, such as CPSC, includes the assumptions that (1) long-term appointment of commissioners would promote stability and develop expertise, (2) independent status would insulate them from undue economic and political pressures, and (3) commissioners with different political persuasions and interests would provide diverse viewpoints.

However, since CPSC was established, there has been little stability in its leadership; both present and former CPSC officials cited leadership turnover as the cause of much uncertainty within the Commission. For example, in its 14-year history, CPSC has had nine Chairpersons—four acting and five confirmed.

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[1] Consumer Product Safety Commission: Administrative Structure Could Benefit From Change (GAD/HRD-87-47, Apr. 9, 1987).

Additionally, since 1973 CPSC has had eight executive directors, of whom five served in an acting role. One of the acting executive directors was later appointed as the executive director. Furthermore, during 1976, 1979, 1982, and 1985, the position of executive director was vacant for periods of 1 to 10 months. Finally, of CPSC's 13 former Commissioners, 9 did not complete their appointed terms. The high turnover rates in these key leadership positions have not promoted the stability or the development of expertise envisioned in the act that created CPSC.

Relative independence from political and economic forces was often cited in CPSC's legislative history as a reason for creating it as an independent commission; however, real independent status is difficult to achieve. Both the Congress and the executive branch, through various mechanisms, are able to exert considerable influence on CPSC. For example, the Office of Management and Budget is able to exert considerable influence through its budget review and Paperwork Reduction Act requirements.

Another rationable for independent commissions is that they provide diverse points of view. However, the Commissioners' voting records do not show much diversity on issues they have voted on over the past 5 years. We recognize that voting records are not the only indicator of diversity, because much discussion abut the pros and cons of various issues obviously takes place before votes are taken. But, in the final analysis, it is the Commissioners' votes that result in policy positions. At CPSC, from fiscal year 1982 through fiscal year 1986, the Commissioners voted for the options recommended by the staff nearly 90 percent of the time, and the Chairperson voted with the majority 95 percent of the time. CPSC's Commissioners voted unanimously in 73 percent of the votes taken during this period.

This degree of unity between the Chairperson and the other Commissioners at CPSC is not unusual for federal regulatory agencies. According to a 1977 study,[2] " * * * the influence of chairmen in comparision with that of their colleagues is substantial, sometimes determinative." The study further stated that "in formal proceedings and other instances when there are collective decisions, the chairman's decision has great impact."

Most of the high-level officials we interviewed—such as former Chairpersons of CPSC, single administrators, and other officials of other health and safety regulatory agencies, and officials of public interest and industry groups—believed that a commission is not an effective administrative structure for CPSC. All former confirmed Chairpersons and former executive directors of CPSC indicated that CPSC's administrative structure should be changed to that of a single administrator. In discussing their opinions, these officials cited many problems with the current structure, incuding the following:

Commission decisions are not prompt.

The Commissioners often do not understand the technical issues that the staff has to deal with in its work.

There is competiton among the Commissioners concerning the use of CPSC resources.

The commission structure is more appropriate for an agency with a significant adjudication function, which is not a large part of CPSC's responsibilities.

The Commissioners tend to "micromanage" the day-to-day operations and are too involved with the process of preparing the budget and operating plan.

On the other hand, others interviewed, including three of the five Commissioners as of May 1986 and one of the two public interest groups, believed that for CPSC the Commission structure was better than a single administrator. Their reasons included: (1) the commission structure is necesesary in order for CPSC to maintain its independence and (2) that structure ensures continuity, exchange of ideas, and a mix of perspectives. This need for a mix of perspectives—including diversity of background, areas of expertise, and political considerations—outweighs the disadvantages of a commission, according to these individuals.

About 3 percent of CPSC's annual budget is spent on the salary, supporting staff, and other associated costs for the four Commissioners (not including the Chairperson). CPSC's fiscal year 1986 operating plan showed that about $1.1 million was budgeted for these four Commissioners. About $839,000 of this was for their salaries and their staffs; $59,000 for operating costs, such as travel and subscriptions for priodicals; and $215,000 for their share of common costs, which are primarily rent and utilities. Therefore, eliminating the four Commissioners and changing to an organization with a single administrator would eliminate the $1.1 million in bugeted

[2] David M. Welborn, *Governance of Federal Regulatory Agencies* (Knoxville: The University of Tennessee Press, 1977), p. 109.

costs for the commission structure. It should be noted, however, that CPSC has had two Commissioner vacancies since August 1986 and, as long as these positions remain vacant, CPSC's cost for the Commissioners will be considerably less than the amount budgeted for in fiscal year 1986.

Seven of the eight other health and safety regulatory agencies that we identified have single administrators. These are the Environmental Protection Agency, the Federal Aviation Administration, the Food and Drug Administration (FDA), the Food Safety and Inspection Service, the Mine Safety and Health Administration, the National Highway Traffic Safety Administration, and the Occupational Safety and Health Administration. We interviewed officials in five of these agencies, all of whom supported the single administrator structure, particularly because they believed this structure would enhance the decision-making process.

If CPSC were changed to a single administrator structure, should the single administrator have a fixed term of office and be removable from office only for cause? This question was raised to us by the Subcommittee. Although we did not research this question during our review, we did observe that all of the single-headed executive agencies serve at the pleasure of the President. With the view that CPSC's duties and responsibilities are similar to those of the health and safety organization listed above, we would recommend that a single-headed CPSC be similarly organized. (See Attachment I for legal background.)

A number of studies, such as those by the Hoover Commission and the Ash Council, have been done over the last 50 years on regulatory commissions. All of the studies we reviewed found some significant problems with the commission structure. Although some of these studies recommended changes to improve such agencies, others found little value in the commission approach and advocated changing it. Some of these studies recommended replacing the multimember commissions with agencies headed by single administrators.

Based on these factors, we propose that the Congress consider amending section 4 of the Consumer Product Safety Act to provide for a single administrator appointed by the President with the advice and consent of the Senate.

SEPARATE AGENCY OR PART OF EXECUTIVE DEPARTMENT?

We could find no criteria or preponderance of evidence for determining whether CPSC should remain as a separate agency or be made a part of an executive department. CPSC's legislative history shows that most of the debate in the Congress concerning the creation of CPSC centered on the question of the need for a separate agency. The Congress considered several options for carrying out consumer product safety functions and responsibilities. These included adding more consumer product safety functions to the role of FDA; creating a separate consumer safety agency with three different commissions—Foods and Nutrition, Drugs, and Product Safety—each headed by a commissioner; and establishing an independent regulatory commission.

Some of the arguments that influenced the decision to establish CPSC as an independent commission could best carry out the legislative and judicial functions of the Consumer Product Safety Act because it would be better insulated from economic and political pressures; an independent commission assures high visibility for consumer product safety; and regulatory programs in executive departments typically suffer from lack of adequate funding and staff.

Our discussions with CPSC and other public and private sector officials suggest that disagreement still exists about CPSC's separate organizational status. For example:

Three of the four former confirmed CPSC Chairpersons told us that CPSC should not remain a separate agency; the other Chairperson told us that it did not matter. On the other hand, the current Commissioners and most of CPCS's high-level staff said that CPSC should remain a separate agency.

Officials at the Department of Health and Human Services disagreed as to whether CPSC should be in FDA. One high-level official told us that CPSC should be placed in FDA; another felt strongly that it should not.

Similarly, differences of opinion exist in the private sector. For example, of the seven groups interviewed, officials in four thought CPSC should remain a separate agency, two thought it should not, and one expressed no opinion.

The officials who supported placing CPSC in an executive department generally cited one or more of the following reasons for their positions: (1) the Secretary of an executive department can better protect the agency from budgetary cuts; (2) the mission of CPSC is compatible with the mission of the Department of Health and Human Services; and (3) there is a need to reduce the number of small separate

agencies reporting to the President. Officials who favored separate agency status for CPSC generally cited one or more of the following reasons for their position: (1) it provides more visibility to consumer product safety; (2) it means that consumer product safety does not have to compete with other high-priority missions within an executive department; and (3) it reduces the opportunity to politicize the agency.

We compared the organizational status of CPSC with that of eight other health and safety regulatory agencies; we tried to determine if there was any rationale for the organizational status or administrative structure of these agencies. We found differences in the status and structure of the nine regulatory agencies—that is, six are part of executive departments, while three are separate.

Finally, major studies of independent regulatory commissions do not contain any consistent recommendations or criteria for their organizational status within the federal government. For example, the Brownlow Committee recommended in 1937 that independent regulatory commissions be integrated into the executive branch, where they would become agencies within executive departments. The Ash Council in 1971 recommended replacing regulatory commissions with organizations headed by single administrators reporting to the President. On the other hand, the Hoover Commission in 1949 recommended maintaining independent status for regulatory commissions.

Because of the lack of criteria and evidence for determining whether CPSC should remain as a separate agency or be made part of an executive department, we are making no recommendation about CPSC's organizational status.

ATTACHMENT I.—LEGAL REVIEW OF INDEPENDENT STATUS OF REGULATORY AGENCIES

We were asked to comment on the authority of Congress to limit the President's power to remove a single administrator only "for neglect of duty or malfeasance in office," as is currently the case with members of the Commission, 15 U.S.C. 2053(a). Although the Supreme Court has not squarely addressed this issue, it has considered challenges to the President's removal of commissioners of independent commissions. The Court has resolved these challenges by examining the functions performed by the agency involved.

In *Myers*, v. *United States*, 272 U.S. 52 (1926), the Court held that the President had an "illimitable" power to remove a postmaster, an executive officer restricted to the performance of executive functions, notwithstanding an act of Congress to the contrary. However, in *Humphrey's Executor* v. *United States*, 295 U.S. 602, 628 (1935), the Court held that Congress may restrict the President's power to remove a member of an independent regulatory commission (specifically, the Federal Trade Commission) that "acts in part quasi-legislatively and in part quasi-judicially." The Supreme Court reiterated this view in *Weiner* v. *United States*, 357 U.S. 349 (1958), holding that the President could not remove a member of the War Claims Commission without cause where the statute reflectd a clear congressional intention that members not be removable at the whim of the President. Thus, to the extent the CPSC performs, and continues to perform, functions that are quasi-legislative and quasi-judicial, these cases suggest that Congress could similarly limit the President's power to remove a single administrator. However, the Supreme Court has not considered whether the rationale of these decisions applies where the functions of a regulatory agency are placed under a single administrator.

Putting aside the issue concerning the constitutional authority of the Congress to limit the President's removal power, the use of multimember commissions to head independent regulatory commissions gives the Congress additional mechanisms (such as staggered terms and appointments) to assure institutional independence. The greater independence afforded by a multimember commission, rather than any legal doubts concerning the Congress' authority to limit the removal of an administrator of a independent regulatory body, most likely explains why the Congress in the past has opted to head independent regulatory bodies with multimember commissions rather than single administrators.

STATEMENT OF STEVE SANDERS, GENERAL MANAGER, SANDERS HONDA, SPRINGFIELD, TN

Mr. Chairman and Members of The Consumer Subcommittee

Thank you for the opportunity to testify at this hearing today. I was educated in the Tennessee Public School System and received a Bachelor of Science Degree in Business Administration at the University of Tennessee. I am married and have a 9 year old son. I am a member of the Civitan Club, Vice President of the Robertson

County Fair Board, and an active member of Springified Baptist Church. I have been a Honda motorcycle and ATV dealer since 1981.

I share this information with you today because the news media has portrayed dealers as untrained, cold hearted, fortune seeking individuals. This is simply not true. We are small independent business people who are vital ingredients in our communities. Sanders Honda has sold over 2,500 ATVs since 1981. We are one of the top 50 Honda ATV dealers in the country. Our annual sales is approximately $1.6 million per year and we employ 10 people. Sanders Honda devotes its time, money, and human resources to help charity organizations and sponsors youth athletic teams in many local communities. Most dealers have similar working relationships in the towns they serve.

My first personal experience with our system of government came on May 21, 1985. I attended a United States House of Representatives Committee on Government Operations, Commerce Consumer and Monetary Affairs Subcommittee, hearing. What a frustrating experience. I watched U.S. Congressman align themselves on party sides, and take cheap verbal shots at each other. The experience was entertaining, but not exactly a tribute to our political system. The Consumer Product Safety Commission was under investigation that day. Here we are two years later, and the CPSC is still under fire. I would lik to address the CPSC's conduct then and today.

In 1985 the CPSC was a mockery of our system. Ex-commissioner Stuart M. Statler became the voice of the commission. Every time he spoke, Chairman Terrance Scanlon would deny that Statler's comments were official CPSC positions. Stuart Statler played judge, jury and prosecutor convicting the ATV Industry before the CPSC ever officially began investigating the ATV Safety Issue. Mr. Statler made so many remarks that he could not substantiate that he failed to appear at the first public hearing in Jackson, Mississippi. With his credibility, he probably did the right thing.

I testified at that hearing, and two others, and attended the last CPSC hearing in Los Angeles. During those months Mr. Statler continued to leak information, and the other commissioners continued to squabble over which direction to take. Finally, prior to becoming unemployed, Mr. Statler resigned. Here we are two years later, and the newest commissioner, Ann Graham is the spokesperson for the CPSC on national television. Commissioner Graham never attended a hearing, but all of a sudden she is an expert on the ATV industry. I would like to see the Justice Department investigate if Mr. Statler was legally acting within his powers as mandated by Congress. I also think commissioner Graham should excuse herself from any decision pertaining to the ATV Industry. She became a commissioner much too late in the study to do an effective job. I also realize that neither of these recommendations will ever be acted upon.

While the CPSC was awkwardly conducting their business, Sanders Honda was also very active. With the help of the Specialty Vehicle Institute of America, four employees of my dealership became the first rider training instructors in Tennessee. We were very excited about being able to train our customers on how to properly ride an ATV. We did several things to promote our course. We ran ads in newspapers, advertised on television, and included training in sales promotions. To date we have trained 78 people at a total cost of $3,500. This is an average cost of $45 per person. With such poor results and high costs, our training program was economically hard to justify.

In the fall of 1986 a different approach was taken. People in our agricultural community simply were not interested in hands on training. We decided to educate children in public schools with 30-45 minute audio-visual seminars. We also promoted ATV Safety at the store, at health fairs, mall shows, outdoor shows and boat shows. In September of 1986 Jesse Holman Jones Hospital and Sanders Honda co-sponsored the first ATV Safety Seminar in Middle, Tennessee. Our panel consisted of three local medical doctors, a representative of the SVIA and myself. Our seminar was very well received, very positive, and all that attended left with new knowledge on ATV Safety. We continue to work with the local medical profession. Together we have made a real impact in our community.

Our last education program was held May 2, 1987 at a local middle school. We showed a video tape, discussed ATV Safety and had ATV demonstrations. It was at this seminar that I learned our efforts were finally paying dividends. Dr. Walter W. Wheelhouse, our local orthopedic surgeon informed me that he was very concerned with the number of soccer and houseback riding injuries he was seeing. He also informed me that he had not treated an ATV accident or admitted an ATV accident victim to the hospital in over a year. You have no way of knowing how satified that made me feel. But we're not finished. We will continue to develop our education

program. Two years ago I felt hands on training was the only way to solve our injury problem. Now I know it can be done, and will be done through effective, cooperative education programs.

As for a ban on three-wheeled ATVs, I think a well organized, nonpartisan study of CPSC findings would show that rider error and rider abuse are the key factors, not the vehicle. How can you blame the vehicle when 70% of child accidents involved no parental supervision? How you can you blame the vehicle when 50% of those accidents involved children on adult sized machines, riding on paved roads, riding double, and riding without protective gear? I don't think you can. Parents must accept the responsibility for the health and welfare of their children. It is very easy, after the fact, to blame someone else, but awfully hard to accept the blame yourself. I wonder where most of these parents were when their children were injured?

In closing, I would ask this subcommittee to take a long hard look at the Consumer Product Safety Commission. With all of the political ramifications of this commission, the inability to keep the commission seats filled and the totally unacceptable job done on this issue, I think the CPSC should cease to exist. One person should be held accountable and responsible for the actions of this agency. In my business, I may not always be the one that makes the mistake, but I'm always the one responsible. I like it that way, and thats why our education program works so well. I am responsible. Again thank you for the opportunity to testify here today.

STATEMENT OF MICHAEL MCCANN, PH.D., C.I.H. OF THE CENTER FOR OCCUPATIONAL HAZARDS

I am respectfully submitting this testimony for the record of your May 13, 1987 hearing on the reauthorization of the Consumer Product Safety Commission. I would also like to thank the Subcommittee for requesting that I offer this testimony.

My name is Michael McCann and I am Executive Director of the Center for Occupational Hazards, a national clearing-house for research and education on hazards in the arts. I have a Ph.D. in Chemistry from Columbia University, and am certified in the Comprehensive Practice of Industrial Hygiene by the American Board of Industrial Hygiene. In the 13 years I have been working on art hazards, I have written two books on the subject—"*Artist Beware*" and "*Health Hazards Manual for Artists,*" have given over 200 lectures on art hazards to artists' organizations, art schools, public schools, etc., and am a frequent consultant on this topic. (See resume, appendix 1)

I am also founder and Executive Director of the Center for Occupational Hazards (COH), a national clearing-house for research and education on hazards in the arts. COH operates the Art Hazards Information Center which receives 50 letters and telephone calls daily on art hazards from artists, schools, government agencies, physicians and Poison Control Centers. COH also publishes a newsletter on art hazards, and offers lectures, consultations and courses on the subject. (See COH brochure, Appendix 2)

I have three major points to make in my testimony:

(1) Artists, hobbyists, teachers and even children are becoming ill as a result of overexposure to art materials.

(2) These illnesses are occurring because of inadequate labeling of art materials.

(3) There is a need for federal legislation to ban toxic art supplies for a elementary school and to require chronic hazard labeling on all art materials.

1. People are becoming ill from overexposure to art materials.

WHAT TYPES OF ILLNESSES ARE OCCURRING?

COH's Art Hazards Information Center receives many inquiries from artists, teachers, parents, Poison Control Centers, etc., reporting symptoms which they think are related to their art materials. In many cases these have been verified by physicians and some have been reported in the medical literature. This includes both immediate or acute poisoning and long-term or chronic poisoning. Examples of the types of diseases that have been found among artists include: lead poisoning among potters, painters, stained glass workers, copper enamelists; silicosis among potters, stone sculptors, jewelers, foundryworkers; chemical pneumonia among jewelers, welders; emphysema in printmakers; mercury poisoning among painters, metalworkers; nerve damage in commercial artists, silk screen printmakers; miscarriages and birth defects in silk screen printmakers, photographers; heart attacks in furniture refinishers, printmakers; liver damage in silk screen printmakers, plastics

sculptors, commercial artists; mesothelioma (cancer of lining of chest cavity) in a ceramicist; asthma in potters, photographers, batik artists; leukemia and destruction of bone marrow in painters, lithographers, metal sculptors; and kidney damage in oil painters, jewelers

Appendix 3 gives references for some of these illnesses, and Appendix 4 gives some case histories.

A few epidemiological studies have also found that artists have higher rates of certain types of illnesses. A National Cancer Institute study in 1981 found that male artists have significantly higher rates of bladder cancer, kidney cancer, leukemia, colon cancer and brain cancer than the rest of the male population; for women artists there were excesses of rectal cancer, breast cancer and lung cancer. (See Appendix 5). The excess of bladder cancer among painters was confirmed by a case control study of bladder cancer patients.

WHAT IS CAUSING THESE ILLNESSES?

Most of the diseases mentioned above are also found among industrial workers. The reason artists are developing the same occupational diseases as industrial workers is that they are often being exposed to the same chemicals—only they are often being exposed at home instead of in factories. Examples of hazardous chemicals commonly found in art and craft materials include lead, cadmium, asbestos, uranium, mercury, arsenic, silica, formaldehyde, toluene, benzene, hexane, sodium cyanide, and many more. The chart on the next page shows that hazardous art materials are found in a wide variety of art media. (See also Appendix 6)

WHO IS AT RISK?

Inquiries received at COH's Art Hazards Information Center clearly show that professional artists and craftspeople are not the only people at risk. We are finding illnesses from art materials also among art teachers and students, hobbyists and even children. Examples include: chemical pneumonia in a high school teacher unknowingly using cadmium-containing silver solders; leukemia in an art student working with benzene at a well known art school several years after attending that school; chlorine poisoning among several students and teachers using Dutch Mordant for etching; seizures (with no prior history) in a kindergarten student exposed to turpentine; and lead poisoning in a stained glass hobbyist.

Since most artists work at home, they can also be exposing other family members. In a study of New York and New Jersey artists in conjunction with the New Jersey State Health Department, we found that half of artists worked at home, and a quarter of them working in living areas such as kitchens, dining rooms, etc. This was even higher for women under 40 with children (See Appendix 7). As an example of what can happen, a couple doing stained glass in their kitchen had no problems, but their young child got lead poisoning. In addition, almost all of the calls we receive from Poison Control Centers involve young children having swallowed adult art materials, many of which have contained materials such as lead, solvents, etc.

HOW MANY PEOPLE ARE AT RISK?

According to the National Endowment for the Arts Research Division, there are over one million professional artists and craftspeople in the United States. In addition a 1975 Harris poll estimated that 39% of the population over the age of 16—representing 57 million people—do crafts, and 16%—representing 22 million people—do painting, drawing or sculpture. And, of course, every child uses art materials, whether in school, at home or in community art centers. (See Appendix 3 and references therein)

From the foregoing it is apparent that, including children, over 100 million people are at risk of exposure to hazardous art materials, and further, many of them are actually developing illnesses from these exposures.

2. These illnesses are occurring because of inadequate labeling of art materials.

My experience in visiting artists' studios, art schools, and public schools, in talking to thousands of artists and teachers and in reading artists' publications has indicated that most artists do not know the hazards of their art materials or how to work safely. This can result in their getting ill.

Some of the responsibility for this lack of knowledge lies with the art schools and public schools and the teachers in these schools. Since most of the art teachers themselves do not know the hazards of the art materials they use, they can not inform their students of the hazards and proper precautions.

Most of the responsibility for this lack of information on art hazards, however, lies with inadequate labeling of art hazards.

FEDERAL HAZARDOUS SUBSTANCES ACT

The Federal Hazardous Substances Act (FHSA) is the major federal law regulating labeling of consumer products, including art and craft materials. Unfortunately, the FHSA only regulates the acute hazards of art materials. This was based on the theory that consumers only have occasional exposure to consumer products and therefore they do not have to be concerned with long-term or chronic exposure. This, however, is not true for either professional artists or hobbyists, and in many instances even children. The major result of this is that most art materials have been only labeled for acute hazards and not chronic hazards.

Another result of this has been the misuse of the term "non-toxic", which is commonly found on children's art materials. According to Charles Jacobsen of the Division of Regulatory Management of the Consumer Product Safety Commission, an art material could be labeled "non-toxic" if it passed the acute toxicity tests of the FHSA. That is, if it does not cause death in more than 50% of a group of rats within two weeks at a certain dosage. Under this, asbestos could be labeled non-toxic. Thus art materials containing ingredients that could cause birth defects or miscarriages, cancer, nerve damage or other long term effects could be labeled non-toxic under the FHSA. This is clearly misleading.

VOLUNTARY STANDARDS

For over 40 years, the Arts and Crafts Materials Institute (formerly the Crayon, Watercolor and Craft Institute)—an industry trade association—has had a voluntary certification program for the safety of children's art materials. Art materials carrying their Certified Product (CP) or Approved Product (AP) seal of approval have been "certified by an authority of toxicology, associated with a leading university, to contain no materials in sufficient quantities to be toxic or injurious to the body, even if ingested."

The major problem with this voluntary standard for children's art materials is that many manufacturers of children's art materials do not participate. Further I have reviewed art supply lists for dozens of school districts, and found that most of them do not specify CP/AP approved art materials for elementary school classes. In fact most school districts were not even aware of the meaning of the CP/AP seal of approval. Therefore the CP/AP program of the Arts and Crafts Materials Institute is not providing sufficient protection for elementary school students.

In the early 1980's, as a result of concern and publicity about the chronic hazards of adult art materials, the American Society for Testing and Materials (ASTM) developed a voluntary standard on chronic hazard labeling of art materials, ASTM D-4236. This consensus standard establishes definitions for chronic hazards, suggests label wording and establishes criteria for a certification program for companies that wish to state that their labeling meets the requirements of ASTM D-4236.

The Arts and Crafts Materials Institute instituted such a program called the Health Labeling Certification. Products containing the HL seal of approval have had their labeling approved by a toxicologist. The ACMI claims that over 80% of art materials comply with this standard. However, they are only including a limited selection of art materials in their definition of art materials, mostly painting and drawing materials. The manufacturers of more toxic art supplies such as solvent-based silk screen materials, plastics resins, stained glass supplies, jewelry supplies, pottery supplies, etc. are not participating in this program. Therefore the voluntary standard is not covering a wide variety of hazardous arts and crafts supplies.

STATE LAWS

In the last couple of years, 5 states—California, Oregon, Tennessee, Illinois and Florida—have passed laws banning toxic art materials from elementary schools and requiring chronic hazard labeling on all other art materials. Several other states, including New York and Massachusetts, are considering similar laws.

At this date, only California has actually begun to implement this law. They are in the process of publishing a list of children's art materials that are non-toxic. This list relies primarily on the CP/AP and HL non-toxic certification of the Arts and Crafts Materials Institute. The other states have said that they do not have the resources to develop such a list on their own and are intending to rely primarily on California.

One major concern of industry about the state laws has been that it would be a financial burden on them to have to comply with a variety of state laws that vary from state to state.

3. Needs for federal legislation to ban toxic art supplies from elementary schools and to require chronic hazard labeling on all art materials.

As I have discussed, a number of factors are resulting in inadequate labeling of art materials: (1) the FHSA only requires acute hazard labeling, (2) voluntary standards are not being complied with by most manufacturers, and (3) only 5 states have passed laws about chronic hazards labeling.

All these factors, combined with the fact that artists, teachers, hobbyists and even children are getting ill from exposure to art materials, indicates the need for federal legislation which will mandate chronic hazard labeling of art materials and ban toxic art supplies from elementary schools.

Any federal legislation that is passed should address the following issues:

DEFINITION OF ART MATERIALS

It is crucial that the definition of art material be as broad as possible. To restrict the defintion to only materials intended for use as art materials would be very restrictive since many of the art materials used by artists are industrial chemicals which are not manufactured as art materials but are marketed or represented by the manufacturer or distributor as being suitable for use in making art.

MINIMUM CRITERIA FOR CHRONIC HAZARD LABELING

The proposed law adopts, with changes, ASTM standard D-4236-85 for chronic hazard labeling of art materials. The original standard provided that a toxicologist will develop the criteria for chronic hazard labeling as supervised by a three-person review board. I think it is in the public interest that minimum criteria for determining chronic hazard labeling be set by public authorities with appropriate opportunity for public comment, rather than by a variety of private corporations and trade associations. This would ensure that different companies using D-4236-85 have the same criteria for chronic hazard labeling.

In determining whether an art material causes adverse chronic health effects, the toxicologist should take into account the current literature as well as OSHA regulations, National Toxicology Program and the IARC monographs.

CHILDREN'S ART MATERIALS

With young children being the most susceptible to injury from toxic art supplies, it is important that special consideration be given to the problem of children's art materials so that parents, teachers, schools and other institutions can have reliable guidelines in purchasing safe children's art materials. In order to best protect children and still allow them to enjoy doing art, I believe that the Consumer Product Safety Commission should develop a list of approved, safe materials for use by children under the age of 12 (i.e. elementary school age children) since school districts and even most states do not have the capabilities to do this themselves. Any school or institution teaching art to young children should be required to only purchase art materials on this list. This list should not include art materials such as oil paints that, although by themselves might be safe, require hazardous solvents for clean-up.

MANUFACTURER'S ADDRESS AND TELEPHONE NUMBER

All art materials requiring chronic hazard labeling should have the name and address of the producer, repackager or importer of the art material. In addition there should be a telephone number listed where 24-hour information is available in case of accidental poisoning, for example of a child. At the Art Hazards Information Center, we constantly get telephone calls from Poison Control Centers where a child has ingested an adult art material and the company is no longer at the address listed, or there is no telephone number where the Poison Control Center can obtain information on the art material.

IMPORTED ART MATERIALS

Any federal legislation should clearly address the responsibility of importers of art materials to obtain adequate information on the art materials they import for sale in the United States. OSHA's Hazard Communication Rule requires importers to develop Material Safety Data Sheets on all hazardous imported chemicals. Therefore these importers should have the information necessary to place adequate chron-

ic hazard warnings on their art materials. Unfortunately, we receive many telephone calls from artists who have been unable to find out information about the hazards of imported art materials.

APPENDICES

1. Resume of Michael McCann, Ph.D., C.I.H.
2. Center for Occupational Hazards brochure.
3. "Health Hazards in the Arts and Crafts", by Michael McCann and Monona Rossol.
4. "Can Making Art Be Hazardous to your Health?", by Mary Lynn Kotz and Nick Kotz.
5. "Cancer Risk Among Artistic Painters", by Barry Miller, Debra Silverman, Robert Hoover, and Aaron Blair.
6. "Hazards in the Arts and Crafts", *Emergency Medicine.*
7. "Reproductive Hazards in the Arts and Crafts", By Michael McCann, Nancy Hall, Randi Klarnet and Perri Peltz.

STATEMENT OF DENNIS C. DIX, ON BEHALF OF OUTDOOR POWER EQUIPMENT INSTITUTE, INC.

Mr. Chairman and Members of the Consumer Subcommittee of the Senate Committee on Commerce, Science, and Transportation, I very much appreciate the opportunity to present this statement in connection with these hearings.

My name is Dennis C. Dix. I am the Executive Director of the Outdoor Power Equipment Institute, Inc. ("OPEI"). OPEI is a trade association of manufacturers of outdoor power equipment, including lawnmowers, garden tractors, leaf blowers, commercial turfcare machinery, logsplitters and snowblowers. OPEI was organized for the purpose of stimulating and advancing the general welfare of the outdoor power equipment industry and its consumers.

OPEI, its members and their customers, have a long history of involvement with the Consumer Product Safety Commission and are concerned about the structure and direction of the Agency. We believe that an efficient CPSC that has the trust of the consuming public and those it regulates is important to maintain a marketplace in which safe goods are sold. The outdoor power industry is one of the industries for which both CPSC and voluntary safety standards have been developed. The CPSC's mandatory safety standard for walk-behind power lawnmowers was promulgated nearly 10 years ago. The standard applies to power mowers with rigid or semi-ridig rotary blades as well as reel-type mowers. The standard prescribes safety requirements, including labeling and performance requirements, for walk-behind power mowers.

The industry has also worked closely with the CPSC to develop several voluntary standards, including standards for walk-behind and riding mowers, commercial turfcare equipment, snow throwers, shredders and grinders, edgers and trimmers, log splitters, and rotary tillers. OPEI has sponsored these voluntary standards through procedures of the American National Standards Institute ("ANSI"). The CPSC participated on the ANSI canvas list for these voluntary standards and submitted comments on several standards.

The partnership of the CPSC, the outdoor power equipment industry and the public, has helped to produce safe, high quality products for the American consumer. Nevertheless, organizational fractures within the CPSC have produced an agency which has a limited ability for decisive action and direction. This situation has resulted in a loss of confidence in the CPSC by both consumers and manufacturers and creates a climate of planning uncertainty for the manufacturing sector. OPEI has chosen to testify in these proceedings in the belief that a CPSC reorganization can result in restoring confidence, efficiency and accountability to the agency.

At the direction of Congress, the GAO has prepared a report on whether the organization structure of the CPSC could and should be changed. The GAO concluded that the CPSC could benefit from changing its current structure of five commissioners to one in which the Agency would be organized under a single administrator. OPEI supports this conclusion of the GAO and encourages this Subcommittee to consider implementing the recommendation. Although it is true that an agency headed by five commissioners may benefit from the diversity of those individuals, the CPSC does not function as a truly collegial body. As the GAO report indicates, CPSC votes are frequently unanimous. Moreover, two of the five commission seats have now been vacant for several months. The inability, or the refusal, of the Ad-

ministration to fill those vacant seats further undermines the credibility of the Agency. Without a unified voice, the Agency lacks accountability and leadership.

In addition, the single administrator proposal would streamline the Agency and provide a more efficient manner of conducting CPSC business. For example, the mandatory lawnmower standard was nearly a decade in the making. During this rulemaking process, OPEI and its members were required to expend substantial resources explaining the workings of complex machinery to each successive chairman, his staff and appointees, as well as each Commissioner and their staff. The high turnover in CPSC leadership resulted in needless duplication of effort and cost. As GAO reports, through 1986 the CPSC has had nine chairmen and an additional thirteen commissioners. Finally, the budgetary savings from CPSC commission salary and expenses would, as the GAO report explains, become available for other programmatic activities including research. For example, OPEI and its Riding Mower Working Group and currently involved closely with CPSC staff in conducting safety-related research will respect to the design of riding mowers. The extent of this research is obviously circumscribed to a degree by the constraints of CPSC's budget. We have no doubt that this project, as well as many others currently being conducted by CPSC, would benefit from the increased budget available through the elimination of four Commission offices. The GAO has estimated this budgetary saving to exceed $1 million annually.

It is based on our long experience working with the Agency, therefore, that we urge adoption of the single administrator proposal. On behalf of the OPEI and its members, I thank you once again for considering these comments.

Thank you.

STATEMENT OF INTERNATIONAL ASSOCIATION OF AMUSEMENT PARKS AND ATTRACTIONS

Mr. Chairman and members of the Subcommittee, we appreciate the opportunity to comment for the record on proposals by Senator Simon and former CPSC Commissioners Pittle and Statler that the Consumer Product Safety Commission's jurisdiction be enlarged to include fixed location amusement park rides.

In 1981, confronted with a situation in which several U.S. Courts had wrestled with and disagreed on how and whether the Consumer Product Safety Act applied to amusement rides, Congress excluded fixed location park rides from the Commission's jurisdiction.

The reasons why Congress, after public hearings and receipt of testimony, defined the Commission's jurisdiction to exclude such rides are even more cogent today than they were in 1981. Those reasons are:

1. The incidence of serious (defined as injuries requiring hospitalization) amusement ride injuries, as estimated by the CPSC, is extraordinarily low—almost the lowest of anything the Commission keeps track of.

2. Of the serious incidences that do occur, the great majority are unrelated to mechanical or design functioning, which is the area of the Commission's jurisdiction and expertise.

3. Amusement park rides are unlike other products the Commission regulates and do not lend themselves to the Commission's normal investigative or research procedures.

4. The industry is not, at present, unregulated or only self-regulated. Between 85% and 90% of park rides are presently regulated by state and/or local government, with the number of states regulating rides increasing each year.

5. For each of the above reasons, it would be an unwarranted and unwise waste of the Commission's resources to attempt effective regulation of these rides.

6. To the above, we would add a major concern, that because amusement park rides are not within the consumer's control and are maintained differently than are the products over which the Commission has jurisdiction, the application of Section 15(b) of the CPSA to amusement rides would create extraordinary, unintended, costly and potentially ruinous problems of compliance for ride operators and unmanageable problems of administration for the Commission.

For all of these reasons, we feel that if any federal role is necessary, it would more properly and effectively be found through legislation such as S.1032 introduced in the last Session, which you, Mr. Chairman, co-sponsored and which was adopted by the Senate last year as part of the CPSC Reauthorization Bill.

Allow us to expand somewhat on each of the above.

1. *The incidence of ride injuries.*—Amusement ride injuries and fatalities lend themselves to sensationalism, to the coinage of terms like "roller coaster roulette" and "mayhem on the midway". The fact is that CPSC estimates, based on its actual

injury reports, suggest that injuries serious enough to require overnight hospitalization occur at a rate of only about one in every 2½ to 3 million park visits. Fatalities occur at the rate of one in every 65 to 80 million visits.

In his statement, Senator Simon says that in 1984, "a dozen people died senselessly," implying that these were all ride related deaths. The truth is, as we have previously pointed out, most of those persons died in a tragic building fire which did not involve any amusement ride and would not have been under CPSC jurisdiction even if the Senator's Bill had been law at the time.

Of the some 200 products with respect to which CPSC makes injury estimates, rides are near the very bottom in terms of injuries produced, whether one is talking about raw numbers or percentages of people involved.

The Commission's estimates are not inconsistent with, but are somewhat higher, than figures based on actual surveys conducted by two separate independent university studies in recent years.

With respect to fatalities, we were recently informed by the National Transportation Safety Board that, based on past experience, one's chances of being involved in a fatal commercial airline crash are about one in five million. As noted above, CPSC ride fatality figures over the past 15 years put those odds at one in 65-80 million for rides.

2. *Injury Causation.*—Of the statistically small number of amusement ride injuries that do occur, most are unrelated to poor design or to mechanical difficulties. Again, the Commission's own studies show this to be true. In the most recent analysis of which we are aware, the CPSC said it could conclusively identify ride defects or failure in only 19% of the injury cases. Private studies put the figure at about the same level.

What this means is not just that the park themselves, supplemented by state and local inspections, do an exceptionally good job in assuring rider safety, but that the chances of the CPSC improving on that record are almost nil. Its concern is design and manufacturing defects and those are involved in relatively few ride injury cases.

3. *Rides do not lend themselves to the Commission's investigative or research procedures.*—Amusement park rides are quite unlike other products the Commission regulates. They are very large, highly complex and engineered, multi-million dollar pieces of equipment, as compared to the toasters, toys and other items the Commision might take in for inspection or examination. They are also unlike other large machines such as airplanes, in that the park ride, once in place, does not move about and is therefore more amenable to state or local regulation.

This means that the tests and the procedures for testing of rides are unlike those with which the Commission staff is familiar or uses regularly.

There is good reason to wonder whether the cost of developing and maintaining this expertise within the Commission can be justified given the dimensions of the problem.

4. *The level of state regulation.*—Proponents of jurisdiction express alarm that only about 30 states have laws regulating park rides. They ignore the fact that because of the way parks are clustered in tourist areas, those 30 states or municipalities within them, regulate nearly 90% of all the parks in the country.

The number of states with ride safety laws increases every year. This year California and Florida, which are two of the states with the most ride facilities in them, both have ride legislation under consideration. (It is worth noting, however, that a few years ago a California legislative research group studied the question of ride regulation for a year and concluded that the number of ride injuries in the state was so low they could not justify the expense of setting up a state program to regulate park rides).

5. *The issue of wise resource management within the Commission.*— Regular inspection of rides by trained personnel, such as is carried out by the parks on a daily basis, is the single most important preventative of those accidents which involve ride malfunction or failure, as opposed to those that result from human error or behavior. Yet no one on the commission, not even those urging jurisdiction, has proposed federal inspection of rides even on an annual basis. Indeed, former Commissioner Zagoria acknowledged publicly that it would be impractical, if not impossible, for the Commisson to inspect.

The second most important deterrent is adherence to approved standards for design, manufacture, operation and maintenance of rides. Such standards have been produced by the American Society of Testing Materials and have been endorsed by the Association.

This would leave post-accident investigations and Section 15(b) reporting requirements as the Commission's only tools. Post accident investigations are important

but the suggestion that federal investigations are necessary to assure accuracy and proper dissemination of information is patently without merit.

At present, accidents are investigated by the parks, by the insurance companies that insure them and, in most instances, by state or local investigators.

The insurance companies and governmental investigators have every reason to see that anyone else operating a similar piece of equipment is notified of any findings of defect or failure and such information is routinely shared through the industry's safety network.

The 15(b) reporting requirement will be discussed below. It can be said here, however, that even if Section 15(b) could be applied in a workable manner to rides, it would not likely affect the industry's safety record. A park finding a problem reportable under 15(b) would correct that problem to protect itself and its guests. As already mentioned, if it is a problem inherent in the equipment, that word will go out through the industry's safety network.

If one takes the time to really analyze just how the mechanisms of the CPSA, and particularly the "hybrid" variations proposed in recent legislation, would work in practice to reduce ride incidents, it is difficult to avoid the conclusion that the effect wouls be negligible.

Indeed, former Commissioner Saunda Armstrong presented to Congress a long, well documented and reasoned paper setting forth her opinion that there is nothing the CPSC could do that would significantly improve the safety record of the ride industry.

It would surely be prudent to at least seriously ponder Commissioner scanlon's concern that to assert a federal juridiction which cannot be effectively exercised would undermine the good efforts being made at the state level.

It comes down to a fundamental decision. Either the Commission should get involved in regulating the industry, including inspections and systematic investigation of any 15(b) reports or it should not. If it is to do so, it will take considerable resources which will not then be available for other Commission concerns.

6. *The Section 15(b) problem.*—From the above discussion it should be evident that our industry does not oppose jurisdiction because of any fear that federal inspections, either pre-or post-accident inspections, would impose impossible burdens on the industry. We agree with Ms. Armstrong, Mr. Scanlon, and others, that jurisdiction would be an ineffective remedy.

We do have a great fear, however, that the application of Section 15(b) to these rides will subject operators to an impossible reporting requirement and burden the Commission with reports it could not possibly handle appropriately.

This is a complex issue which can only be understood by looking closely at the language of 15(b) and trying to imagine how that requirement would have to be applied to an amusement ride which, unlike the other products under the Commission's jurisdiction, is being constantly maintained by trained personnel.

In the course of normal inspection of rides by park personnel, many things are found which could, if unattended, perhaps cause an injury of the type triggering the Section 15(b) reporting requirement. Would the park have to report these, even though they are corrected on the spot? The language does not clearly excuse them from reporting.

If they are all reported, so as to protect the park from the penalties imposed for non-reporting, what will the Commission do with all those reports? Investigate them all? Ignore them?

What is the legal position of a park operator who reports these findings when the Commission takes no action on them? Do they dare operate the ride?

These are not whimsical speculations. The problem is very real because of the nature of rides and the maintenance and operation of them by trained personnel. This problem has been acknowledged by Senator Simon and by those who drafted the Bill which passed the House in 1985. That Bill, and Senator Simon, attempted to get around the problem by exempting routine maintenance from the reporting requirement. That does not help, since no adequate definition of "routine" has been offered. No satisfactory solution—that is, one which accomplishes what the original drafters of 15(b) had in mind yet not put an unreasonable interpretive burden on the operator—could be agreed on after many hours of discussion.

Mr. Chairman, we plead with this committee to look beyond the emotional and sensational aspects of this question and seriously prove for the answer to just one question: Would extending jurisdiction to these park rides measurably increase the safety of the public?

That probing must include an analysis of what the effect will be on other Commission responsibilities of taking some of its very limited resources to try to regulate rides.

We sincerely believe the answer arrived at by Commissioners Armstrong and Scanlon is correct.

However, realizing that the Commission may not have the time or resources to make a thorough inquiry, we have supported in the past, and continue to support, the legislation which you co-sponsored last year which would allow for a thorough study of the issue.

Such a study is not an evasion or dodge. Given the public record on injury rates and the doubtful efficacy of regulation under the CPSA, there is no reason to believe the time devoted to the study will not be time well spent. As was suggested in connection with the Study Commission Bill last year, it could be provided that any accidents occurring during the period of the Commission's work would be investigated by a federal agency.

This study would focus on the state of present safety efforts—private and public, on whether federal intervention is necessary and, if so, what form that intervention should take.

Our industry would welcome such a study. It might point to ways in which the industry itself can improve on its own record. If so, we will be the better for it.

It is possible the Study Commission may decide a federal role is needed. If so, at least it will presumably define a role which is at once more effective and less potentially onerous than would be the CPSC's effort to apply the present law to rides.

No one has a greater stake in maintaining and improving upon an excellent safety record than do our members. If that requires a federal role we will be pleased to work with you to create an effective federal remedy.

Proponents of CPSC jurisdiction have announced a conclusion that such jurisdiction is necessary. They have not offered any reasoned analysis of how such jurisdiction will favorably affect the safety of the industry when there will be little or no federal inspection except after an accident, when the Commission is already pared to the bone in terms of its available resources and when reporting under Section 15(b) will vastly complicated things for both operators and the CPSC.

Your position and that adopted by this Committee and the Senate last year, is a much more responsible and promising approach. We encourage you to pursue it.

Thank you.

STATEMENT OF PAMELA GILBERT, U.S. PUBLIC INTEREST RESEARCH GROUP

My name is Pamela Gilbert. I am a staff attorney with the U.S. Public Interest Research Group (U.S. PIRG). Thank you for inviting U.S. PIRG to submit testimony to the subcommittee on the issue of chronic hazards in children's and adults' art and craft supplies.

U.S. PIRG is the national lobbying office for state PIRGs across the country. PIRGs are nonprofit, nonpartisan consumer advocacy organizations. During the past five years, U.S. PIRG and PIRGs in California, Massachusetts, New York and Oregon have conducted studies of the art supplies used in their local public schools. Each study came to the same conclusion: *schoolchildren were routinely using art materials such as rubber cements, permanent markers and clays and glazes which contain dangerously toxic substances.* In most instances, teachers were unaware of the potential long-term dangers of the art supplies because the products did not carry chronic hazard warning labels.

In 1984, as a result of the efforts of the California PIRG and other interested groups to uncover and publicize this problem, California passed the first state law in the country to require chronic hazard labeling of art and craft materials and to restrict the use of these products in schools. Since then, growing public awareness has led to the enactment of similar laws in Florida, Illinois, Oregon, Tennessee and Virginia, and labeling laws are currently pending in the New Jersey, Massachusetts and New York state legislatures.

HAZARDS OF ART AND CRAFT MATERIALS

It is undisputed that many commonly-used art and craft supplies contain substances that cause cancer and other chronic illnesses. For example:

Solvents contained in rubber cements, turpentine and permanent markers, and use in oil painting and silk-screening, have been associated with nervous system damage, internal organ damage, respiratory damage, skin disease and miscarriages.

Lead, found in paints, clays and glazes, can poison the renal and nervous systems, and cause anemia, sterility and birth defects. Lead solders contained in stained glass hobby kits have caused lead poisoning in hobbyists.

Asbestos, found in talc and clays, is linked to lung cancer, mesothelioma and asbestosis.

Cadmium-containing silver solders, used in jewelry-making, metal sculptures, silver brazing, soldering and welding, when inhaled or ingested can result in severe chronic lung and kidney damage, and acute, severe respiratory tract irritation, lung damage and even death.

In 1981, the National Cancer Institute (NCI) released the results of a study of death certificates of 1598 professional artists. The study found significantly elevated risks of arteriosclerotic heart disease, leukemia, and cancer of the bladder, colon, rectum, kidney and brain among white male artists Among femal artists studied, excess numbers of deaths due to cancer of the rectum, lung and breast were noted.[1] Results from a case-control interview study by NCI of bladder cancer patients found further support for an association between bladder cancer and employment as an artistic painter.[2]

Other evidence compiled during the last decade by governmental and private groups has added considerably to the growing body of knowledge regarding the dangers associated with art and craft materials. In 1980, the Subcommittee on Consumer Protection and Finance in the U.S. House of Representatives held a series of hearings on legislation to require chronic hazard labeling for consumer products. Artists, physicians, toxicologists, artists' advocates and the Chair of the CPSC testified in favor of the legislation. Although that bill would have applied to all consumer products, the CPSC Chair singled out the problem of hazardous art and craft materials when she stated, "There are a number of carcinogens that we are studying and to which the bill would be applicable that are found in art materials * * * Artists are increasingly concerned about their exposure to toxic substances and, if aware of hazard, could take steps to reduce their exposure on the basis of full information."

At those hearings, a number of professional artists testified about injuries and debilitating diseases they suffered because of exposure to their art supplies. Examples of their testimony include: a potter, who worded with barium carbonate, clays with arsenic and leaded glazes, and died of leukemia; a stained glass hobbyist who developed lead poisoning; and a silk-screen artist who suffered from severe headaches and stomach aches and had two miscarriages. Her symptoms disappeared when she stopped silk-screening.

Since these hearings, many other examples of illness and tragedy resulting from the use of art products have come to light. These include:

Jon Glowacki, who died suddenly on February 20, 1985 when he was 13 years old. Jon spent much of his free time engaging in art and craft activities and had been at home along using Ross' rubber cement. A sample of the glue accompanied his body to the medical examiner's office. The medical examiner listed his cause of death as "sudden death associated with inhalation of volatile hydrocarbons."

Ross' rubber cement contains n-hexane, an aliphatic hydrocarbon, which has been associated with heart arrhythmia (heartbeat irregularity) and poly neuropathy, a progressive disorder of the nervous system causing motor paralysis and a deficiency of the respiratory muscles.

Judith Sinclair, who worked as a commercial artist and graphic designer for almost 20 years. From December, 1979 through October, 1982, Ms. Sinclair worked as a creative coordinator of a public affairs communications department, which involved constant exposure to permanent markers, acetates, glues, rubber cements, paints, inks and a cleaning agent and solvent called Bestine, which contains 30-35% n-hexane.

Beginning in fall, 1980, Ms. Sinclair suffered from exhaustion, dizziness, headaches, nausea, swollen glands, chest and stomach pains, muscle cramps, blurred vision, dehydration, severe dry skin, and loss of coordination. She spent two years consulting various doctors and specialist before recognizing that there was a connection between the chemicals in her art products and her illness. Soon after, she left her job on the advice of her physician.

Ms. Sinclair has been diagnosed with poly neuropathy due to the chemicals in her art supplies. She has not fully recovered from her illness and she suffers severe recurrences of her symptoms upon exposure to even small amounts of the chemicals with which she once worked. After a lifetime of training and work as an artist, Ms. Sinclair is permanently disabled and can no longer work in the art field.

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[1] "Mortality Patterns Among Professional Artists: A Preliminary Report," Barry A. Miller, Aaron Blait, and Michael McCann, National Cancer Institute (1985).

[2] "Cancer Risk Among Artistic Painters," Barry A. Miller, Debra Silverman, Robert N. Hoover and Aaron Blair, American Journal of Industrial Medicine 9:281-287 (1986).

Tadzu Lapinski is a graphic artist who teaches at the University of Maryland. In 1976, as a result of using pure benzene in his art work, Prof. Lapinski developed acute aplastic anemia and spent one year in the hospital, at times close to death. Prior to his illness, Prof. Lapinski was completely unaware of the dangers associates with long-term exposure benzene.

G. Kaye Holden was a full time professional artist from 1962 to 1975. Virtually every day, he worked with oil paints, turpentines and mineral spirits used in thinning paint and cleaning brushes.

In 1975, Mr. Holden developed a potentially fatal kidney disease which required surgery, constant monitoring and the loss of 60% of his kidney functions. Since his doctor did not realize there was a connection between his art materials and his illness, Mr. Holden continued to work when he was not in the hospital. He worked until 1977 while his condition rapidly deteriorated. In 1977, he had to go on a kidney dialysis machine, and ultimately had a kidney transplant.

In July 1977, Mr. Holden read an article by Dr. Theodore Ehrenrich, which reported on a relationship between artists working with oil paints and paint thinners and kidney disease. Dr. Ehrenrich wrote that repeated "small insults" to the kidney over a long period of time set off the body's immune system so that the kidneys were ultimately destroyed by the body itself. This was exactly what had happened to Mr. Holden. Unfortunately, Mr. Holden became aware of the relationship between his work and his illness when it was too late to reverse the disease.

Audrey Eichelmann died in 1981 of mesothelioma, a cancer that is nearly always caused by exposure to asbestos. It is believed that Ms. Eichelmann was exposed to abestos while working with clay mixed with talc that was contaminated with asbestos.

MILLIONS AT RISK

The health of millions of Americans is threatened by the presence of hazardous substances contained in art and craft products. A Harris poll from November, 1984 found that 50 million Americans paint or draw as a hobby, 29 million make pottery or ceramics and 15 million sculpt or work with clay. In addition, the National Endowment for the Arts Research Division estimates that there are over one million professional artists and craftspeople in the United States.

CHILDREN AT RISK

Public Interest Research Groups in California, Massachusetts, New York, Oregon and the District of Columbia have conducted studies of the art and craft supplies being used in the public schools in their areas. The studies found that children routinely use art materials such as rubber cements, permanent markers and clays and glazes which contain many of the same toxic substances that have been documented to cause chronic illnesses in adults. In most instances, teachers and school officials were unaware that these products posed dangers and were eager to rid the schools of inappropriate supplies as soon as they were informed of the hazards in the products.

The PIRG findings are particularly troubling because, when compared to adults, children are at a higher risk of developing diseases from exposure to hazardous substances. First, exposure by a child to the same amount of a substance as an adult experiences will result in a greater concentration of that substance in the child's body. This phenomenon is illustrated best with an analogy familiar to everybody—a child who drinks an alcoholic beverage will be affected much more than an adult who consumes the same amount of alcohol.

Second, children's body systems are still developing, so that damage to vital immune mechanisms can lower future resistance to infection and disease. Children's developing nervous systems and brains are particularly sensitive to damage from substances that cause or contribute to chronic harm, where effects may not be immediately apparent.[3]

Third, children's high metabolic rate results in a greater tendency to absorb toxic chemicals into their body systems. Finally, children often do not follow directions properly and they tend to misuse products by, for example, inappropriately putting things in their mouths.

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[3] "Proceedings of the SOEH Conference on Health Hazards in the Arts and Crafts," Society for Occupational and Environmental Health, editors: Michael McCann and Gail Barazini, p.146 (1980).

For all of these reasons, regulations are needed to protect children from exposure to toxic substances contained in art and craft supplies. Five states—California, Florida, Illinois, Oregon and Tennessee—have passed laws which require chronic hazard labeling of art and craft materials and restrict the use of these products in public schools.

School systems that have become aware of the danagers of many art supplies have voluntarily removed known toxic products from their classrooms. In almost every case, safer substitutes were found for the hazardous products that were being used. School officials across the country have consistently demonstrated a willingness to use only non-hazardous art materials with elementary schoolchildren, and to use toxic materials in secondary schools only under proper conditions.

However, in order to carry out a program of safe purchase and use of art products, school officials need to know two things: (1) which art products are too hazardous for young children; and (2) how teachers and older children can use hazardous products safely.

Unfortunately, without legislative action requiring comprehensive labeling and easy indentification of hazardous products, school systems do not have the expertise to establish effective art materials safety programs.

FEDERAL REGULATION OF HAZARDOUS PRODUCTS

The workplace

The use of chronically-hazardous substances in the workplace is subject to federal regulations that are enforced by the Occupational Safety and Health Administration (OSHA). For hundreds of hazardous chemicals and products, OSHA rules establish maximum levels of exposure for employees who work with those products. In addition, under the OSHA Hazard Communication Rule, most employers must provide information to their employees concerning hazardous chemicals through hazard communication programs which include labeling, material safety data sheets, training and access to written records.

Since consumers of art supplies primarily use art products in their homes or in classrooms, they are not protected by these OSHA regulations. This is true even through many of the hazardous substances that are regulated when used in the workplace are also found in art and craft products. These substances include lead, asbestos, solvents such as benzene, toluene and hexane, mineral compounds such as cadmium and barium compounds, and preservatives such as formaldehyde.

Furthermore, artists are often exposed to toxic substances at levels *higher* than the government allows for industrial workers. First, artists often work and live in the same place so that they are exposed to their art materials for more hours than are workers in a typical employment setting. Second, because of their unusual working conditions, artists often eat while doing their art work, causing them to accidentally ingest hazardous materials. Finally, artists who are self-employed or are hobbyists usually do not work in areas that are well-ventilated as industrial workplaces.

CONSUMER PRODUCTS

As consumer products, most art and craft materials are subject to the labeling requirements of the Federal Hazardous Substances Act (FHSA), which is administered by the Consumer Product Safety Commission (CPSC). The FHSA requires warning labels on consumer products which are: toxic, corrosive, irritants, strong sensitizers, flammable or combustible, or that generate pressure through decomposition, heat or other means. The Act states that the term "toxic" applies to any substance "which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." Although this definition appears to include both "acute" toxicity (which causes immediate adverse effects) and "chronic" toxicity (whose adverse effects are not apparent for a period of time after exposure), the CPSC has not adequately exercised its authority to protect consumers from unknowing exposure to chronically toxic materials.

Labeling requirements under the FHSA work in the following way: "Once a product achieves the status of being a hazardous substance, which is generally accomplished not be rulemaking but by the fact that it meets the appropriate definition, the Act provides that it be labeled in a manner prescribed by the Act to help insure safe use and inform the user of appropriate first aid treatment. Products whose status as a hazardous substance is borderline or uncertain when the statutory definitions are applied may be declared hazardous substances by regulation." (Reprinted from a February 18, 1977 memorandum by the Office of General Counsel of the

CPSC entitled "Consolidation of the Acts Administered by the CPSC in an Amended Consumer Product Safety Act." *See*, Chronic Hazard Labeling Legislation, House Hearings, September, 1980, page 33.)

FHSA regulations define a toxic substance as one that produces death within 14 days in at least half of a group of white rats who have been exposed to a certain amount of the substance through ingestion or inhalation, or in at least half of a group of rabbits whose skin has been exposed to a certain amount of the substance. (16 CFR 1500.3(c)(2)). This definition describes a test for *acute* toxicity, and would not trigger a warning label for a product that poses a chronic hazard but does not produce death in animals within a short period of time.

FHSA regulations also state that "Toxic' also applies to any substance that is 'toxic' on the basis of human experience." A finding by the CPSC that a substance is toxic because it poses a chronic hazard must be made pursuant to this part of the definition of the term toxic. Since this definition does not specify the test for "toxicity based on human experience," findings of chronic toxicity that are made this definition must be done by regulation. In order for the FHSA's *automatic* labeling requirements to apply to chronically toxic substances, without the need for separate rulemakings for each substance, the CPSC would have to establish regulations which specify the tests and criteria manufacturer must use to determine if their product pose chronic hazards.

The CPSC has never conducted a regulatory proceeding to determine whether a specific art and craft material should be labeled or banned because it poses chronic hazards, nor has the CPSC initiated proceedings to establish tests and criteria for chronic toxicity. The Commission has, however, made hazards determinations for specific substances which may be contained in art products. For example, the CPSC has determined through rulemaking that the following substances are hazardous based on human experience, and therefore, the Commission requires hazards warning labels on products which contain a specified amount of these substances. Many of these substances are often found in art materials: (1) diethylene glycol; (2) ethylene glycol; (3) benzene, toluene, xylene, or petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline, mineral spirits, stoddard solvent and related petroleum distillates; (4) methyl alcohol; and (5) turpentine.

In addition, the CPSC has issued regulations under the Consumer Product Safety Act and the FHSA to regulate and ban certain consumer products which contain lead and asbestos—two of the most hazardous substances that are found in art and craft materials. The lead regulations, however, specifically exclude from their scope "artists' paints and related mateials." Likewise, the CPSC's labeling regulations for asbestos apply only to products to which asbestos has been intentionally added. This means that the regulations do not apply to clays and tales which contain naturally occurring asbestos and are used as art materials by artists, hobbyists and childrens.

The CPSC also has initiated a rulemaking to determine whether methylene choloride, which is contained in some paint strippers and spray paints, is a hazardous substance under the FHSA. Although this issue was brought to the attention of the CPSC in September, 1984, the current proceeding was not began until August, 1986. The staff of the Commission is currently assessing the public comments and conducting risk assessment for each product that would be affected. Their decision is due to be submitted to the Commissioners in June of this year, but no date has been set for a final Commission determination.

As the foregoing makes clear, although the CPSC has the authority to regulate art and craft products that pose chronic hazards, they must accomplish this either through separate rulemaking proceedings or by establishing tests and criteria for chronic toxicity. To date, the Commission has chosen to initiate and complete rulemaking proceedings for only a small handful of the hundreds of hazardous substances that are contained in art materials.

Furthermore, even where the CPSC has acted to reguire labeling of a chronically hazardous substance under the FHSA, the labels that are required do not adequately convey to the user the dangers associated with the substance. For example, benzene is a cancer agent, which has been linked to bone marrow damage and blood dyscrasias. Under FHSA regulations, a product which contains 5 percent or more by weight of benzene must be labeled with the following:

DANGER: Vapor harmful. Poision. (Picture of skull and crossbones)
CONTAINS: Benzene.
KEEP OUT OF THE REACH OF CHILDREN.

This language does not inform consumers of the long-term hazards, such as cancer, that may result from exposure to the product, nor does it include instructions on how to use the product safety. In light of the extreme potential dangers of

benzene, this label is wholly inadequate as a health warning for consumers, artists and children.

Under the comprehensive scheme for labeling chronically-hazardous art materials that we propose, a product which contains 5 percent or more by weight of benzene would be labeled with the following:

Warning: Cancer Agent! Exoposure may produce cancer. May be harmful if swallowed, by skin contact or by breathing vapors. Exposure may cause bone marrow damage. Contains: benzene

Use NIOSH-certified respirator with an organic vapor cartridge or use in fully enclosed local exhausting hood. Wear vinyl or latex gloves and coveralls. Do not eat, drink or smoke while using. Wash hands immediately after use.

KEEP OUT OF REACH OF CHILDREN.

For further health information contact your poison control center.

VOLUNTARY STANDARD

At the conclusion of the 1980 hearings on chronic hazards of art supplies, Rep. Fred Richmond, the sponsor of the legislation, issued the following directive to the art and craft materials industry:

"We are not adequately potecting the health and well-being of artists in the United States. There are 54 million people involved in the arts in the United States. There are a lot of consumers. So, we all agree something has to be done. Let's start working together. As Chairman Scheuer said, let's work informally to see if we can develop material directed to the consumer, not to industry, but to the consumer, legible, simple material that will tell the consumers, the 54 million consumers, exactly what Chairman Scheuer said: What is in this product, what should be avoided, how it should be used, and what to do if it is ingested, inhaled or absorbed."

That statement began a process in which art material manufacturers, artists, government officials and scientists, under the guidance of the American Society for Testing and Materials (ASTM), developed a voluntary consensus standard for the labeling of chronically toxic ingredients in art supplies. ASTM adopted this standard, number D-4236, in March, 1983. Labels began appearing on art and craft products in 1985.

The voluntary standard works in the following way:

Art and craft material manufacturers submit their products for evaluation by a certified toxicologist. The toxicologist evaluates the products to determine if they have the potential for producing chronic adverse health effects under customary or reasonably foreseeable use.

The standard establishes responsibilities for participating manufacturers which include: submitting product formulations to a toxicologist for review; adopting precautionary labeling suggested by the toxicologist and in accordance with statements listed in the standard; supplying a poison control center with formulation information; and having their products and labels reviewed periodically to ensure they conform with the most current scientific knowledge.

The standard also establishes considerations that toxicologists must take into account when determining whether an art material has the potential for producing chronic adverse health effects. These include; current chemical composition of the art material; current generally accepted, well-established scientific knowledge; physical and chemical form of the product, bioavailability, concentration and amount of toxic components; reasonably foreseeable uses; potential for synergism and antagonism of components; potential adverse health effects of decomposition or combustion; and opinions of various regulatory agencies and scientific bodies.

Under the voluntary standard, art materials that pose chronic hazards must carry labels which contain:

(i) a signal word, such as "WARNING";

(ii) statement(s) regarding potentially chronic hazards, such as "CANCER AGENT! EXPOSURE MAY PRODUCE CANCER";

(iii) a list of chronically hazardous components;

(iv) statement(s) regarding safe use, such as "Avoid inhalation/ingestion/skin contact", or "Use NIOSH-certified mask for dusts/mists/fumes";

(v) a statement identifying a source for additional health information, such as "Call your local poison control center for more information"; and

(vi) a statement of conformance that states "Conforms to ASTM D-4236."

PROBLEMS WITH THE VOLUNTARY STANDARD

Industry participation in the voluntary labeling program has been estimated as follows:

Fine arts and ceramics: 85-90%

Crafts: "most of the major manufacturers" Silk-screening: 50%

As for other art activities, such as jewelry-making and the creation of stained-glass windows, no approximation of industry compliance is available.

These estimates illustrate the problem with voluntary standards—they are voluntary, and therefore, companies who do not want to participate do not have to. Unfortunately, many of the non-participating companies produce products for the most hazardous activities, such as silk-screening and jewelry-making. Since the standard is designed to protect the health and safety of a large segment of the public, this situation is unacceptable.

In addition, when some companies label their products and some companies do not, added dangers are presented to consumers. For example, a consumer will be more likely to purchase a product that does not contain a warning of a cancer hazard than a product with such a warning, thinking that the absence of a warning signifies no potential danger. However, under a voluntary program, a product without a label may be as hazardous or *more* hazardous than a product with a label. Furthermore, since the program is voluntary, there is no official agency that is responsible for monitoring or enforcing compliance, and in fact, no such monitoring or enforcement is currently taking place.

Finally, the ASTM program raises concerns because the standard does not specify tests or criteria for determining whether a substance or product presents chronic health hazards. Therefore, one toxicologist may conclude that a certain product is not hazardous while another toxicologist will come up with a different conclusion, because the second toxicologist used different criteria to measure the hazard. For example, experts differ on the safe level of solubility for lead. An effective rule must include a mechanism for developing minimum criteria that the product must meet.

LEGISLATIVE PROPOSAL

The problem of chronicaly-hazardous has been well-documented by state and federal policymakers, artists and their physicians, consumer groups, art product manufacturers and scientific studies. There is no federal law which requires adequate labeling on art products which are used outside of the workplace and which can cause chronic illnesses, although the FHSA gives the CPCS the authority to establish such requirements.

Due to this gap in federal regulations, a voluntary standard for the labeling of chronic hazards in art supplies has been established. However, many art material manufacturers do not comply with this standard. What is more, the standard is incomplete because it does not specify the criteria for determining whether a substance or product presents chronic health hazards. Therefore, U.S. PIRG joins with art material manufacturers, artists, consumers, parents, eductors and health organizations in supporting national legislation to require comprehensive labels on chronically-hazardous art and craft materials, and the development and distribution of a list of products that are inappropriate for use by children in elementary schools.

Specifically, U.S. PIRG strongly urges this subcommittee to amend the FHSA to:

(1) Adopt ASTM standard D-4236, with some changes as a regulation under the FHSA.

(2) Require the CPSC to issue regulations which would specify the minimum criteria to be used by toxicologists to determine the chronic hazards of art materials. The CPSC should periodically review and revise these criteria to ensure they reflect changes in scientific knowledge and in the formulations of art materials.

(3) Require the CPSC to develop a list of art materials for distribution to schools and other institutions in which children work with art supplies, which would identify which products are inappropriate for elementary-school age children to use. We would also support sanctions for anyone who *knowingly* purchases or sells, for use by elementary schoolchildren, an art product which has been identified by the government as inappropriate for use by such children.

This proposed legislation would provide significant and important benefits to most interested groups:

The health and well-being of professional artists, hobbyists, teachers, children and other consumers of art products would benefit greatly from information, printed directly on product labels, of potential hazards and how to avoid them;

Art and craft manufacturers would benefit from the development and enforcement of uniform labeling requirements and hazard determination criteria which would apply nationwide. Such uniform, mandatory labeling requirements would put an end to the market advantage that manufacturers who do not adequately label

their products gain over manufacturers who engage in responsible labeling practices.

Parents and school officials would benefit from the identification of art and craft materials that are inappropriate for elementary schoolchildren.

The only groups that would lose under this proposal are those intransigent manufacturers who do not participate in the voluntary labeling program and who are not complying with the various state labeling laws. U.S. PIRG believes it is high time that these companies acted as responsibly as their competitors and warned their customers of the hazards associated with their products.

Under this proposed legislative scheme, the CPSC would be required to take on added responsibilities. However, the increased burden on the resources of the Commission would be greatly outweighted by the benefits to the public interest that would result from this law.

CONCLUSION

Up to 100 million Americans, including children, are threatened by hazards in art and craft materials. A federal law is needed to protect the health and safety of these art product users. Just like existing federal labeling laws for consumer products, the legislation that we propose is self-enforcing. That is, once the criteria for determining chronic hazards in art products have been developed, art and craft material manufacturers would be responsible for testing their own products and determining the appropriate labels. Furthermore, for most art and craft manufacturers, this would not be an added responsibility since they already engage in chronic hazard labeling under a voluntary program. Therefore, this national labeling law would provide a maximum benefit to the public interest with a minimum of extra effort on behalf of manufacturers and government regulators. The time is long overdue for the federal government to act to protect artists and other consumers from the uninformed use of hazardous and deadly art products. We urge the subcommittee to act quickly to enact a chronic hazard labeling law for art and craft materials.

STATEMENT OF NATIONAL ARTISTS EQUITY ASSOCIATION

National Artists Equity Association strongly supports the reauthorization of the United States Consumer Product Safety Commission (CPSC) with an increase in funding to enable CPSC to adequately address the serious problems of health hazards to the consumer. There are many circumstances where consumers, including children, are not protected under the Occupational Safety and Health Administration (OSHA) or the Environmental Protection Agency (EPA). These agencies approach health hazards from a viewpoint which does not take into account the many types of exposure that the average citizen encounters or the special requirements of warning labels addressed to that citizen. Warnings and safe-handling instructions that are intended to address conditions in the workplace often cannot be understoods or applied by the general public.

Artists Equity is a national organization of profesional visual artists and has been addressing the needs of artists for 40 years. Artists usually work alone in a studio or at home and therefore their problems of exposure to health hazards are not addressed by OSHA. Since 1977, National Artists Equity has been working to get art and craft supplies labeling that would alert users to any chronic as well as acute health hazards. National Artists Equity is presenting testimony on the basis of its experience with this issue over the past ten years and its role as the national association representing all American visual artists. To a large extent, National Artists Equity has been successful in its labeling efforts due to the cooperation of the art material manufacturers themselves; however, it has become increasingly apparent that the only place where adequate oversight of labeling art materials for chronic toxicity can be performed is at the CPSC.

National Artists Equity is a part of a coalition of consumers, health professionals, and art materials manufacturers that had help and advice from the CPSC staff in developing, under the auspices of the American Society for Testing and Materials (ASTM), a unique national voluntary consensus standard on chronic health hazards labeling of art materials (ASTM Standard ±D4236). But there have been insufficient funds for the CPSC to take the lead in establishing guidelines for chronic health hazards evaluation of consumer products or in establising nationwide uniform warnings and safe-handling instructions. Acute hazards had to receive priority attention. Nonetheless, the general public, including children, is handling at home and at school products that are known to present chronic health hazards. This is true not only for art materials but for many other products commonly used.

There must be a uniform way to warn consumers of these hazards, just as they are warned of acute hazards. In the past, such warnings of chronic hazards has been difficult because testing for acute hazards is simpler and less expensive than establishing which substances, and in what forms and in what amounts, pose chronic hazards. Current knowledge of specific chronic hazards is sufficient to warrant warning labels for many substances as part of a program flexible enough to accommodate advancing knowledge.

Conformance to national consensus standard D4236 by the art materials industry has been very good. And five states (California, Illinois, Oregon, Tennessee, and Florida) have included D4236 in their laws mandating health labeling on art materials. It would seem then that, through cooperative effort, the problem has been solved; however, as is inevitable, the state laws, are not identical. Even though D4236 is included in the laws, there are other sections that vary from state to state. One state, Virginia, has recently signed into a law a bill that does *not* include D4236. (This happened because neither National Artists Equity nor any of the other coalition members were aware of the pending legislation and therefore did not have the opportunity to explain the advantages of including the standard). Art supplies labeling bills are pending in at last three other states, and there remains the problem of lack of uniformity among them. Thus, manufacturers are confused about what is required in terms of laberling and schools are confused about what can be purchased for children's use. Six state health departments are struggling with trying to compile lists of safe or unsafe art materials. Considering the difficulty in evaluating products for chronic health hazards, there is every reason to believe that these lists will not be identical.

From the consumer's viewpoint, the situation is intolerable. In order to be understood by the public, warning labels must be uniform. Yet, because art and craft materials typically come in sufficient information on the label. Slight changes in wording can completely confuse the consumer. Warning and safe-handling phrases must be uniform and nationally publicized in order to be meaningful. The necessity to label differently for different states will drive prices of art materials up tremendously and force many products out of the marketplace. Artists, who already spend from one-half to three-quarters of their art-related income on their art supplies, cannot afford these additional costs. Schools need national guidance on the purchase of safe art products as well as the ability to purchase these art products at reasonable prices so that art is kept in the curriculum.

Current toxicological testing shows that the majority of art and craft materials are completely harmless. It would be tragic if confusion over labeling of the new products needing chronic toxicity warnings is allowed to cripple the art materials industry, to eliminate art and craft education in schools, and to penalize professional artists, whose careers depend on access to these supplies.

National Artists Equity believes, and the CPSC staff advisory opinion ±309 states, that art materials fall under the jurisdiction of the CPSC; that CPSC has the mandate to deal with chronic health hazards in consumer products; and that D4236 meets CPSC's requirements for chronic health hazards labeling. What is needed now are (1) assurance that the requirements of D4236 are nationally applied and (2) a set of national guidelines to insure that toxicologists applying those requirements are using the same criteria. But, if CPSC cannot do these two things under the Federal Hazardous Substances Act, then further legislation is needed.

This problem is just the beginning of a flood of similar problems that consumers and producers of other consumer products will have to deal with in the immediate future. Now is the time to put into place the mechanism to address these problems before the confusion and expenses move through the American economy. The course that National Artists Equity and the other members of the art supplies labeling coalition have followed in developing a consensus standard is inexpensive. Advice was sought from CPSC, and the costs are borne almost entirely by industry. The consensus process allows for continuing public input and is flexible enough to adjust to developing knowledge. Guidelines from CPSC on toxicological criteria will give small companies, which are worried about liability, the guidance they need to uniformly label products that qualified toxicologists, using current scientific information, believe should have warning labels. The application of those guidelines to individual products will be in the hands of qualified private-sector toxicologists, relieving the government of the burden of dealing with tens of thousands of product labels.

THE NATIONAL PTA,
Chicago, ILL, May 22, 1987.

Hon. ALBERT GORE. Jr.,
Chairman, Senate Committee on Commerce, Science and Transportation, Senate Russell Building, Washington, DC.

DEAR SENATOR GORE: The National PTA, representing over 6.1 million parents, teachers and concerned citizens around the nation supports long-awaited congressional action related to the labeling of toxic art supplies. As a general policy, the National PTA supports regulation of the manufacture, advertising, or sales of products hazardous to children and youth. More specifically, the National PTA delegate assembly passed a resolution at its 1984 National convention "seeking and supporting legislation to mandate the labeling of ingredients on art and craft products and precautions for safe use."

Whether via a free standing bill or the reauthorization process of the Consumer Products Safety Commission, the National PTA would support the amending the Federal Hazardous Substances Act to:

1. Require manufacturers of art and craft materials to put comprehensive labels on chronically hazardous art products, and;
2. Require the Consumer Product Safety Commission to develop a list of products which do not pose any acute or chronic hazards for distribution to schools and other institutions that serve children.

It would be a violation of the Act to knowingly purchase for use by children under 12 an art material that is not contained in that list.

The labels would contain: the signal word "WARNING"; a list of chronically hazardous components; a statement of potential hazards; a statement regarding safe use of the product; and a statement identifying a source for additional health information.

In addition, there would be a provision for a uniform labeling symbol, to be placed on products appropriate for use by children, which would designate that the product has not been found to pose any acute or chronic hazards.

A voluntary standard, approved by consensus by the American Society for Testing and Materials (ASTM), is already in existance. Under the voluntary standard, art and craft material manufacturers submit their products for evaluation by a certified toxologist. The toxologist evaluates the products to determine if they have the potential for producing chronic adverse health effects under customary or reasonably forseeable use. But since the standard is voluntary, many art and craft manufacturers do not comply with it.

Art supply labeling laws have been passed in California, Florida, Illinois, Oregon, Tennessee, and Virginia, and similar legislation has been introduced in Massachusetts and New York. The laws provide for comprehensive labeling on all art and craft supplies that cause chronic illness. It is reasonable to suggest, however, that beyond these states, little other state action related to labeling is foreseeable. A national problem requires national action.

The problem with toxic art supply use is easy to define. Many commonly-used art and craft products contain substances which are known to cause cancer and other chronic illnesses. Studies conducted by Public Interest Research Groups have found that children are at a higher risk of developing diseases from exposure to hazardous substances because:

1. Their body size is smaller, therefore, exposure to the same amount of a substance as an adult experiences will result in higher concentrations of the substance in the child's body;
2. They have a higher metabolic rate and their body systems are still developing, therefore, they absorb toxic chemicals more quickly;
3. They often misuse products and do not follow directions properly;

Labeling is fair; it alerts the consumer of products to a danger without being punitive; and it provides an incentive to manufacturers who care about children to produce safer art supplies. The National PTA urges this Committee and the Congress to take immediate action.

Sincerely,

MILLIE WATERMAN,
Vice President for Legislative Activity.

NATIONAL SCHOOL BOARDS ASSOCIATION,
Alexandria, VA, May 22, 1987.

Hon. ALBERT GORE, Jr.,
Chairman, Consumer Subcommittee, U.S. Senate, Washington, DC.

DEAR SENATOR GORE: The National School Boards Association represents the 95,000 local school board members who are the policy makers in the 15,000 local public school districts throughout the United States. It is our understanding that your subcommittee is considering legislation that would (1) require chronic hazard labeling of art and craft products; (2) direct the Consumer Product Safety Commission to develop and promulgate a list of safe products; and (3) require schools to purchase and use—and suppliers to supply—only those products on the approved list.

NSBA cannot support the requirement that schools purchase and use only those products on a federally-approved list. We believe that proper labeling, along with promulgation of a list of approved products, assures the safety of children in the schools. The additional burden of federal sanctions against school districts is unnecessary. In addition, it would, on a day-to-day basis, be impractical for a local district to monitor purchase of such products, particularly those incidental purchases made by individual teachers.

NSBA does not oppose the concept of appropriate labeling of hazardous products. We also do not oppose the preparation and dissemination by the Consumer Products Safety Commission of a list of safe art and craft products. Local school boards are extremely interested in the health and safety of their students and would welcome information that would help them maintain a healthy environment for their students.

Sincerely,

EDWARD R. KEALY,
Director, Federal Programs.

PETTIT & MARTIN,
ATTORNEYS AT LAW,
Washington, DC, May 27, 1987.

Hon. ALBERT GORE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GORE: In connectionm with the May 13 CPSC reauthorization hearings of the Senate Consumer Subcommittee, we are submitting two documents [1] which U.S. Suzuki Motor Corporation ("Suzuki") recently submitted to the Consumer Product Safety Commission regarding ATVs intended for use by children under 12 years of age. Although your hearings covered a range of ATV-related issues, these documents pertain specifically to the question of accidents involving children under 12 as this was understandably one of the more salient issues discussed in your hearings and has been a major focus of the CPSC's actions and publicity emanating from those actions.

The first document attached hereto is Suzuki's response to Chairman Scanlon's February 18, 1987 letter (also enclosed) requesting that Suzuki cease marketing its ATV intended for children under 12. (Commissioner Dawson dissented from the motion authorizing that request.) Suzuki's response details the reasons why Suzuki (the largest distributor of ATVs intended for use by children under 12) cannot accede to Chairman Scanlon's request, principally because of the outstanding safety record of Suzuki's 50cc ATVs which are marketed and age-labeled for children six and older. These very small, slow-speed ATVs are designed specifically for young riders and have compiled an exemplary safety record, as the CPSC's data and staff reports indicate.

The second document is Suzuki's comment on the CPSC's updated ATV Consumer Product Safety Alert, which continues to foster the inaccurate and misleading impression that substantial numbers of children under 12 are being killed or injured on ATVs intended for use by such children, when in fact the CPSC's own data show that over 96 percent of injuries to children under 12 have involved children operating larger ATVs not intended for their use or children riding as passengers, a practice Suzuki and the other ATV distributors expressly warn against. Additionally, of the 644 fatilities reported by the CPSC in its December 29, 1986 fatality report, only one involved a child under 12 operating an ATV designed for children under 12, and that fatility resulted from an automobile striking the ATV on a roadway.

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[1] The documents are in the Committee files.

Unfortunately, the widespread publicity generated by the CPSC and the media regarding ATV-related children's injuries has obscured the excellent safety record compiled on child-sized, 50-60cc ATVs. Moreover, the misleading impression that all ATVs pose hazards to young children has also tended to obscure the key issue of concern to the industry—that children under 12 are being injured either riding as passengers or operating larger vehicles not intended for use by such children.

I would also point out that as early as 1985 Suzuki sent letters to all its ATV owners regarding important safety concerns. You will noe that this letter, a copy of which is attached to the enclosed Suzuki response to Chairman Scanlon, contains express directions against allowing children to ride inappropriately sized ATVs or allowing children to operate ATVs without adult supervision. Similar information is also included in Suzuki's owner manuals.

At the recent hearing you very properly indicated your intention to keep an open mind on the ATV issues until the Subcommittee has completed its inquiry. Our purpose is to provide you with relevant information in order to facilitate an informed judgment on the matter by the Subcommittee. It is in this spirit, therefore, that we respectfully submit the enclosed materials and hope that they will be helpful to you in connection with your Subcommittee's review of ATV-related issues. I look forward to conferring with you on this important matter at your convenience.

Thank you for your consideration.

Sincerely,

HARRY W. CLADOUHOS.

HONDA NORTH AMERICA INC.,
Washington, DC, June 9, 1987.

HON. ALBERT GORE, Jr.,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GORE: This letter is in reponse to your request that we submit for the record our concerns over the quality of the Consumer Product Safety Commission's (CPSC) statistical data regarding all-terrain vehicles (ATVs). The following comments are a general summary of specific materials we have given to the Committee staff and, earlier, to the Consumer Product Safety Commission.

Our basic concern is that the CPSC's use of its death and injury statistics "related to" ATVs is very unfair and misleading. American Honda is certainly concerned about *all* ATV-related accidents, and has taken many different steps to try to reduce ATV-related injuries. We will continue to make efforts to do so. However, the CPSC's use of its statistical data tends to exaggerate the ATV issue and does not help identify areas in which remedial action can be taken. The National Electronic Injury Surveillance System (NEISS) is designed only as a very rough "early warning" system to enable the Consumer Product Safety Commission to identify products that warrant further investigation. Based on daily reports from 64 hospital emergency rooms of injuries "related to" specific consumer products, the CPSC estimates consumer product related injuries throughout the United States. Thus, for example, in 1986 there were about 1,000 "ATV-related" injuries reported in NEISS hospitals, and from that figure CPSC estimates 86,400 "ATV-related" injuries nationwide. This figure has serious limitations.

First, it does not indicate what caused the injury. During the Senate hearing there was an inference that ATVs were somehow the cause of the estimated number of injuries. The CPSC has repeatedly stated that NEISS statistics (and also CPSC death statistics) do not show causation. However, when discussing ATVs, CPSC does not make this point clearly. The only thing these statistics reflect is that an ATV was associated with the injury. A close examination of the injury statistics cited by CPSC reveals incidents in which the ATV was not in any way the cause of the injury. For example, some injury statistics show people being injured loading an ATV on or off a truck or bending over to start the ATV and injuring their back, or being scratched by an overhanding branch while riding. Our review of the data shows that a large number of the injuries "related to" ATVs can in no way be affected by any kind of change to an ATV. This fact was not touched upon during the hearing.

The death statistics cited by CPSC are even more egregious. A number of the CPSC investigations of deaths clearly indicate that factors completely unrelated to all-terrain vehicles caused the deaths. For example, at least two of the deaths were caused by discharge of weapons while the person was riding an ATV and a recent death was caused by the discharge of a crossbow. The death reports are replete with situations such as people being electrocuted while pushing an ATV, and people sit-

ting still on ATVs and being struck by other vehicles. Despite the fact that common sense would easily be able to eliminate some of these deaths, CPSC continues to aggregate these figures in an attempt to justify its investigation.

Our second concern about the CPSC injury data is that the method of estimating nationwide injuries is seriously flawed. For example, the small size of the hospital sample has led to inaccuracy in the estimates. Additionally, the hospitals used for the NEISS survey are not positioned in a manner that is reflective of ATV usage nationwide. Accordingly, the NEISS statistics, considering both the deficient sample size and poor placement, are not reflective of actual ATV injuries. This problem leads to an exaggeration that does not help in addressing the issue of ATV injuries and deaths.

For example, CPSC found that 30 percent of all fatal ATV accidents involved alcohol and helmets could have saved the lives of 25 percent of the people who died of head injuries. Twenty-five percent of the deaths occurred while operating ATVs on paved roads. These are the kinds of data analyses the CPSC has that point to solutions, rather than merely raw numbers, that are not even analyzed.

The above comments are in no way meant to represent that deaths and injuries are acceptable to American Honda. They are not. American Honda and the rest of the ATV industry will continue to work vigorously to do everything we can to reduce all deaths and injuries possible.

I am also providing a description of the various safety materials and programs that Honda has undertaken to promote ATV safety.

We are looking forward to working with you and the Committee in this and other areas.

Sincerely,

TONI HARRINGTON,
Manager, Government and Public Relations.

Enclosure[1]

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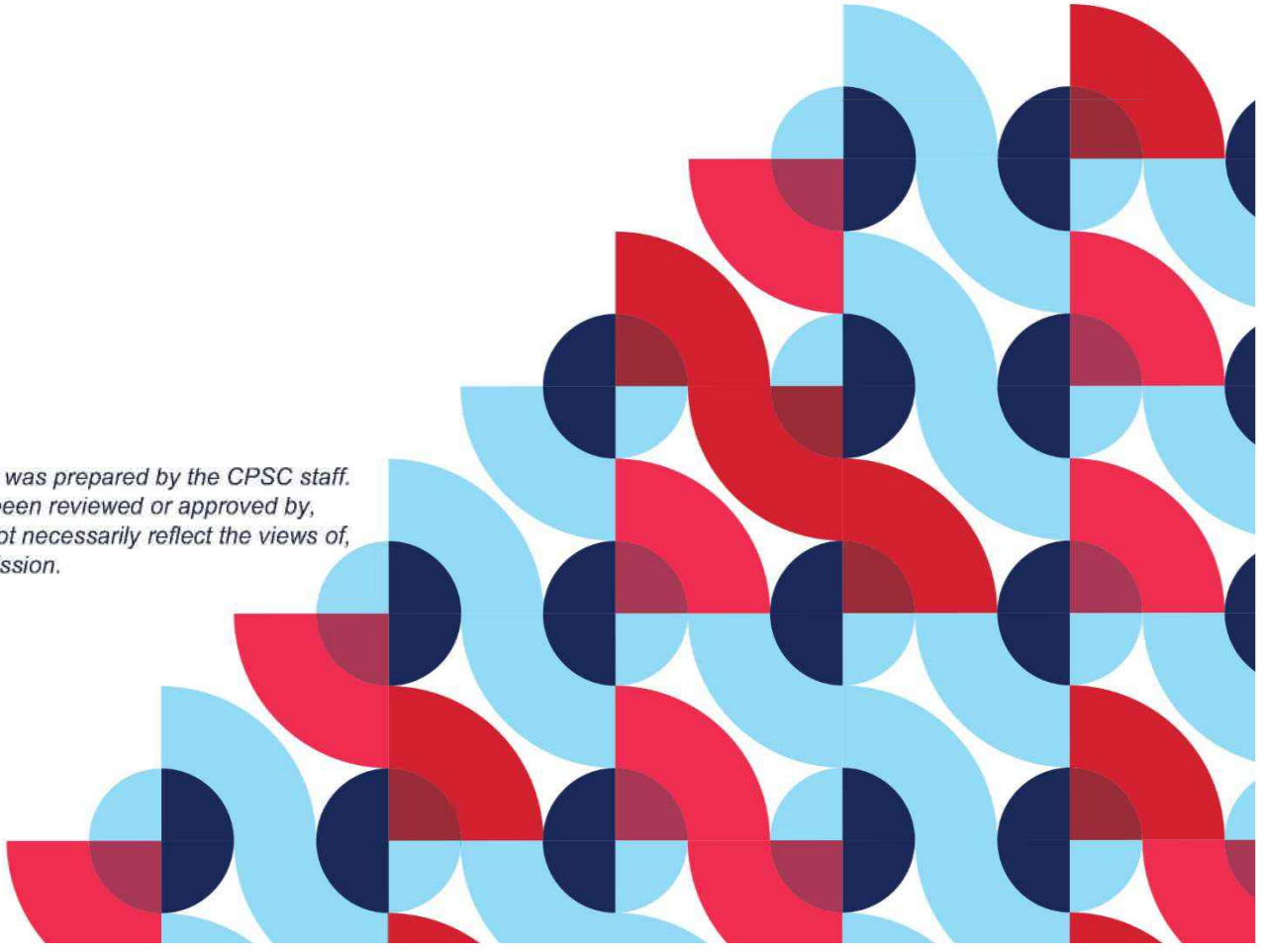
[1] The enclosures are in the Committee files.

Exhibit 125

United States
Consumer Product Safety Commission

Cost-Benefit Analysis of Continuing the Interim DINP Prohibition in the Final Rule: 16 CFR Part 1307 "Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates"

February 2022



This report was prepared by the CPSC staff. It has not been reviewed or approved by, and may not necessarily reflect the views of, the Commission.

I. Executive Summary

Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) established permanent and interim prohibitions on the sale of certain consumer products containing specific phthalates. The CPSIA also directed the U.S. Consumer Product Safety Commission (CPSC or Commission) to convene a Chronic Hazard Advisory Panel (CHAP) to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles, and to provide recommendations to the Commission regarding whether any phthalates or phthalate alternatives should be prohibited in addition to those already permanently prohibited. The CPSIA required the Commission to promulgate a final rule after receiving the final CHAP report.

The Commission published the final rule on October 27, 2017 (82 FR 49938) with an effective date of April 25, 2018. The final rule made the interim prohibition of diisononyl phthalate (DINP) permanent and expanded the scope of covered products to which the DINP prohibition applied, from children's toys that can be placed in a child's mouth and child care articles to *all* children's toys and child care articles. The final rule prohibits the manufacture and sale of any children's toys and child care articles that contain concentrations of more than 0.1 percent of DINP. The final rule also prohibits concentrations of more than 0.1 percent of diisobutyl phthalate (DIBP), di-n-pentyl phthalate (DPENP), di-n-hexyl phthalate (DHEXP), and dicyclohexyl phthalate (DCHP) in children's toys and child care articles, and ended the interim prohibitions on diisodecyl phthalate (DIDP) and di-n-octyl phthalate (DNOP). The preambles to the notice of proposed rulemaking (NPR) and final rule provide more detailed discussions of the CHAP report and CPSC staff's technical analysis and findings in support of the rule. (*See* NPR 79 FR 78324, December 30, 2014, and final rule 82 FR 49938, October 27, 2017, as amended at 83 FR 34764, July 23, 2018.)

In December 2017, the Texas Association of Manufacturers, and others, petitioned the U.S. Court of Appeals for the Fifth Circuit to review the CPSC's final phthalates rule (82 FR 49938)[1]. In March 2021, the court remanded the rule to the CPSC to reconsider its final rule, by addressing two procedural issues the court found. The appeals court held, among other things, that the final rule had failed to consider the costs of continuing Congress's interim prohibition on DINP and remanded the rule to the CPSC to consider the costs of continuing the interim DINP prohibition in the final rule to determine whether the rule is "reasonably necessary" to protect from harm[2]. This document provides CPSC staff's analysis of the costs and benefits of continuing the interim prohibition on DINP, to address the deficiency the court found.

The final rule made permanent an interim prohibition on DINP content that had been in place since 2009 for mouthable toys and child care articles, and expanded the scope from mouthable toys to all toys. (This document uses CPSIA's definition of a "toy that can be placed in a child's mouth" as the definition of a "mouthable toy.") Thus, the cost of the final rule as compared to the alternative of ending the interim prohibition on DINP in mouthable toys and child care

[1] Texas Association of Manufacturers, et al., v. U.S. Consumer Product Safety Commission, 989 F.3d 368 (5th Cir. 2021)).

[2] CPSC's response to the other procedural issue found by the Court is included in the *Federal Register* notice seeking comment on this document.

articles is the cost of testing those products to demonstrate compliance, and the cost of any necessary reformulation to comply with the regulated level of DINP. CPSC staff estimates the total cost for DINP testing of products subject to the final rule is no more than $934,000 annually to the entire U.S. toy and child care products industry as a whole, including both importers and manufacturers, plus an unknown small cost for replacing DINP with other plasticizers. The cost for related businesses, such as toy stores and general retailers, was zero because items had already been subject to the interim prohibition for almost 10 years. Therefore, retailers should not have had any mouthable toys or child care articles with prohibited DINP content in stock by the time the final rule became effective. The cost impact on related U.S. businesses, such as U.S. chemical manufacturers, was minimal, because most toys and child care articles sold in the United States were imported when the CPSIA passed, and also when the Commission promulgated the final rule. Toys were, and still are, a very small portion of the market for DINP worldwide, and the rule thus had no observable impact on the price of DINP. Finally, because the U.S. regulations were consistent with existing regulations on DINP in many other countries, consumer product suppliers to the world market had already phased out DINP in children's products intended for the North American and European markets, as well as smaller markets with similar regulatory restrictions.

Congress directed the Commission to determine whether to continue the interim prohibition as necessary "to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety," and to extend the prohibition as "necessary to protect the health of children." 15 U.S.C. § 2057c(b)(3). After reviewing relevant studies, the CHAP found that certain phthalates including DINP (which the CHAP called active or anti-androgenic) cause adverse effects on the developing male reproductive tract. The CHAP focused on testicular dysgenesis syndrome (TDS) as the toxicity endpoint for phthalate exposure, which results in poor semen quality, reduced fertility, testicular cancer, cryptorchidism (undescended testes), and hypospadias (a type of male genital deformity). The essential benefit of this final rule is avoiding the costs to individuals and society of male reproductive harm caused by exposure to phthalates in children's toys and child care items. Staff analysis in this cost-benefit analysis (CBA) based on peer- reviewed literature estimates the direct, indirect, and quality of life costs per case of TDS to be between $92,000 and $300,000. Estimates from peer-reviewed literature of the total cost to society of harm from endocrine-disrupting chemicals, including phthalates, range from tens of millions to hundreds of billions of dollars per year, as discussed in detail in the Benefits section of this document. CPSC staff estimates that if the final rule prevents just 4 to 10 cases of TDS per year, which would represent less than 0.1 percent of TDS cases annually in the U.S., then the lowest estimate of benefits would outweigh the highest estimate of costs. In fact, the actual benefits of this rule associated with direct reduction of TDS are likely far greater than this "break-even" threshold. The rule also benefits the public by reducing additional health impacts where DINP exposure would contribute to cumulative harm from multiple endocrine-disrupting chemicals.

II. Market for DINP

a. DINP in Mouthable Children's Toys and Child Care Articles

DINP is an ingredient used to make plastic soft and flexible. It is one of many competing phthalate and non-phthalate[3] chemicals and chemical mixtures known as plasticizers. It is used in a variety of consumer and industrial products, particularly products made with polyvinyl chloride (PVC), including construction materials, electrical cords, vinyl flooring, automotive interiors and undercoating, tubing, food packaging, gloves, shoe soles, raincoats, and hoses. It can also be used in inks, adhesives, sealants, paints, pool liners, wall coverings, coated fabrics, and soft plastic dip coatings, such as the soft handle grips on metal hand tools. DINP was the most commonly used phthalate in flexible plastic toys in 2007, just before Congress passed the CPSIA [4].

Section 108(g)((2)(B) of the CPSIA defines the phrase "toy that can be placed in a child's mouth" as follows: ". . . a toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth." This document uses the CPSIA's definition of "toy that can be placed in a child's mouth" as the definition of a "mouthable toy." The CPSIA also defined a "child care article" as a "consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething."

Child care product suppliers voluntarily removed DINP from teethers, bottle nipples, and pacifiers from the U.S. market beginning in 1999. By 2007, Canada and Europe had similar voluntary removals from the market of children's products containing phthalates or mandatory prohibitions on phthalates in items small enough to be mouthed. Although phthalates were commonly used in mouthable soft plastic toys before passage of the CPSIA, toy manufacturing was not a major market sector for DINP, or any other plasticizer in the United States. Most toys sold in the United States in 2008, when Congress passed the CPSIA, were imported.[5] When the Commission promulgated the final rule in 2017, most toys sold in the U.S. market (more than 92 percent by dollar value) were imported, primarily from China.[6]

Mouthable children's toys and child care articles were not previously, and are not currently, a major market sector for DINP, or for other plasticizers, in the United States or in the world market. In 2010, CPSC staff estimated that children's toys and child care articles were less than 1 percent of the total market for DINP, based in part on information provided by U.S. DINP manufacturers.[7] This is consistent with more recent information from parties to a U.S.

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[3] The term "phthalate" is commonly used to refer to ortho-phthalates, including DINP. Consumer products marketed as "phthalate free" typically do not contain phthalate esters but may contain terephthalates such as DOTP.

[4] Phthalate Esters Panel of the American Chemistry Council website from August 2007, via internet archive (Phthalates Information Center -- Phthalates and Your Health -- Children's Toys (archive.org)

[5] U.S. Department of Commerce, International Trade Administration, Global Patterns of U.S. Merchandise Trade, NAICS code 33993, Dolls, Toys, and Games, shows imports of more than $22.8 billion in 2008, of which $20.7 billion were from China.

[6] U.S. Department of Commerce data, same NAICS code, shows imports of more than $20.1 billion in 2017, of which $17.7 billion were from China.

[7] https://cpsc.gov/s3fs-public/ToxicityReviewOfDINP.pdf, pages 16 and 100 of the PDF file.

International Trade Commission investigation (ITC, 2017) of dioctyl terephthalate (DOTP) imports from South Korea. DOTP is a terephthalate plasticizer that is commonly used as a functional alternative to DINP. One of the parties characterized the toy manufacturing share of the DOTP market as "single digit on the low end." Multiple private sector analyses of the global DINP market, as well as U.S. chemical industry market information provided to EPA in the recent request for a review of DINP's status under the Toxic Substances Control Act, consistently list construction materials, electrical cords, vinyl flooring, automotive interiors and undercoating, tubing, and food packaging as the major uses. Data from 2015 reported to EPA by manufacturers and importers of DINP show that only two of 28 U.S. suppliers of DINP used it in children's products that were not covered by the CPSIA prohibition.

The market for DINP is mostly affected by the prices of raw inputs, and production and demand in Asia, rather than the demand for toys and child care articles in the United States. Manufacturers' contract prices for plasticizers are often indexed to the prices of the raw inputs. Declines in the prices for raw inputs from 2014 to 2016 coincided with the decline of U.S. prices for DOTP, DINP, and other plasticizers during the same period. In 2017, the U.S. ITC determined that the U.S. chemicals industry had been materially injured by imports from South Korea of DOTP, a competing substitute for DINP, which had been sold at less than fair value in the immediately prior years (ITC, 2017). These two factors of declining input prices and underpriced functional substitutes materially impacted the entire U.S. market for plasticizers. Comparatively, the interim ban on DINP in mouthable children's toys and child care articles applied to items that represented less than 1 percent of the world market for DINP. CPSC staff analysis finds that the continuation of the ban on DINP in mouthable children's toys and child care articles in the United States did not have a significant impact on price or on quantity produced, because the DINP market is largely affected by worldwide supply and demand for other uses, particularly construction, wiring, and automotive. Staff found no evidence that DINP prices or production were impacted by the CPSIA interim prohibition, or by the final rule. CPSC staff concludes that continuation of the final rule would not have a significant impact on prices or on quantity produced.

Other plasticizers in toys and child care articles that are not prohibited by CPSC's final rule are available to provide a similar functionality to DINP, at a comparable price. There are also multiple plastics available that do not use a plasticizer, some of which are exempted from phthalate testing by CPSC's rule 16 CFR part 1308 "Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates: Determinations Regarding Certain Plastics." There are many plastics other than PVC available for toy manufacturing. The non-PVC plastics commonly used in in toys include ABS, polystyrene, polypropylene, polyethylene, polyester, and silicone. Toy manufacturers thus have many cost-effective functional alternatives to PVC that provide utility like a PVC with DINP. In addition, some of these plastics do not require third party testing for phthalates, thereby reducing testing costs for manufacturers. Therefore, there is no evidence that the initial interim prohibition on DINP caused any significant loss of utility for mouthable toy and child care article manufacturers, or that the continuation of that prohibition in the final rule reduced utility for those manufacturers.

The price of DINP is now, and has been in the past, highly correlated with its raw inputs and the prices of competing phthalates and non-phthalate functional substitutes. In recent years, prices

for DINP, di-(2-ethylhexyl) phthalate (DEHP), and DOTP typically have been within 5 percent to 10 percent of each other, subject to temporary shipping and production issues for each plasticizer in various countries, and the specific terms of any individual contract. At times, DINP has been *more* expensive than the functional alternatives that provide similar utility for similar quantities. In the U.S. ITC case, all 19 respondents providing pricing information indicated that they used contracts or transaction-by-transaction negotiations; none reported using a set price list. As noted in the general market analysis below, Asia dominates the world market in both production and consumption of plasticizers, so the U.S. price is strongly influenced by both supply and demand issues outside the United States. Parties to the U.S. ITC dispute did not agree on whether DOTP prices were higher than DINP prices, or vice versa, during 2014-2016, although they generally agreed both prices were declining. In the decade between passage of the CPSIA and promulgation of the final rule, DINP production worldwide increased as DINP replaced DEHP in some applications. In the past several years, DINP has been replaced in some applications in the United States with a terephthalate substitute, often DOTP. In summary, the prohibition on DINP content in mouthable toys and child care articles did not impact the general market for plasticizers in the United States. It is extremely unlikely, given the number of functional substitutes available at comparable prices, and that the constant dollar price of children's toys in the United States has fallen in the past decade, that the prohibition on DINP caused increases, to any quantifiable extent, in materials costs for the mouthable children's toy and child care articles industry.

b. Market Factors – Additional General Background on Market for DINP and Plasticizers

CPSC staff research found that the market for DINP and other plasticizers is dominated by factors other than the mouthable children's toy and child care article market in the United States.

As noted, DINP is used in a variety of consumer and industrial products, particularly products made with polyvinyl chloride (PVC), including construction materials, electrical cords, vinyl flooring, automotive interiors and undercoating, tubing, food packaging, gloves, shoe soles, raincoats, and hoses. Other ortho-phthalates, terephthalates, and non-phthalate substitutes can also be used for these purposes; DINP is a commodity input material.[8] The suitability of DINP, compared to other plasticizers, depends on the specific requirements of a particular application, such as durability or exposure to high temperatures, as well as cost. Global production of all plasticizers is estimated at more than 9 million metric tons annually, with phthalates accounting for more than half of that production, and DINP accounting for about 1.7 million metric tons. Asia, particularly China, accounts for about two-thirds of world production and consumption of plasticizers, while the U.S. accounts for less than 10 percent. According to the EPA Chemical Data Reporting tool, DINP consumption in the United States was roughly stable from 2011 to 2015, at between 200 and 500 million pounds of DINP imported or manufactured per year. This range is consistent with independent private sector estimates of U.S. consumption of DINP. U.S. DINP consumption grew at a steady, but modest rate, from 2008 to 2018, at roughly 2 percent per year.

[8] As discussed in more detail later in this document, the CHAP analyzed the impacts of multiple common phthalate and non-phthalate substitutes. The CHAP did not find evidence that any of the non-phthalate substitutes had anti-androgenic health effects that would justify including them in the cumulative risk assessment or in the prohibition on use in mouthable children's toys and child care articles.

Exact prices for plasticizers depend on the specifics of an individual contract or individual transaction negotiations between buyers and sellers, including exchange rate adjustments, shipping costs, order size, forward pricing, and indexing, among other factors. Asia dominates the market in both production and consumption of plasticizers, so the U.S. price is influenced by demand and supply issues outside the United States. When the final rule was published in 2017, U.S. prices for DINP, DOTP, and several competing non-prohibited plasticizers ranged from about $1,700 to $2,000 per metric ton, subject to freight costs and the terms of any specific contract. Before COVID-related supply chain issues impacted prices in 2020 to 2021, phthalate prices, in general, had decreased slightly over the past 15 years, because production capacity worldwide has expanded and prices of raw materials have fallen. Demand growth for phthalates has been positive since the CPSIA passed, but slower than for non-phthalate plasticizers. Prices were unusually high and volatile in 2020 and 2021, due to COVID-19-related supply chain issues impacting demand and supply, which are slow to resolve.

Phthalates are still commonly used in many flexible plastic applications, including wire and cabling, hoses and other flexible piping, wall coverings, automotive interiors and undercoating, roofing, and other construction and industrial uses. DINP is often the phthalate of choice, based on price and performance, particularly for wiring and automotive uses. Demand for plasticizers depends upon demand in the construction, wiring, and automotive sectors, which are major market sectors for soft PVC, and thus, for plasticizers.

There have been voluntary shifts in uses of various plasticizers for economic reasons over the past 20 years, as manufacturers have chosen cheaper phthalates, plasticizers with different functional capacities, or phased out certain phthalates for products where consumers demand "phthalate free" products, independent of regulatory requirements. In 2010, before the NPR was published, a major flooring supplier announced that their products in the United States would be phthalate-free; other suppliers and major retailers followed their example. Thus, CPSC staff found no evidence that the final rule's restriction on DINP in mouthable toys and child care articles in 2017 discouraged the use of phthalates in consumer products in general, other than in toys or child care articles. DINP world production has continued to grow. The voluntary phase-out of phthalates in general (not DINP specifically) in consumer products other than toys began before the NPR published, and in many countries, not just in the United States.

Regulatory restrictions on phthalates in other countries, as discussed in more detail later in this document, generally only apply to toys and children's products. (As noted earlier, consumer products marketed as "phthalate free" typically do not contain phthalate esters but may contain terephthalates such as DOTP.) World consumption of phthalate plasticizers decreased from more than 85 percent of the world plasticizer market in 2008, to approximately 55 percent in 2020. The move to non-phthalate plasticizers began before the passage of the CPSIA and continued after promulgation of the final rule. CPSC staff found no evidence that continuing the interim prohibition on DINP in mouthable toys caused or accelerated this trend. In the 2017 US ITC DOTP investigation hearings, industry experts disagreed on the extent to which DINP and DOTP are functional substitutes. They also did not agree whether the regulatory status of DINP was an important factor in competition with DOTP, or whether the main deciding factor for plasticizer purchasers was price. They also disagreed if end users of DINP and DOTP

commonly switched between phthalate and non-phthalate plasticizers, or if once a switch was made away from phthalates in consumer products, that switch tended to be permanent.

In summary, the market for DINP in the United States is dominated by factors other than the continuation of the interim ban on DINP in mouthable toys, including, but not limited to, production and demand for plasticizers in Asia, prices of raw inputs, growth of the construction and automotive sectors, and the availability of suitable phthalate and non-phthalate functional substitutes. Pricing is subject to negotiated contracts that may include exchange rate adjustments, shipping costs, volume discounts, forward pricing, and indexing to raw materials prices. Regulatory restrictions in other countries are limited largely to toys and children's products, although consumer demand for "phthalate-free" products has led to voluntary substitution in some other consumer sectors. The availability of suitable substitutes is subject to supply and demand conditions in other countries for plasticizers and their raw materials, production capacities overseas, and freight shipping availability.

III. Regulation of DINP in U.S. and Foreign Countries

a. U.S. Regulation

In the United States, in addition to the CPSC regulation on DINP content in children's toys and child care articles, DINP is subject to regulation by EPA,[9] FDA,[10] and the U.S. Coast Guard.[11]

Many U.S. states also have regulations requiring additional warning labels or reporting for articles containing DINP and other phthalates, and some restrict phthalate content. California passed a law in 2007, before the enactment of the CPSIA or the promulgation of the final rule, banning the manufacture, sale, and distribution of any toy or child care product that contained more than 0.1% of DEHP, dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP). California's law also banned content of more than 0.1% of DINP, diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP) in toys and child care articles, if that product can be placed in the child's mouth.

Some state regulations have a lower content threshold for reporting or labeling than the CPSC final rule, and in some cases, provide a wider scope. For example, Vermont's threshold for reporting of DINP content in children's products is 50 ppm, which is 0.005 percent, as compared to 0.1 percent in the CPSC final rule, and Vermont's regulation covers all children's articles, including apparel, cosmetics, jewelry, and car seats.[12] Oregon has reporting requirements similar to Vermont's for phthalate content in children's products above 50 ppm, and it has a new law going into effect in 2022 prohibiting such content. Maine has current reporting requirements for chemicals of concern in children's products and a new law going into effect in 2022 prohibiting

[9] The Toxic Substances Control Act (Pub. L. No. 94-469, 15 U.S.C. 53) requires manufacturers and importers to provide information to EPA every 4 years on certain chemicals they manufacture or import into the United States, including DINP.
[10] See 21 CFR section 178.3740 "Plasticizers in polymeric substances."
[11] See 46 CFR part 150 "Compatibility of Cargoes."
[12] https://www.healthvermont.gov/environment/children/chemicals-childrens-products.

phthalates in food packaging.[13] Washington state requires reporting of any DINP content, including below 100 ppm for individual phthalates if the total phthalate content is above 0.1 percent (1000 ppm), and prohibits the manufacturing or sale of children's products with a total phthalate content of more than 0.1 percent by weight.[14] California currently requires warning labels[15] on all products containing DINP, not just consumer or children's products, stating that the product may expose the consumer to a chemical that is known by the state of California to cause cancer.

b. Foreign Regulations

DINP is subject to regulatory restrictions in many other countries, primarily in toys and children's products. In the European Union (EU), DINP content is restricted to less than 0.1 percent in toys and child care articles that can be placed in the mouth. The threshold for the regulated amount in other countries is typically the same as in the CPSC regulation – 0.1 percent. However, the scope of prohibited products varies slightly between some countries. For example, in Canada, the prohibition applies to child care articles intended for children up to 4 years of age, and toys for children up to age 14, rather than 3 years and 12 years, respectively, in the CPSIA and in CPSC's final rule. But in general, the relative consistency in various countries' regulations creates economies of scale for toy and child care product manufacturers and suppliers that can manufacture and sell a product that is compliant with the phthalate content regulations for multiple countries.

Many prohibitions on phthalates in children's toys and child care articles in other countries were implemented before passage of the CPSIA. In the EU, DINP was temporarily banned from mouthable children's products in 1999, with a permanent prohibition beginning in 2005, while Brazil's regulatory prohibition on DINP and other phthalates in children's toys began in 2007. Japan prohibited DINP in toys intended to be mouthed beginning in 2002.

In summary, many other countries, and an increasing number of U.S. states, have regulatory restrictions on DINP content in children's products. The United States was neither the first, nor the most recent country to promulgate such restrictions. In the United States, California's regulation pre-dated the CPSIA. Although retailers and manufacturers have voluntarily removed phthalates in general (not specifically DINP) from other consumer products, the legal restrictions on DINP in consumer products in other countries are largely limited to children's products. The CPSC's final rule continuing the interim prohibition on DINP is consistent with phthalate regulations in other countries, allowing for economies of scale for suppliers of children's toys and child care articles to sell products to a world market. Given the economies of scale for products compliant with DINP regulatory restrictions in multiple countries, it would likely not be profitable for toy suppliers to the U.S. market to reintroduce DINP for toys manufactured in large volumes and sold worldwide, absent CPSC's final rule.

[13] https://www.maine.gov/dep/safechem/packaging/index.html, and https://www.maine.gov/dep/safechem/childrens-products/index.html.

[14] https://ecology.wa.gov/Regulations-Permits/Reporting-requirements/Reporting-for-Childrens-Safe-Products-Act/Chemicals-of-high-concern-to-children.

[15] https://www.p65warnings.ca.gov/fact-sheets/diisononyl-phthalate-dinp.

IV- Cost Analysis from Final Rule Briefing Package Relevant to this Cost-Benefit Analysis

CPSC staff's analysis in support of the final rule included a brief analysis of the cost impact of the rule to comply with the Regulatory Flexibility Act (RFA) (5 U.S.C. §605) certification that the rule would have no significant impact on a substantial number of small businesses. This section summarizes the portions of that analysis that are relevant to this CBA.

The Commission certified under the RFA that the final rule would not have a significant impact on a substantial number of small entities. The analysis to support that certification[16] assessed the impact of the final rule on small businesses. Benefits were not considered or analyzed as part of that certification. This CBA uses two findings from the RFA certification for the final rule. These findings are:

- The cost of reformulation to manufacturers would be minimal because many functional alternatives to DINP exist and DINP had already been phased out of many toys and child care articles; and
- The increase in costs for testing products is minimal because manufacturers would still have to test for certain other prohibited phthalates in the absence of the rule and the additional cost of testing for DINP in the final rule is not significant, given the typical bundled pricing for testing phthalates.

CPSC staff's analysis found that the additional cost of testing toys for DINP would be minimal because these products already required phthalate testing for the three phthalates Congress permanently prohibited under the CPSIA. CPSC staff estimated the additional cost of testing to be roughly 35 cents per test, reflecting mostly the additional cost of the chemical standards required for the tests. Testing laboratories generally offer phthalate testing as a bundled price of about $300 per test, with a range of $125 to $350, depending on volume discounts and where the tests are performed. The marginal cost of adding or subtracting one phthalate from the test bundle is minimal.

V. Cost Estimate of Continuing the Interim Prohibition on DINP as Compared to Ending the Interim Prohibition on DINP

This section considers the cost of continuing the interim prohibition on DINP, as compared to ending the interim prohibition on DINP. The total cost for compliance testing is estimated at no more than $934,000 annually to the entire U.S. toy industry, including manufacturers and importers. There is also a small, but unquantified, cost impact for switching to a different plasticizer, or to a plastic that does not require a plasticizer. Any such reformulation costs were a one-time cost that would largely not be borne by U.S. businesses, because most toys (more than 92 percent) are imported. In addition, CPSC staff found no evidence that reformulation or testing costs raised the retail prices of toys for consumers, or the availability of any particular type of toy. U.S. Bureau of Labor Statistics data show prices of toys in the United States have declined steadily in constant dollars, seasonally adjusted, since 1997.

[16] https://www.cpsc.gov/s3fs-public/Final Rule - Phthalates - September 13 2017.pdf, see Tab C "Impact on Small Business."

If the CPSC did not prohibit DINP content above 0.1 percent in mouthable children's toys and child care articles, suppliers would no longer be required to third party test for DINP content to comply with the CPSC final rule. However, suppliers would still be required to test for the presence of other prohibited phthalates, including the three CPSIA statutorily-prohibited phthalates. Since the cost of testing for phthalates is commonly bundled, CPSC staff expects the incremental cost reduction of removing DINP from the testing requirements will be small. In addition, state prohibitions and labeling laws would still apply, and any suppliers selling to the U.S. market would have to test for and limit DINP content to comply with those laws. Therefore, even if the interim DINP prohibition had ended, children's toy and child care article suppliers would likely have continued obligations to restrict DINP content to comply with state prohibitions and to sell to an international market.

a. Cost of Testing for Children's Toy and Child Care Article Suppliers

The relevant cost of compliance with the final rule, compared to ending the interim prohibition on DINP, is the cost of testing for DINP in mouthable toys and child care articles that are subject to the final rule. However, not all mouthable toys and child care articles are made of plastic or require testing for phthalates. Recent estimates (Aurisano, 2021) indicate that roughly 55 percent of toys sold contain some type of plastic. CPSC staff's analysis in 2010 found that only about 30 percent of sampled soft plastic toys and child care articles were made of PVC (Dreyfus, 2010). In addition, not all plastic toys or child care articles must be tested for phthalates. In February 2013, the Commission published a rule (codified at 16 CFR part 1199 "Children's Toys and Child Care Articles Containing Phthalates: Guidance on Inaccessible Component Parts"), clarifying that the permanent and interim restrictions on phthalate content specified in the CPSIA do not apply to component parts of toys or child care articles that are inaccessible to the child through normal and reasonably foreseeable use and abuse of the product. In 2017, the Commission promulgated a rule specifying plastics that are not required to be third party tested for phthalates. That regulation is codified at 16 CFR part 1308, "Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates: Determinations Regarding Certain Plastics." The exempted plastics are polyethylene (PE), polypropylene (PP), acrylonitrile butadiene styrene (ABS), general purpose polystyrene (GPPS), medium-impact polystyrene (MIPS), high-impact polystyrene (HIPS), and super high-impact polystyrene (SHIPS). The Commission determined that certain plastics would not contain the phthalates prohibited in concentrations above 0.1 percent content in children's toys and child care articles. Some of these plastics are particularly common in plastic toys; CPSC staff estimated in the Regulatory Flexibility Act (RFA) analysis for the determinations rule that polypropylene and high-density polyethylene are used in 38 percent and 25 percent, respectively, of injection-molded toys.

The potential cost of testing to demonstrate compliance with the phthalates final rule was substantially reduced by the rules that exempted inaccessible component parts and many plastics commonly used in toys from third party testing for phthalates. Additionally, any negative impacts on chemical companies selling plastics or plasticizers to toy manufacturers was likely mitigated by these two rules, which were promulgated in 2013 and 2017, which was after passage of the CPSIA, but before the phthalates final rule went into effect.

In 2017, when CPSC promulgated the final rule, the United States imported more than $20.1 billion dolls, toys, and games, according to U.S. Census data. According to U.S. Census data,

U.S. manufacturing in the relevant NAICS[17] category in 2017, was $1.6 billion, which means imports represented 92.6 percent of the total $21.7 billion market. Using Toy Association data, the average toy cost about $10 in 2017.[18] That would represent about 2.17 billion units. Assuming that about 55 percent of toys sold contain plastic (Aurisano, 2021), and about 25 percent of those are made of an exempt plastic (from the RFA analysis for the 2017 exempt plastics rule cited earlier), then roughly 41 percent of toys sold would need to be tested for phthalates, and specifically for DINP. If 41 percent of 2.17 billion units require reformulation and additional testing to comply with this rule, that is about 890 million toys per year. Assuming each model of toy sells 1,000 units,[19] that is 890,000 models to test. At 35 cents per test,[20] and 3 samples per model, the annual cost for DINP testing to the entire U.S. toy industry could be as high as $934,500. It is likely much lower, as CPSC staff analysis (Dreyfus, 2010) found that only about 30 percent of soft plastic toys were made of PVC. Also, as noted in this document, and as explained in more detail in the final rule briefing package, phthalate testing services are normally sold in a bundle of tests for various regulated phthalates, costing about $300 for the bundle. If only the DINP interim prohibition were ended, while the prohibitions on other phthalates specified in the CPSIA were continued, the annual compliance testing cost for the entire U.S. toy industry might decline much less than $934,000, if at all.

It is difficult to estimate the number of child care article suppliers impacted by the continuation of the interim ban on DINP in mouthable toys and child care articles, as consumer products "to facilitate sleep or the feeding of children age 3 and younger" might fit into a number of different NAICS categories, and are often sold by the same suppliers that sell toys. Many of these items are not made of soft plastic, but rather, are made of hard plastic, wood, fabric, or metal. Child care articles are similarly subject to the materials determinations rule for certain types of plastics, and the rule exempting inaccessible component parts. In addition, many of these items are manufactured in accordance with product-specific voluntary or mandatory standards that specifically include limits on phthalate content in accessible components. As with toys, most of these items are imported. It is unlikely that the compliance testing burden from child care articles intended for use by children age 3 or younger would add significantly to the estimated total cost of the continuation of the interim ban on DINP in mouthable toys and child care articles.

b. Cost of Reformulation for Toy Suppliers

Reformulation was a one-time cost incurred at the time of the CPSIA (and in response to restrictions in other countries), that was largely not borne directly by U.S. businesses because most toys (more than 92 percent) are imported. The cost of reformulation to use a different plasticizer than DINP was likely minimal. CPSC staff cannot estimate the precise cost with the

[17] NAICS is the system used by federal statistical agencies to classify business establishments to collect, analyze, and publish statistical data. For more information, see: https://www.census.gov/naics/.

[18] https://www.toyassociation.org/PressRoom2/News/2017_News/toy-industry-economic-impact-in-the-us-reaches-107-5-billion.aspx.

[19] In the absence of specific data, CPSC staff made a conservative assumption of 1,000 units per toy model to avoid underestimating the cost of the DINP prohibition in mouthable toys and child care articles, particularly to smaller businesses. Economies of scale and volume discounts listed on toy supplier wholesale sites suggest the average number of units per model may be much greater, which would tend to reduce the total testing cost to the industry as a whole.

[20] The cost of testing is from the analysis done to support the RFA certification in the final rule.

available information, although given that the plasticizer market is highly competitive, the incremental cost of substituting another plasticizer would have been minimal.

There is some evidence that DINP is still a cost-effective plasticizer for use in mouthable children's toys and child care articles, based on its continued use in other countries, and on CPSC import surveillance. In countries that do not prohibit phthalates in children's toys, or limit the scope of the prohibition, DEHP or DIDP, rather than DINP, is often the most common phthalate used in children's toys. However, DINP is often the second- or third-most common phthalate used in mouthable toys, which suggests it is a cost-effective material in children's toys and child care articles, where allowed, but other plasticizers are used in those places as well. For example, researchers in New Zealand found that 28.6 percent of sampled toys contained DINP above 0.1 percent, and 40.8 percent had concentrations of above 0.1 percent of DIDP (Ashworth, 2018). Researchers in India found DEHP in 96 percent of sampled toys, and DINP and DIDP in 42 percent of toys (Johnson, 2011). DINP and other phthalates are still commonly used in larger toys sold in foreign markets that have a prohibition on phthalates only in mouthable toys. For example, in 2012, researchers in Japan, where phthalates have been prohibited in mouthable toys since 2002, found functional levels of DEHP in 42 percent and DINP in 25 percent of sampled "non-designated" toys, such as large balls and inflatable beach toys. (Abe, 2012). As Table 1 illustrates, CPSC regulators continue to intercept more than a hundred imported toys a year with phthalates that exceed regulated levels. European regulators similarly continue to intercept hundreds of imported toys each year with phthalates that exceed regulated levels in the European Union.

Table 1: Number of Samples with Phthalate Violations Intercepted by CPSC

FY 2017	FY 2018	FY 2019
108	98	113

U.S. states that have reporting requirements for DINP in children's products at a lower concentration level than the prohibition in the final rule have hundreds of reported items listed in their state registries. Thus, although it cannot be quantified with the available information, the evidence suggests that DINP can be a less costly plasticizer option than the non-prohibited substitutes because it is still being used in toy manufacturing outside the United States. Thus, although the one-time impact to children's product manufacturers of reformulation has been minimal on a per-item basis, it may not have been zero for foreign manufacturers selling to U.S. importers.

c. Costs to Large, Foreign and Peripherally Related Businesses

The scope of the CPSC staff economic analysis for the final rule was the analysis required by the RFA to support the certification that the rule would not have a significant impact on a substantial number of small U.S. entities. The economic analysis supporting the final rule did not consider cost impacts on large businesses, foreign businesses, or businesses of any size not directly involved in manufacturing or importing mouthable toys or child care articles. CPSC staff analysis finds the cost impact from the continuation of the interim prohibition on DINP in mouthable toys and child care articles to foreign, large, or peripherally involved businesses, such as chemical manufacturers and toy retailers, to be minimal.

Large and foreign toy and child care articles businesses faced the same or lesser impact as small businesses in this sector—few items need to be reformulated, and any testing cost increases would have been minimal. Due to economies of scale, larger toy and child care article suppliers typically have a lower cost per model for third party testing costs because they sell more units per model and can sometimes use component part testing to spread the testing costs across multiple models. DINP was typically an insignificant cost of production for toy manufacturers as a percentage of the retail price of the toy, and the incremental cost of replacing DINP with a different plasticizer should not have substantially raised input costs, if costs increased at all. Switching from one plasticizer to another, or to a material that did not require a plasticizer, should not have required new capital or equipment expenses for toy manufacturers. The CPSC materials determinations rule for plastics (16 CFR Part 1308 "Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates: Determinations Regarding Certain Plastics") does not require phthalates testing for certain plastics that are commonly used in injection-molded plastic toys. Toy suppliers had already begun voluntarily to phase-out PVC from soft plastic toys before the NPR was published—CPSC staff analysis in 2010 found that only about 30 percent of soft plastic toys and child care articles tested were made of PVC (Dreyfus, 2010). By the time the final rule was published, due to the interim prohibition, DINP had not been allowed in mouthable toys and child care articles sold in the United States for nearly 10 years, so retailers would not have had any stock to sell down. Thus, the impact to retailers was zero for the continuation of the prohibition on DINP in mouthable toys and child care articles

Because of the interim prohibition, manufacturers of DINP had not been selling large volumes of DINP to manufacturers of children's toys and child care articles, either in the United States or to manufacturers in other countries making items for export to the United States. Although the shift by mouthable toy and child care article manufacturers from DINP to other phthalates or non-phthalate plasticizers may have shifted plasticizer market share among large chemical suppliers, these shifts would have been very small because toys and child care articles were a very small share of end use for DINP, compared to other uses (*e.g.*, wiring insulation, construction, and automotive uses). When CPSC's proposed rule published, DINP was competing with imported DOTP from South Korea that was being sold in the United States at less than fair market value, as determined by the U.S. International Trade Commission (ITC, 2017). If the DINP prohibition had been lifted, manufacturers of DINP could have witnessed increased sales of DINP to toy manufacturers, but toy manufacturing likely would have remained a tiny share of the total plasticizer market, particularly in the United States. Also, because the CPSC continuation of the interim ban on DINP in mouthable toys and child care articles was consistent with existing regulations in many other countries, consumer product suppliers to the world market had already phased out DINP in children's products intended for the Canadian and European markets, as well as to smaller markets with similar regulatory restrictions.

d. Cost of Continuing the Interim Prohibition on DINP for Consumers

Although the prohibition of DINP may have slightly increased the cost of manufacturing children's toys and child care articles, there is no evidence of such impact on the retail prices or availability of children's toys or child care articles. The price differential between DINP and alternative plasticizers that provide similar functionality with similar quantities is typically a few

hundred dollars per metric ton (thus, a few cents per pound of plasticizer), often less than $100. Moreover, the cost of any plasticizer would be a small fraction of the retail price of a toy, even in a toy like a novelty pencil eraser or a squishy bath toy, where the plasticizer might be more than 40 percent of the item by weight. Even for those toys, the *incremental* cost of using a more expensive plasticizer, rather than DINP, would be only a few cents per item, often less than 1 cent per item. A review of toy prices provides no evidence that the prohibition on DINP increased the retail prices of toys. U.S. Bureau of Labor Statistics data show prices of toys in the United States have declined steadily in constant dollars, seasonally adjusted, since 1997. In addition, the overall U.S. market for traditional toys (*i.e.*, not video games) declined slightly in constant dollar terms between 2007 and 2017. Overall, both prices and demand for the traditional types of toys, where soft plastic could represent a significant portion of the retail price or manufacturing cost, fell. There is also no evidence that soft plastic toys, such as bathing toys or action figures, were removed from the market due to the costs of testing or product reformulation. Such items are still widely available from a wide variety of suppliers. This does not mean that prohibition of DINP had no impact on the prices or supplies of children's toys or child care articles, but rather, that the impact was minor, both in absolute terms and compared to other impacts on the market.

e. Summary of Costs for Continuing the Interim Prohibition on DINP Compared to Ending the Interim Prohibition on DINP

The cost of the DINP prohibition to manufacturers of mouthable toy and child care articles is the difference between the costs they incur with the interim prohibition made permanent, and what their costs would have been if the interim prohibition on DINP were lifted. There is evidence that the manufacturing costs with the interim DINP prohibition in effect may be slightly higher for some items than they would be in the absence of a prohibition. However, CPSC staff research found no evidence that either testing or reformulation costs have impacted the prices or availability of mouthable toys and child care articles. The cost of reformulation was likely minimal, based on the similar cost of competing plasticizers, and the need for similar formulations to sell to other international markets. Competing plasticizers with similar functionality were and are readily available at a similar price, thus, ensuring that minimal utility was lost by mouthable toy manufacturers from continuing the interim prohibition on DINP. As for testing costs, the final rule required products to be tested for other permanently prohibited phthalates, and the additional testing costs per unit for DINP were minimal, about 35 cents per test, as part of a testing bundle for other phthalates, which is typically around $300. The total cost for DINP testing of products subject to the final rule would be no more than $934,000 annually to the entire U.S. toy industry as a whole, including both importers and manufacturers.

The direct impact on related businesses, such as toy stores and general retailers, was zero because items had already been subject to the interim prohibition for almost 10 years and non-phthalate substitutes for the prohibited substances are available to enable the production of commercially marketable toys. Therefore, retailers should not have had any mouthable toys or child care articles with prohibited DINP content in stock. The direct impact on related U.S. businesses, such as U.S. chemical manufacturers, was minimal, because most toys and child care articles sold in the United States were imported, when the CPSIA passed, and when the Commission promulgated the final rule. Finally, because the U.S. regulations were consistent with existing regulations on DINP in many other countries, consumer product suppliers to the

world market had already phased out DINP in children's products intended for the North American and European markets, as well as smaller markets with similar regulatory restrictions.

VI. Benefits of Continuing the Interim Prohibition on DINP

The intended outcome of the final rule regarding the interim prohibition on DINP, as mandated by the CPSIA, was the assurance of a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety. Section 108 of the CPSIA did not require CPSC to find that the benefits of the rule exceeded the costs, but rather, that the rule was needed to "ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety."

The chief benefit of continuing the interim prohibition on DINP is avoiding the costs to individuals and society of cases of testicular dysgenesis syndrome (TDS) caused by exposure to phthalates in mouthable children's toys and child care articles. This benefits section discusses in detail the costs per case and the costs to society, of TDS caused by phthalates, including DINP. The beneficial impact of continuing the interim prohibition on DINP that is addressed here is specifically the reduced harm from the reduced exposure to DINP in mouthable children's toys and child care articles.

Given the prevalence of mouthable children's toys with DINP content above 0.1 percent available in foreign markets, and the number of items intercepted by CPSC import surveillance each year, it is likely that if the final rule had lifted the prohibition on DINP, the exposure to DINP from mouthable children's toys and child care articles in the United States would increase, and the benefits, compared to continuing the interim ban, would be reduced. The Commission determined that lifting the interim prohibition on DINP would not "ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety." Although the exact benefits of continuing the prohibition on DINP cannot be quantified, CPSC staff estimates that the benefits exceed the estimated costs if 4 to 10 cases of TDS per year would be prevented by continuing the interim ban on DINP in mouthable toys and child care articles, which would represent far less than 0.1 percent of TDS cases. However, as discussed below, staff estimates that the likely number TDS cases actually prevented by continuation of the DINP ban is substantially higher than this.

The CHAP did not estimate etiological causality rates for TDS attributable to phthalate exposure, nor did CPSC staff in the briefing package for the final rule make such an estimate. Similarly, neither the CHAP nor subsequent staff analysis of NHANES data estimated how many women of reproductive age in the U.S. as a whole had a hazard index above 1.0. Thus, staff cannot estimate precisely how many cases are prevented by the rule. In the peer-reviewed literature discussed in more detail below, the lowest fraction of TDS cases attributed to exposure to endocrine-disrupting chemicals, including DINP, is 2 percent, with estimates as high as 40 percent. Based on the CHAP's exposure assessment, up to 29 percent of infants' potential DINP exposure is from toys and child care articles. Thus, the recommended prohibition on DINP

would address up to 29 percent of infants' exposure to anti-androgenic phthalates[21], which represent a major category of endocrine-disrupting chemicals (Attina et al. 2016).

Two percent of TDS cases in the U.S. would represent hundreds of cases per year for cryptorchidism, hypospadias, and testicular cancer together. The number of infertility cases from specifically poor semen quality is more difficult to estimate, but would add to the total. Forty percent of TDS cases in the U.S. would represent more than 15,000 cases per year for cryptorchidism, hypospadias, and testicular cancer. Thus, the "break-even" threshold of this rule preventing 4 to 10 cases per year is a small fraction of the estimates in peer-reviewed literature of TDS cases attributable to endocrine-disrupting chemicals. Staff believes the prohibition of DINP is likely to prevent far more than 4 to 10 cases per year and that benefits of this rule likely exceed the costs by an order of magnitude.

a. Background to Benefits Estimates

The CHAP focused on TDS as the toxicity endpoint for phthalate exposure, which results in poor semen quality, reduced fertility, testicular cancer, cryptorchidism (undescended testes), and hypospadias (a type of male genital deformity). The CHAP did consider other toxicity endpoints for phthalate exposure, including other types of cancers, ADHD, and longer-term mortality impacts. However, the CHAP's recommendation for the permanent prohibition on DINP, and the justification for the final rule, was based on the adverse effects of DINP on male reproductive development. Given the strong evidence from peer-reviewed literature linking TDS to phthalate exposure, the CHAP recommended making the interim prohibition on DINP permanent. The CHAP recommended that "the interim prohibition on the use of DINP in children's toys and child care articles at levels greater than 0.1 percent be made permanent. This recommendation is made because DINP does induce antiandrogenic effects in animals, although at levels below that for other active phthalates, and therefore can contribute to the cumulative risk from other antiandrogenic phthalates." The CHAP concluded that certain phthalates cause effects on the male reproductive system, and that these effects may occur from phthalate exposures at any life stage from the fetus through adulthood. The CHAP's conclusion is based primarily on studies in animals (CHAP 2014; pp. 13-14) and supported by epidemiological (human) studies (CHAP 2014, pp. 27-33, Appendix C). While adverse effects may occur at any life stage, the CHAP further concluded that the fetus is the most sensitive population, followed by neonates, children, and adults. Therefore, the CHAP derived toxicological values (potency estimates for anti-androgenicity) from animal studies involving prenatal exposures. The CHAP reasoned that a toxicological value that protects the most sensitive population (the fetus) will also protect infants, children, and other sensitive populations (CPSC 2017, TAB B, pp. 8-9 and 19). The practice of selecting the most protective endpoints and potency estimates is consistent with the statutory mandate to provide a reasonable certainty of no harm with an adequate margin of safety, and is also consistent with CPSC Chronic Hazard Guidelines (CPSC 2017, TAB B, p. 19).

The CHAP assessed exposure and risks for pregnant women (as a surrogate for the fetus) and infants, in part because these are the most sensitive populations, and also to satisfy the CPSIA's charge to "examine the likely levels of children's, pregnant women's, and others' exposure to

[21] In the CHAP, Table E1-21 "Sources of phthalate ester exposure (percent of total exposure) for infants" shows that for infants, 12.8 percent of total DINP exposure is from toys, and 16.5 percent is from child care articles, for the population mean exposure.

phthalates . . .” CPSIA §108 (b)(2)(B)(iii). (CHAP 2014, p. 12). Prohibiting toys and child care articles containing more than 0.1 percent of certain phthalates would not directly reduce risks to pregnant women and their fetuses (CPSC 2017, TAB B, p. 20). However, other sensitive groups (i.e., infants, toddlers, and children who are more likely to be exposed through contact with toys and child care articles) are also considered in the CHAP's analysis and recommendations. In addition, the CPSIA required the CHAP and the Commission to consider whether to prohibit toys and child care articles containing certain phthalates, not to prohibit products that directly affect pregnant women. CPSIA §108 (b)(2)(C).

The CHAP did not find that children's toys and child care articles were the main or only source of DINP exposure for infants, children, and women of reproductive age, but rather, that the estimated exposure was sufficient that the prohibition was needed to ensure a reasonable certainty of no harm, which was the threshold for regulation set by Congress in section 108 of the CPSIA. Based primarily on studies in animals, there is empirical evidence that male fetuses, infants, and children are more sensitive to the reproductive tract effects of phthalates than adults. Other recent studies have reinforced and added detail to the concerns expressed in the CHAP report regarding phthalates, specifically DINP, in children's toys and child care articles. A recent analysis of “chemicals of concern” in children's toys (Aurisano, 2021) estimated that the average child in Western countries receives 18.3 kilograms of plastic toys per year. Given that some households have more than one child, the potential exposure from plastic toys in some households would be higher for both children and adults. Pregnant women in families with more than one child would be exposed to plastic toys from the younger children, thus exposing the fetus of subsequent children to phthalates. While adults do not typically mouth toys, exposure to phthalates can occur from handling toys and child care articles, from subsequent hand to mouth transfer. Mouthable toys manufactured and sold before the final rule went into effect, which could contain prohibited phthalates above the currently permitted levels, may still be in use.

The CHAP analyzed human biomonitoring data and potency estimates for anti-androgenicity to estimate exposures and cumulative risk assessments. CPSC staff analysis of National Health and Nutrition Examination Study (NHANES) data sets published since the CHAP analysis in the CHAP report have found that the exposure to DINP for women of reproductive age (WORA) is now greater than exposure to DEHP, BBP, DBP, or DIDP. CPSC staff analyzed NHANES data sets subsequent to the CHAP report from 2007/2008, 2009/2010, and 2011/2012, using the methodology from the CHAP, and published the results. Data from 2013/14 were added after they became available. For the cumulative risk assessment, the CHAP and subsequent CPSC staff analysis used a Hazard Index (HI) approach, which is widely used in cumulative risk assessments of chemical mixtures. Individuals with HIs greater than 1.0, a level that indicates adverse impacts may be expected, were observed in every NHANES data cycle analyzed. The exposure to various phthalates shifted over time, as DEHP exposure decreased, while DINP became the predominant source of exposure to phthalates for women of reproductive age.

The TDS harm alone was sufficient to justify the permanent prohibition on DINP in the final rule. However, the CHAP, and this cost-benefit analysis, likely underestimate the benefits of continuing the interim ban on DINP in mouthable toys and child care articles, by not quantifying the impact of other negative health impacts of phthalate exposure from children's toys and child care articles, where the quantified extent of the impact was not as well documented at the time

the CHAP report was written. Recent peer-reviewed research (Engel, 2021) summarizes the current evidence of other toxic effects of phthalates on women of reproductive age, infants, and children. The CHAP, and this cost-benefit analysis, did not quantify the negative health impacts where the DINP exposure contributes to the cumulative harm from multiple endocrine-disrupting chemicals other than the specific phthalates analyzed by the CHAP. The CHAP did consider DINP's contribution to cumulative exposure from multiple phthalates analyzed by the CHAP.

The CHAP found that roughly 10 percent of pregnant women in the U.S. population have HI values that exceed 1.0, depending on which set of PEAAs (potency estimates for anti-androgenicity) was used. After publication of the NPR, CPSC staff analyzed NHANES data sets for WORA from 2007/08 through 2013/14. CPSC staff's analysis shows that the risk to WORA, as indicated by HI, has decreased since 2005/06, the data analyzed by the CHAP[22], but that there were individuals with an HI greater than 1.0 in every year of data. In the 2013/14 data, out of a sample of 538 WORA, for PEAA Case 1, three WORA had an HI greater than 1.0; for PEAA Case 2, nine WORA had an HI greater than 1.0; and for PEAA Case 3, two WORA had an HI greater than 1.0. In percentage terms, 99.5 percent of WORA in the 2013/14 sample had an HI less than or equal to 1.0 when considering PEAA Case 1 and 99.6 percent when considering Case 3. For PEAA Case 2, an estimated 98.85 percent of WORA had an HI less than or equal to 1.0 in the same cycle. Thus, between 0.4 percent and 1.2 percent of WORA had an HI of greater than 1.0, using the most recent data set, and there were WORA with an HI greater than 1.0 in every exposure scenario.

The CHAP did not estimate etiological causality rates for TDS attributable to phthalate exposure, nor did CPSC staff in the briefing package for the final rule make such an estimate. Given that between 0.4 percent and 1.2 percent of the individuals in the study sample of 538 women had an HI greater than 1.0 in the 2013/14 data set, hundreds of thousands of individuals each year in the United States could be impacted by phthalate exposure, and the impacts of fetal exposure can persist into adulthood. Exposure during childhood can also impact infertility. The beneficial impact of continuing the interim prohibition on DINP is specifically the reduced harm from the reduced exposure to DINP in mouthable children's toys and child care articles.

b. Benefits Analysis that Provides a Quantitative and Qualitative Estimate of Averted Costs

It is possible to estimate the cost per case of TDS, but as noted, neither the CHAP, nor CPSC staff analysis to support the final rule, estimated how many cases of TDS would be prevented or reduced in severity because of the final rule. This section provides a range of estimates of cost per case of TDS, and qualitative comparison to conditions with similar disease burden.

The costs for a nonfatal injury or disease, both to the individual and to society, include direct medical costs of treatment; indirect costs, such as lost productivity from missing work to recover from surgery, or to care for a child recovering from surgery; and quality of life or intangible losses. A recent study in the United States of endocrine-disrupting chemicals (Attina, 2016) estimated the direct and indirect cost of cryptorchidism at $8,300 per case, in 2010 dollars, testicular cancer at more than $22,000 per case, and male infertility at $10,400 per case, but the study did not provide an estimate for hypospadias. (Phthalates are one type of endocrine-

[22] Following sample collection, it takes years to perform chemical analyses and quality control checks before the data are published.

disrupting chemicals.) A recent study conducted in Nordic countries estimating the burden on society of TDS caused by endocrine-disrupting chemicals (Olsson, 2014) estimated the net present value (NPV) discounted direct and indirect costs of testicular cancer at 4,240 EUR per case, which would be about $5,100, using an exchange rate of $1.20 per EUR, cryptorchidism at EUR 5474 per case (approx. $6,600), hypospadias at 11,540 EUR per case (approx. $13,850), and male infertility at 3,480 EUR per case (approx. $4,175). These estimates reflect medical costs in the European Union; costs in the United States might be different or have more regional variation. U.S. Medicare estimates of the national average costs at a hospital outpatient center for "Repair of hypospadias complications (*i.e.*, fistula, stricture, diverticula); by closure, incision, or excision, simple: Code: 54340" total $3,656, including the patient's cost and Medicare's cost. A more complicated "Repair of hypospadias cripple requiring extensive dissection Code: 54352" has an estimated cost of $5,850. U.S. Department of Health and Human Services (HHS) data on hospitalization costs show a median cost of $8,647 in 2014 for in-patient treatment of hypospadias, and $9,578 for in-patient treatment of undescended testes. A recent study (Ward, 2020) estimates the direct cost to U.S. private insurers for hypospadias at $5,431 per case, which is comparable to Medicare's estimate. Another U.S. study from 2009 estimated the cost of repairing cryptorchidism at $7,500 to $10,298 per patient, depending on whether the correction was done in infancy or later in life (Hsieh, 2009). Thus, the approximate direct and indirect costs for treating TDS symptoms range from $3,650 to more than $22,000 per case, depending on severity and location of treatment (outpatient vs in-patient). However, the Attina study did not appear to discount costs of future disease burden that could be attributed to current exposures, such as the cost of treating testicular cancer that occurs decades after fetal exposure. The purpose of that study was to document current costs of harm from past and current exposure. Therefore, the partially undiscounted source (Attina, 2016) is not considered to be the top end of the range for this analysis, and the discounted net present direct and indirect medical costs are estimated at $3,650 to $13,850.

Intangible costs or qualitative disease burden are more complicated to estimate, but standard methodologies exist that are widely accepted. A standard metric used by the World Health Organization (WHO) and health researchers in many countries to estimate the societal burden of nonfatal diseases and injuries is DALYs, or Disability-Adjusted Life Years. A DALY represents the loss to society of the years of life lost to a disease or injury and the years lived with the disability. One DALY is equal to one lost year of healthy life. Estimating a DALY requires weighting the severity of the health outcome for the years lived with disability with a disability weight, ranging from 0, representing perfect health, to 1, representing a state of health near death. Using this measure allows researchers to compare the burden to society of different diseases, and compare the cost-effectiveness to society of different treatments, across time and across different countries, with different health care environments. The disability weights and Global Burden of Disease estimates (IMHE, 2019) initially were developed in the 1990s, as part of a large WHO-funded study, and they have been updated each decade to reflect recent data from researchers in more than 100 countries.

The Global Burden of Disease estimates (IMHE, 2019) provide disability weights for relatively common conditions that do not include the TDS symptoms. Other researchers have built on the Global Burden of Disease model and methodology to develop estimates of disease burden for less common diseases and chronic conditions. The disability weights for the congenital male

reproductive anomalies discussed in the CHAP are 0.07 for undescended testes, 0.2 for mild hypospadias, and 0.6 for severe hypospadias, based on a recent peer-reviewed study (Poenaru, 2017). The Poenaru study found that these weights were consistent between surgical professionals and community members, and between people in Kenya and Canada, illustrating the methodological robustness of DALY estimates in public health policy research. Another recent study (Jentink, 2012) assigned a disability weight of 0.8 to hypospadias; CPSC staff has used the lower estimate of 0.6 in this analysis. Conditions with comparable Global Burden of Disease disability weights from the most recent version are a moderate stroke or heart failure (0.07), profound developmental intellectual disability (0.2), or end-stage renal disorder on dialysis (0.6). The severity of comparable disability burden estimates reflects that while some outward symptoms of TDS can be addressed surgically in infancy, other anti-androgenic effects can persist into adulthood, particularly reduced fertility and increased risk of testicular cancers, even in the absence of continued phthalate exposure. CPSC staff did not find literature estimating the DALY for the TDS conditions, which would multiply the disability weight by the number of years in which the disability impacts the individual.

The chief benefit of continuing the interim prohibition on DINP is reducing the risk of harm, specifically male reproductive congenital symptoms and cancer risk caused by prenatal exposure to phthalates, including DINP, as well as infertility problems caused by both prenatal and childhood exposures. Each case of male reproductive congenital conditions has a disability weight of 0.07 to 0.6, as discussed earlier, reflecting lifetime impacts, such as increased risk of testicular cancer and reduced fertility, as well as the costs and intangible impacts of surgical treatment. A case of cryptorchidism that is treated successfully with surgery is reflected with the lower disability weight, comparable to a moderate stroke, while the higher disability weight for a severe case of hypospadias reflects longer term and more severe impacts, comparable to end-stage renal failure treated with dialysis. The disability for any individual case of hypospadias and cryptorchidism depends on the severity and response to treatment. Surgical treatments are not successful or require further surgery in many cases; and even with successful surgical treatment, these conditions can cause urologic and fertility disabilities later in life, as well as being correlated with an increased risk of male reproductive system cancers.

Many public health studies in the United States and European Union use QALYs (Quality Adjusted Life Years) to evaluate and compare health policies and treatments. The concept is similar to DALYs, with the numerical scale reversed, so that 1 is a state of perfect health, and 0 is a near-death state. In a recent study conducted in Nordic countries estimating the burden on society of TDS caused by endocrine-disrupting chemicals (Olsson, 2014), the QALY value losses for hypospadias and cryptorchidism were estimated at 0.4 and 0.42, respectively. This is consistent with the disability weights in Poenaru, given the reverse numerical scale for DALYs versus QALYs. The advantage of using DALYs or QALYS allows comparisons of conditions and treatments without monetizing costs of intangibles, such as pain, or loss of ability to have children. Monetized estimates of QALYS do exist, however. Using 2014 U.S. ranges of estimated values for QALYs (HHS RIA Guidance, 2016) and a 3 percent discount rate for future disabilities, the values for hypospadias and cryptorchidism would reflect a cost to society of approximately $92,000 to $300,000 per case (multiplying 0.4 times the estimated value per QALY of $230,000 to $750,000); the benefit of avoiding that disability would be the same. However, the HHS guidance for value-per-QALY assumes that the person is 40 years old, and

that the disability impacts them for the rest of their life. The monetized QALY value for a disability that requires pediatric surgery but may or may not have effects later in life, such as reduced fertility or testicular cancer, might be higher or lower. On one hand, the immediate impacts that require surgery in the first year of life should not be discounted, and thus, the value per QALY could be even higher; but the other impacts might occur later in a lifetime of 75+ years, and thus, should be discounted over more years.

In summary, using U.S. values for QALYs, the monetized impact of TDS on quality of life (the intangible costs) could be about $92,000 to $300,000 per case. The discounted direct and indirect costs of medical treatment and lost productivity would range from $3,650 to $13,850 per case. Using disability weights (IMHE, 2019, Poenaru, 2017), the qualitative severity of TDS would be comparable to a moderate stroke, or to end-stage renal failure treated with dialysis. The quantitative monetary value of this benefit at the national level cannot be estimated because CPSC staff is unable to estimate the percentage of WORA with an HI greater than 1.0 in the population of approximately 60 million WORA in the United States, nor predict the number of TDS cases that would result from that exposure.

Using the low end of the U.S. range value for QALYs of $92,000 per case, and adding in a rough estimate of discounted direct and indirect medical costs of $6,000 per case, the benefits of the continuation of the interim ban on DINP in mouthable toys and child care articles would exceed the upper range of estimated costs ($934,000) for testing if 10 cases of TDS disabilities per year were prevented by continuing the interim prohibition on DINP. Using the high end of the U.S. range value for QALYs of $300,000 per case of TDS, plus $6,000 for discounted direct and indirect costs, the benefits of continuing the interim prohibition on DINP would exceed the high end of the estimated cost range if 4 TDS cases per year were prevented.

The TDS diseases and symptoms are relatively common in the United States, so 4 to 10 cases per year would represent far fewer than 0.1 percent of such cases, which is lower by an order of magnitude or more than the etiological factor for endocrine-disrupting chemicals in any of the peer-reviewed literature discussed in the next section. For example, hypospadias occurs in approximately 1 in 200 male births, or about 10,000 cases per year in the United States.[23] Cryptorchidism cases that are severe enough to require medical treatment occur in about 1 percent of male births,[24] or about 19,000 cases per year in the United States. Testicular cancer is less common, occurring in about 0.4 percent of males during their lifetime, or about 9,500 cases per year.[25] Infertility is extremely common, impacting at least 10 percent of couples in the U.S., but any individual case may have multiple causal factors, so it is difficult to estimate the number of cases that are specifically due to low semen quality or other TDS disabilities. In about 8 percent of infertility cases, male infertility is the only identified cause.[26] The lowest estimate in the literature reviewed by CPSC staff of the etiological factor for endocrine disrupting chemicals on TDS was 2 percent, which would represent hundreds of cases per year in the United States. Based on the CHAP's exposure assessment, up to 29 percent of infants' potential DINP exposure is from toys and child care articles. Thus, the recommended continuation of the prohibition on

[23] https://www.cdc.gov/ncbddd/birthdefects/hypospadias.html.
[24] https://www.ncbi.nlm.nih.gov/books/NBK470270/.
[25] https://seer.cancer.gov/statfacts/html/testis.html.
[26] https://www.cdc.gov/reproductivehealth/infertility/index.htm.

DINP would address up to 29 percent of infants' exposure to anti-androgenic phthalates, which represent a major category of endocrine-disrupting chemicals.

c. – Range of Benefits (Costs Avoided) from Comprehensive Cost Effectiveness Analysis of Impact on Society

The CHAP analysis of data and interpretation of existing research only considered information available by the end of 2012. Since the NPR was published in 2014, various health economics studies, particularly in the EU, have estimated the total cost to society of exposure to endocrine-disrupting chemicals, and the corresponding economic benefits of reducing that exposure. A 2018 Organisation for Economic Co-Operation and Development (OECD) working paper on the socio-economic costs of phthalates (Holland, 2018) summarizes multiple relevant studies, most published since 2014. The estimated total costs to society, and equivalent benefits of averting such costs, range from hundreds of millions of EUR to billions of EUR per year. Studies in the United States are of similar magnitude in dollar terms. The large range reflects that different studies considered different chemicals and different impacts as toxicity endpoints. However, none of the available peer-reviewed studies specifically estimate the cost of TDS to society caused by exposure to DINP in mouthable children's toys and child care articles. The total benefit of reduced cases of TDS in the United States from continuing the interim prohibition of DINP in mouthable toys and child care articles would be some unknown, perhaps small, fraction of the estimates in these studies. This section discusses the ranges of those estimates, but CPSC staff cannot determine what fraction of the total societal impact of endocrine-disrupting disease burden would be prevented or reduced in severity by continuing the interim prohibition on DINP.

Perhaps the most narrowly focused, and thus, directly relevant of the recent studies was one conducted for the Nordic Council of Ministers (Olsson, 2014), analyzing specifically the cost of TDS to society from exposure to endocrine-disrupting chemicals, particularly phthalates. The Olsson study is relevant because it breaks out direct and indirect costs and provides a range of estimates using alternative assumptions about etiology (what portion of TDS cases are caused by exposure to endocrine-disrupting chemicals). It also discounts costs and benefits (net present value or NPV) to reflect the discounted future costs of treating TDS disabilities that do not occur until decades after exposure. While other U.S. and EU studies have considered the costs of multiple possible impacts of endocrine-disrupting chemicals, the Olsson study focused specifically on TDS. However, the Olsson study did not estimate the impact specifically from exposure to DINP in mouthable children's toys and child care articles.

The Olsson study considered direct, indirect, and intangible costs. The Olsson study provided different estimates of the total cost to EU society, based on the assumptions that 2 percent, 20 percent, or 40 percent of TDS cases were caused by endocrine-disrupting chemicals. Using the lowest 2 percent etiological estimate and prevalence of TDS disabilities in the (pre-Brexit) EU, the total cost to EU society would be about 59 million EUR annually. The EU population of 506 million in 2014 (pre-Brexit) was larger than the U.S. population of about 318 million in 2014, so a proportional impact number for the United States would be 37 million EUR annually. The middle etiologic estimate of 20 percent yielded a cost to the European Union of 592 million EUR, equivalent to 370 million EUR for a population the size of the United States. These are discounted estimates, reflecting the NPV of costs between exposure and incidence of disability.

Undiscounted costs would be more than twice as high, reflecting that exposure to phthalates before birth could result in disabilities decades later.

Based on the Olsson study, if the prevalence of TDS caused by endocrine disrupters is roughly equivalent in the United States to its prevalence in the European Union, which appears to be the case, the cost of all TDS caused by endocrine disrupters per year of exposure (and thus, the benefit of removing endocrine-disrupting chemicals) would be approximately 370 million EUR annually for a population the size of the United States. That is approximately $444 million, using the middle etiologic estimate, which assumes that 20 percent of TDS cases are caused by phthalates, and an exchange rate of $1.20 per EUR. If the lowest etiological estimate of 2 percent is used, the benefit is approximately $44 million. The CPSC final rule did not prohibit all phthalates from all consumer products; the recommended prohibition on DINP would address up to 29 percent of infants' exposure to anti-androgenic phthalates. Thus, the benefit of the continuation of the interim ban on DINP in mouthable toys and child care articles would be some material fraction of the Olsson estimate of total societal impact, considering only DINP exposure specifically from mouthable children's toys and child care articles, and considering primarily the impact on women of reproductive age.

Other recent studies have looked at the cost impacts of endocrine disrupting chemicals, which include phthalates. Some recent estimates (Trasande, 2016) of the total cost impact on EU society of endocrine-disrupting chemicals exceed 1.28 percent of GDP as the median estimate. However, that study includes the direct and indirect costs for IQ loss and associated intellectual disability, autism, attention deficit hyperactivity disorder, endometriosis, fibroids, obesity, diabetes, cryptorchidism, male infertility, and mortality associated with reduced testosterone, which is a much larger scope of impacts than the CHAP considered for DINP. The European Health and Environment Alliance (HEAL, 2014) report on endocrine disrupting chemicals estimated current annual health costs in the EU resulting from past and current exposure to such chemicals at approximately 31 billion EUR, or roughly 0.2 percent of pre-Brexit EU GDP, using an etiological estimate of 2 to 5 percent for the medical conditions considered. The HEAL report attributed slightly less than 1 percent of that 31 billion EUR cost to male reproductive harm. The HEAL report considered only current direct and indirect costs, not intangible quality of life costs, nor net present value discounted costs of future treatments.

A different study (Attina, 2016) considered the cost of endocrine-disrupting chemicals to U.S. society. Unlike the Olsson, HEAL, and Trasande studies of EU costs, based on EU disease burden, the Attina study considered U.S. medical costs and U.S. exposures to phthalates and other endocrine-disrupting chemicals. However, the scope was all endocrine-disrupting chemicals and toxicity endpoints including but not limited to TDS, so it would be difficult to isolate from this estimate only the specific impact of CPSC's continuation of the interim ban on DINP in mouthable children's toys and child care articles. It is notable that the Attina study median estimate of the cost burden to U.S. society of endocrine-disrupting chemicals of $340 billion exceeds 2.3 percent of GDP. The upper end of the range was more than $500 billion per year. In contrast, the Olsson study of only TDS costs at the median 20 percent etiologic estimate would be the equivalent of $444 million U.S. per year for the United States, or about 0.05 percent of U.S. GDP, which was similar to the HEAL estimate of specifically male reproductive harm costs, considering that the HEAL estimate did not consider intangible costs.

In summary, the recent literature on total societal economic burden of endocrine disrupting chemicals has a large range of cost estimates, from under $100 million for TDS impacts only to over $500 billion for a larger set of health impacts on the United States or an EU population equivalent to the size of the United States. It is not possible to determine what fraction of those estimates would be attributable specifically to exposure to DINP in mouthable children's toys and child care articles, but the available evidence indicates that such DINP exposure would constitute a material additional risk.

d. Other Factors that Could Impact Benefits Amount or Distribution

Within U.S. society, the harm from phthalate exposure may disproportionally impact infants, children, and women from vulnerable populations. Thus, the benefits of continuing the interim ban on DINP in mouthable toys and child care articles in reducing phthalate exposure may disproportionally benefit certain populations within the United States. EPA analysis of NHANES data from 2011 to 2014 (ACE, 2017) found that Black, non-Hispanic women of child-bearing age had higher median concentrations of the phthalate metabolites of di-2-ethylhexyl phthalate (DEHP), dibutyl phthalate (DBP), and butyl benzyl phthalate (BBzP) than women of other races. Also, the EPA analysis found that women living below the poverty level had higher concentrations of phthalate metabolites in their urine than women living at or above the poverty level. Similarly, Black, non-Hispanic children had higher levels of phthalate metabolites than children of other races, and children living in poverty had higher levels of phthalate metabolites than children living at or above the poverty level.

It has been suggested that the prohibitions on phthalates, including DINP, have merely led to a shift to "regrettable substitutes" that might have equally bad or worse health impacts that are not yet documented. If that were true, the benefits of continuing the interim prohibition on DINP in mouthable children's toys and child care articles would be limited. As required by the CPSIA, the CHAP analyzed the impacts of multiple common phthalate and non-phthalate substitutes. The CHAP did not find evidence that any of the substitutes had anti-androgenic health effects that would justify including them in the cumulative risk assessment or in the prohibition on use in mouthable children's toys and child care articles. The CHAP also considered possible health effects from the substitutes, other than anti-androgenic effects, and concluded that available information did not support CPSC action against those substitutes, although the CHAP recommended additional research on some of the substitutes to identify any hazard or exposure concerns.

Recent peer-reviewed analysis of functional substitutes (van Vugt-Lussenburg, 2020) found that some common, bio-based, non-phthalate substitutes "are not only technically viable alternatives to phthalates, but also offer significant toxicological benefits, which supports a non-regrettable substitution." In addition, CPSC staff analysis found evidence (Dreyfus, 2010) that a substantial portion of manufacturers of soft toys had already voluntarily switched to plastics that did not require a phthalate or non-phthalate plasticizer before the NPR was published.

The EU has developed extensive guidelines on using benefit/risk analysis to assess the trade-offs of using phthalates in certain medical devices versus alternative substances, designs, or treatments (SCHEER, 2019). For some medical devices, such analysis may find that the benefits

of continuing to use a phthalate outweigh the potential harm, such as where the risks of a particular phthalate are extremely well documented and understood, as compared to the unknown risks of a substitute, and where the phthalate has medically relevant functional benefits, such as stabilizing red blood cells in blood bags. In that case, the medical benefit of the continued use of phthalates in a medical device could outweigh the risks. However, in the case of the CPSC final rule, it is highly unlikely there are any important life-saving functional benefits of continued use of DINP in a mouthable children's toy or child care article, instead of a non-phthalate substitute without known anti-androgenic effects, or a plastic that does not require a plasticizer.

VII. Conclusion

Based on this analysis, CPSC staff concludes that the rule is a cost-beneficial solution that achieves the statutorily required safety purpose of ensuring a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety by continuing the interim prohibition on DINP. By "cost-beneficial," CPSC staff means that the ratio of benefits to costs is greater than 1. CPSC staff-estimates that costs are small, while the benefits are potentially very large, but cannot be fully quantified. From the cost side, the compliance costs of continuing the interim ban on DINP in mouthable toys and child care articles are no more than $934,000 annually to the entire U.S. toy and child care article industry for testing, likely much less, and reformulation costs were minimal, if any. The cost of prohibiting DINP content in mouthable children's toys and child care articles, and third party testing to ensure compliance, is balanced against—and likely greatly outweighed by—the benefits of averting male reproductive disabilities that include genital deformities that require pediatric surgical treatment, infertility, and cancers of the male reproductive system.

Continuing the statutory interim prohibition on DINP in the final rule had no observable impact on the price of mouthable children's toys or child care articles. It has had no observable impact on the market for DINP, primarily because mouthable children's toys and child care articles are a very small share of the market for DINP. It likely did not reduce utility for mouthable toy and child care article manufacturers, because many functional substitutes for DINP exist at similar prices. On the benefits side, the reduction in exposure to DINP, a commonly used anti-androgenic phthalate, is expected to continue to reduce the instances of TDS and reduce the associated costs to individuals and society, including direct medical costs, lost productivity, and intangible pain and suffering. The costs of the health effects on society of phthalates, including DINP, and other endocrine disrupters are very high, and thus, the benefits of reducing those impacts are also high. CPSC staff cannot quantify the specific amount of the benefits derived from prohibiting DINP in mouthable children's toys and child care articles. However, the lowest estimates in the peer-reviewed literature of the fraction of TDS cases that are caused by endocrine-disrupting chemicals are around 2 percent, which would represent hundreds of cases per year in the United States, with the upper end of the range around 40 percent, which would represent more than 15,000 cases. If even just 0.1 percent of such cases were prevented by continuing the interim ban on DINP in mouthable toys and child care articles, a percentage that likely is substantially lower than the actual prevention, the lowest estimate of benefits from the continuing rule would greatly outweigh the highest estimate of costs.

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Exhibit 126

Calendar No. 75

101ST CONGRESS
1st Session

SENATE

REPORT
101-37

CONSUMER PRODUCT SAFETY COMMISSION AUTHORIZATION ACT OF 1989

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 605

MAY 25, 1989.—Ordered to be printed

Filed, under authority of the order of the Senate of May 18 (legislative day, JANUARY 3), 1989

U.S. GOVERNMENT PRINTING OFFICE

29-010

WASHINGTON : 1989

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Calendar No. 75

101ST CONGRESS
1st Session

SENATE

REPORT
101-37

CONSUMER PRODUCT SAFETY COMMISSION AUTHORIZATION ACT OF 1989

MAY 25, 1989.—Ordered to be printed

Filed, under authority of the order of the Senate of May 18 (legislative day, January 3), 1989

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 605]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 605) to authorize appropriations for the Consumer Product Safety Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

This legislation amends the Consumer Product Safety Act (CPSA) to authorize appropriations for fiscal years (FY) 1989, 1990, and 1991 for the purpose of carrying out various Consumer Product Safety Commission (CPSC) programs. The legislation also would amend the CPSA regarding voluntary standards, rulemaking, and administrative matters.

BACKGROUND AND NEED

The CPSC administers four major statutes: the CPSA (15 U.S.C. 2051 et seq.); the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 et seq.); the Poison Prevention Packaging Act (15 U.S.C. 1471 et seq.); and the Flammable Fabrics Act (FFA) (15

U.S.C. 1191 et seq.). These statutes direct the CPSC to establish safety standards, mandate compliance, undertake safety research, order recalls, provide consumers with information, and otherwise undertake activities to protect American consumers.

Legislation to reauthorize the CPSC has not been enacted since 1981. Since the authorization expired, funds for activities of the CPSC have been continued through appropriations acts, although the Committee has reported legislation during each intervening Congress to authorize such appropriations.

The CPSC in recent years has been troubled by internal disagreement, which has led to reduced effectiveness in fulfilling its mandate. The compliance and enforcement activities of the CPSC have not been vigorously undertaken, and this failure to act aggressively has communicated the impression that product safety is not of primary national importance. American consumers and businesses alike are less able to anticipate what will be the CPSC's initiatives and responses to product safety matters; this uncertainty has meant that consumers rely less on the safety of products, and manufacturers of products are not certain what is expected of them. Testimony presented to the Committee indicates that the difficulties and uncertainties currently involve three major areas of CPSC activities: administrative matters; rulemaking delays; and voluntary standard activities.

The CPSA provides that the CPSC shall consist of five commissioners, of whom three constitute a quorum. Due to limitations imposed in the appropriations process, sufficient funds are available for three members, who continue to be bound by the quorum requirements in the CPSA. The recent resignation of the Chairman of the CPSC has left the agency with only two members, less than required to satisfy the statutory quorum requirements, and therefore unable to meet to take formal action.

Testimony presented at hearings held by the Consumer Subcommittee indicates that the average time for promulgation of a final rule by the CPSC is four to five years. During this process, the CPSC is receiving comments from interested parties about the proposed rule, but no final mandatory standard has been adopted to protect the public.

In addition, the CPSA requires that the CPSC defer to voluntary standards in certain circumstancees. Suggestions have been made that this requirement has been used to thwart compliance and enforcement activities of the CPSC, which is clearly contrary to congressional intent.

The bill as reported does not contain "product-specific" initiatives, though their absence should not be construed as an indication that the Committee does not view them as important matters for consideration. Rather, the Committee intends to address some of these matters in the future, and chose at this time to provide redirection and make improvements in the overall structure and regulatory mission of the CPSC.

Legislative History

On March 13, 1989, the Commerce Committee conducted an authorization hearing on the CPSC. On March 17, 1989, Senator

Bryan introduced S. 605 which has been cosponsored by Senators Gore, Kerry, and Reid. S. 605 was considered on April 18 by the full Commerce Committee and ordered to be reported without objection, with an amendment in the nature of a substitute.

Summary of Major Provisions

S. 605 as reported authorizes appropriations of $34.5 million for FY 1989, $36.5 million for FY 1990, and $38.179 million for FY 1991.

The reported bill changes the membership of the CPSC to three comissioners, with a quorum of two members, and requires that major department heads at the CPSC be appointed and removed by action of the full CPSC.

It also requires the CPSC to consider petitions for action filed under section 553(e) of title 5, United States Code, in a reasonable time period, and to state reasons for granting or denying the petition. In the case of a voluntary standard, the petition only can be denied if the CPSC has made certain determinations regarding the voluntary standard.

The bill as reported requires that the CPSC permit comments prior to deferral to a voluntary standard, and requires that voluntary standards exist prior to deferral by the CPSC under section 9 of the CPSA. The bill establishes time limits for the conclusion of rulemaking proceedings. The bill increases the amount of civil penalties, to counter inflation's effects on their value.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 1, 1989.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 605, the Consumer Product Safety Commission Authorization Act of 1989, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 18, 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 605.
2. Bill title: Consumer Product Safety Commission Authorization Act of 1989.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, on April 18, 1989.

4. Bill purpose: To authorize appropriations for the Consumer Product Safety Commission, and for other purposes.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993	1994
Consumer Product Safety Commission:						
Authorization level	0	36.5	38.2			
Estimated outlays	0	31.0	37.9	5.7		
Increases in pay and retirement benefits:						
Estimated authorization level	.7	2.2	3.4			
Estimated outlays	.7	2.1	3.3	.1		
Total:						
Estimated authorization level	.7	38.7	41.6			
Estimated outlays	.7	33.1	41.3	5.9		

The costs of this bill fall within budget function 550.

Details in this table may not add to totals because of rounding.

Basis of estimate: S. 605 would reauthorize the Consumer Product Safety Commission (CPSC) for fiscal years 1989 through 1991. Authorization levels for the CPSC are partially stated in S. 605. In fiscal year 1989, the bill authorizes the 1989 appropriation level of $34.5 million. Because the authorization level equals the current appropriation, no 1989 cost for this component is shown in the estimate. In addition to the stated levels, the bill authorizes such sums as may be necessary for increases in pay and retirement benefits for fiscal years 1989 through 1991. For 1989, we have assumed that the 1989 appropriation does not include monies for the 1989 pay raise. We have estimated, therefore, an additional authorization equal to 4.1 percent (the 1989 pay raise in January 1989) of the CPSC payroll for three quarters of the fiscal year. The 1990 and 1991 increases in pay and retirement benefits were calculated by inflating the pay component of the CPSC account by the CBO pay inflator. This estimate assumes that the 1990 and 1991 authorizations would be fully appropriated at the beginning of each fiscal year. Outlays are estimated using spendout rates computed by CBO on the basis of recent program data.

6. Estimated cost to State and local government: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Lori Housman.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The Committee does not anticipate that enactment of S. 605 will result in an increased level of regulation. The bill imposes time limitations on rulemaking activities, but does not require any additional rulemakings to be conducted.

ECONOMIC IMPACT

The bill should have no economic impact on any individuals. The authorization levels in the bill reflect current spending levels and thus should have no inflationary impact.

PRIVACY

The Committee expects that S. 605 will have no adverse impact on the personal privacy of the individuals affected.

PAPERWORK

S. 605 does not impose additional reporting requirements on the CPSC or others.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section states the short title of the legislation, the "Consumer Product Safety Commission Authorization Act of 1989".

SECTION 2.—QUALIFICATIONS OF MEMBERS; QUORUM

Subsection (a) of this section requires that the President, in making appointments to the CPSC, consider individuals with demonstrated consumer and safety experience. Testimony presented to the Committee stressed the importance of appointing individuals to the CPSC who are knowledgeable in the issues involved in consumer product safety. The Committee does not intend to suggest, however, that other experience is not also relevant. Indeed, a CPSC composed of members with widely diverse backgrounds is consistent with the concept of a collegial body.

Subsection (b) of this section changes the number of CPSC commissioners from five to three, and adjusts the quorum requirement from three to two members, in keeping with the reduction in number of commissioners. Currently, funding has been provided for only three commissioners. This limitation and the recent resignation of the Chairman of the CPSC have made the agency unable to fulfill its statutory responsibilities because of the lack of a quorum. The amendments will ensure that the CPSC continues to have sufficient membership to conduct its operations.

SECTION 3.—APPOINTMENT OF CERTAIN PERSONNEL

Subsection (a) of this section amends section 4(g)(1) of the CPSA to require that top-level personnel at the CPSC (other than in each member's office) are to be appointed by the Chairman with the concurrence of the other members of the CPSC. Currently, only certain of these individuals are so appointed, and this amendment will

reaffirm that all top-level employees are responsible to the full CPSC

Also, the subsection provides that no such individuals may be removed from their positions except by action of the full CPSC. This provision parallels the appointment process.

Finally, the subsection requires that the head of the Office of Compliance and Enforcement within the CPSC be an attorney, as is currently the case. As that Office is responsible for ensuring compliance with the CPSA and standards adopted pursuant to the CPSA and for recommending action when persons fail to meet such responsibilities, it is desirable for the head of that Office to possess the legal training necessary to make informed decisions on compliance and enforcement matters. The recent reassignment of the head of the Office of Compliance, an individual with a long history of service to the CPSC, and his replacement with an individual who is not an attorney, emphasized the importance of having an individual with appropriate qualifications responsible for supervising the attorneys in this Office.

Subsection (b) of this section specifies that an individual may be appointed to certain top-level positions at the CPSC (other than in each member's office) on an acting basis for a period not to exceed 90 days, unless the acting appointment is approved by the CPSC. This should ensure that the Chairman may make acting appointments to respond to exigent circumstances, but also afford the full CPSC with the opportunity to act on appointments to major positions.

SECTION 4.—PRIORITIES

This section adds a new subsection (j) to section 4 of the CPSA to require the CPSC to prioritize its actions during each year. In establishing the agenda, the CPSC must hold a public hearing and offer interested parties the opportunity to comment. Currently, the CPSC follows these procedures, and this provision merely codifies this existing practice.

SECTION 5.—DISCLOSURE TO CONTRACTORS

This section amends section 6(a)(8) of the CPSA (15 U.S.C. 2055(a)(8)). Subsections (a)(2) through (a)(6) of section 6 of the CPSA provide substantive and procedural protections for trade secrets and certain other confidential business information reported to or otherwise obtained by the CPSC. Under section 6(a)(2), such business information shall be considered confidential and shall not be disclosed. Subsections (a)(3) through (a)(6) further provide that when a manufacturer or private labeler designates information as confidential, the CPSC (if it determines that the information is not confidential) may not disclose the information until the CPSC has both (1) notified the manufacturer or private labeler of the CPSC's intent to disclose the information, and (2) given the manufacturer or private labeler not less than ten days from the date of receipt of the notification to bring an action in U.S. district court to restrain disclosure of the information.

Section 6(a)(8) provides that subsections (a)(2) through (a)(6) of section 6 do not prohibit the disclosure of information to "officers

or employees" of the CPSC. The CPSC has expressed its concern that section 6(a)(8) of the CPSA does not provide clearly that the CPSC may disclose to a CPSC contractor product hazard information essential to the contractor's research or investigation.

This amendment will permit the disclosure of CPSC-held information needed by agency contractors for compliance with their contracts. Contractors remain bound by section 6(d)(2) of the CPSA, which requires that contractors comply with the disclosure provisions of section 6 in making any subsequent disclosure of information to the general public.

SECTION 6.—PETITION REGARDING VOLUNTARY STANDARDS

Under section 553(e) of title 5, United States Code (formerly the Administrative Procedure Act), any interested party may petition a Government agency to commence a rulemaking proceeding, and the agency is to consider and make a determination on the petition within a reasonable time.

Subsection (a) of this section adds a new subsection to section 9 of the CPSA to require the CPSC to make any such determination within a reasonable time, and to state the reasons for approving or denying any such petition. The subsection further provides that the CPSC may only deny such a petition on the basis of a voluntary standard if the standard is actually in existence, if the CPSA has determined that the standard is likely to produce an elimination or adequate reduction in the risk of injury involved, and if it is likely that industry will be in substantial compliance with the standard.

The Committee consistently has received testimony and comments regarding the voluntary standards process since the provisions were enacted in 1981. Though the Committee did not desire to reenact section 10 of the CPSA as it existed before the 1981 amendments (which permitted any interested person to file a petition with the CPSC to commence a rulemaking proceeding), the Committee is aware that the CPSC at times has not been responsive to concerns that voluntary standards development has been inadequate or too slow. In fact, it has been suggested that the CPSC may seek to utilize the deferral to voluntary standards required under section 9 to justify inaction or delay with regard to product risks. This is clearly contrary to the intent of the 1981 amendments. The development of voluntary standards should proceed as expeditiously as possible, with aggressive development of standards adequate to address risks of injury.

The CPSC is required under this provision to act on a petition within a reasonable time. A "reasonable" time is one which affords the CPSC adequate time to investigate and assess the claims in a petition, but without unnecessary delay. A "reasonable" time may vary according to the issue involved and the particular petition that has been filed, but the Committee expects that the CPSC will not unnecessarily delay responding to petitions. Under section 9 of the CPSA, a request for a voluntary standard begins with the filing of an advance notice of proposed rulemaking. Because this section affords interested parties the ability to suggest voluntary action to address safety issues, it is not anticipated that the CPSC will delay in responding to petitions under this section because of the devel-

opment of a voluntary standard. Rather, such development will occur once the petition is granted and the process provided in section 9 is begun.

Subsections (b) and (c) of this section make identical amendments to the FHSA and FFA, respectively.

SECTION 7.—TIME LIMITATIONS FOR PROPOSED RULES

This section amends section 9(c) of the CPSA to require the CPSC to issue a proposed consumer product safety rule within 12 months after an advance notice of proposed rulemaking for such a rule has been issued, unless the CPSC determines the rule is not likely to eliminate or reduce the risk of injury from the product. The CPSC may extend this time for good cause, but is required to notify the Senate Committee on Commerce, Science, and Transportation and the House Energy and Commerce Committee of the extension and the reasons for the extension, and estimate the date by which the rule will be completed.

The CPSC has testified previously before the Consumer Subcommittee that the average time for development of a mandatory standard by the CPSC is four and one-half years. The Committee believes that in most cases this time period is excessive, and the Committee expects the CPSC to streamline its procedures in order to ensure that rulemakings are conducted expeditiously, without sacrificing the thorough review that is necessary in any rulemaking proceeding.

The Committee envisions that additional time would be warranted under the "good cause" standard where, for example, additional time is needed due to the complexity of the subject matter or to ensure that the proposed consumer product safety rule is technically sound. Another example of the need for additional time would be for the development of a voluntary standard where efforts to develop such a standard have been proceeding expeditiously and in good faith, the standard can be expected to eliminate or adequately reduce the risk of injury identified by the Commission, and completion of the voluntary standard can be anticipated within a short time.

The Committee does not intend that the extension authority in this section will be utilized so often as to become the norm, rather than the exception.

SECTION 8.—VOLUNTARY CONSUMER PRODUCT SAFETY STANDARDS

In 1981, the CPSC was amended to require that the CPSC defer to a voluntary standard where the CPSC determines that a voluntary standard developed in response to the invitation contained in section 9(a)(6) of the CPSC is likely to result in the elimination or adequate reduction of the risk of injury and it is likely that there will be substantial compliance with such standard. This invitation is initiated by the publication of an advance notice of proposed rulemaking (ANPR).

The Committee reaffirms its belief that voluntary safety standards can play an important role in protecting consumers. CPSC deference to voluntary standards permits the CPSC to save scarce resources and can permit safety problems to be addressed in a more

expeditious manner than might otherwise occur, thereby saving lives and preventing injuries. Such deferral authority, however, was not intended to become an excuse for inaction or delay on the part of the CPSC, including delay in issuing ANPRs where such issuance is appropriate.

Subsection (a) of this section amends section 9(b)(2) of the CPSA to require that the CPSC defer under section 9 of the CPSA to a voluntary standard only where the voluntary standard exists. The Committee understands that the 1981 amendment to section 9 anticipated that persons would submit to the CPSC their intentions and a plan to modify or develop a voluntary standard. Recently, however, suggestions have been made that the mere promise to submit such a standard, or a "hope" by the CPSC that such a standard might be developed, may be a sufficient basis for deferral under section 9(b). To clarify the original intent of the 1981 amendments, S. 605, as reported, includes language requiring that the standard actually be in existence before deferral under section 9(b) may occur. This subsection also makes a parallel amendment to section 3(g)(2) of the FHSA.

Subsection (b) amends section 9(b)(2) of the CPSA to require that the CPSC afford interested persons the opportunity to comment regarding any voluntary standard prior to CPSC deferral. When the CPSA was amended in 1981, the conference report discussed the adoption of voluntary standards in the sense that they were finally approved in accordance with reasonable procedures, such as those utilized by groups that develop national consensus standards. The Committee believes that participation by affected individuals as early as possible in the development of a voluntary standard will yield the best results. The requirement in the bill as reported that an opportunity to comment be afforded prior to deferral is consistent with that earlier intention, and reaffirms the Committee's intent that participation by interested and affected parties occur during the development of voluntary standards. Subsection (b) also makes a parallel amendment to section 3(g)(2) of the FHSA.

Subsection (c) amends the CPSA, the FHSA, and the FFA to require that the CPSC establish a system for monitoring compliance with voluntary standards to ensure that industry is following the voluntary guidelines. In order to guarantee the integrity of the voluntary standards process under these Acts, the Committee believes that it is imperative for the CPSC to monitor compliance with voluntary standards. Absent such oversight, adherence to these standards might diminish, resulting in unnecessary risks to consumers. The Committee intends that the system established by the CPSC under this amendment provide for CPSC review of all voluntary standards on a regular basis.

SECTION 9.—COST-BENEFIT ANALYSIS

In recent years, there has been controversy as to whether the CPSC is required to consider the costs of corrective action as well as the benefits likely to be derived from the action, in matters addressed under sections 12 and 15 of the CPSA. Especially in the past several years, the CPSC has almost routinely imposed a mechanical cost-benefit process which critics maintain has delayed en-

forcement activity by the CPSC. These critics also claim that weighing the costs and benefits is inappropriate in determining, for example, whether a product contains a defect and what should be the corrective action for that defect. Because of the notion of "unreasonable risk" involved, e.g, in actions brought under section 12 to counter imminent hazards, others assert that the CPSC must consider the likely effectiveness of proposed corrections and the cost that would be imposed as a result of those improvements.

Subsection (a) of this section amends section 12 of the CPSA (relating to CPSC action to address an imminent hazard) by stating that the preparation of a cost-benefit analysis is not required. The CPSC, of course, would be permitted to prepare such an analysis in those situations where it believed the analysis to be appropriate. The Committee is most concerned about the imposition in any case of the kind of mechanical cost-benefit analysis utilized in recent years.

Subsection (b) of this section adds this provision to section 15 of the CPSA (relating to non-imminent repair, replacement or refund), and subsection (c) adds the provision to the FHSA.

SECTION 10.—NOTIFICATION

Under section 15(b) of the CPSA, a manufacturer, distributor, or retailer must notify the CPSC when it obtains information which reasonably supports the conclusion that its product fails to comply with a product safety rule, or contains a defect which could create a substantial product hazard. This notification process acts as a kind of "early warning system" for the CPSC, alterting it to potential problems that warrant further investigation for possible corrective action.

In its regulations and interpretive materials regarding section 15(b), the CPSC has correctly indicated that the intention of Congress was to encourage widespread reporting of potential hazards. In addition, the CPSC has found "reporting to be invaluable since manufacturers, distributors, and retailers often receive safety-related information long before the Commission does and before injuries have occurred . . . The Commission believes that vigorous reporting as . . . mandated by Congress will help reduce injuries by identifying a greater number of potentially hazardous products." (Pages 34988–89, Federal Register, Vol. 43, No. 152, Monday, August 7, 1978.)

Many have indicated that under-reporting of product hazards is prevalent. Information received by the Consumer Subcommittee suggests that only about 150–200 reports are received each year. In part, this is because current law requires notification either for violation of a safety rule or when a defect could present a substantial product hazard. Manufacturers are reluctant to indicate that their products may contain a defect or do not believe their products to be defective, and so often do not supply the CPSC with notice under the law. This failure to report places upon the CPSC the entire burden of doing investigative work to uncover products that require corrective action, an activity that the CPSC (particularly in budget-strained circumstances) is not equipped to perform unilaterally.

The bill as introduced mandated a manufacturer to report when its product was the subject of a lawsuit involving serious injury or death, but the Committee was concerned that this requirement might not take into consideration such matters as frivolous filings or other factors that might detract from a manufacturer's inclination to comply with the law.

As reported, this section amends section 15(b) of the CPSC to add two additional situations in which manufacturers would be required to report—namely, where information is received that reasonably supports the conclusion that a product either (1) fails to comply with a voluntary standard on which the CPSC has relied under the CPSA, or (2) creates an unreasonable risk of injury or death.

Voluntary standards are becoming more utilized than before, and indeed the CPSA states a preference for voluntary action in lieu of mandatory standards. Therefore, the Committee has determined that it is desirable for the CPSC to receive information regarding these standards as well as information on violations of mandatory rules. The committee anticipates that the CPSC may develop procedures or interpretations of this provision regarding the need for reporting of minor, technical violations of voluntary standards.

In addition, manufacturers will be held to a "reasonable person" standard regarding unreasonable risk of serious injury or death. The correct inquiry is whether a reasonable person could conclude, given the information available to the manufacturer, that the product creates such a risk. A product liability action, consumer reports, or reports, or reports from experts suggesting the existence of such a risk could be instances under which a manufacturer would become subject to the reporting requirement in the bill, as reported.

This provision will increase the number of section 15(b) reports to the CPSC, and provide valuable information to the CPSC to assist it in implementing its statutory responsibilities.

SECTION 11.—CIVIL PENALTIES

Civil penalties were provided under the CPSA when it was enacted in 1972, in the amount of $2,000 for each violation and an aggregate penalty of $500,000. Since that time, no adjustment has been made to the dollar figures in the statute, despite the fact that inflation has eroded the value of the penalties. Testimony presented to the Committee indicated that these penalties are worth only 36 percent of their original value, or $720 and $180,000, respectively.

To address this inflation erosion, subsection (a) of this section amends the CPSA to increase the penalties to $5,000 for individual violations, and $1,250,000 for a related series of violations.

In addition, civil penalties were not provided for violation of the FHSA. Their absence was demonstrated recently in the case of injuries and deaths caused by lawn darts. Regulations governing this product had been adopted under the FHSA, and the CPSA found that manufacturers of lawn darts were not in compliance with those regulations. However, the manufacturers could not be as-

sessed a civil penalty because such penalties were not contained in the FHSA.

Subsection (b) adds civil penalties to the FHSA, in the amount of $5,000 and $1,250,000 for a related series of violations.

Subsection (c) of this section requires the CPSC to report annually to the Senate Committee on Commerce, Science, and Transportation and the House Energy and Commerce Committee regarding the number of civil penalties imposed, the violations that led to the civil penalties being imposed, the amount of revenue recovered from the penalties, and the effect (if any) on inflation on the civil penalty amounts provided in the CPSA and FHSA.

SECTION 12.—CHRONIC HAZARD ADVISORY PANEL

This section amends section 28(b)(1) of the CPSA, which sets forth the membership of chronic hazard advisory panels appointed under the CPSA to advise the CPSC respecting the chronic hazards of cancer, birth defects, and gene mutations associated with consumer products. Section 28(b) of the CPSA contains limitations on the persons who may serve on such advisory panels, and these limtiations were intended to preclude individuals with a conflict of interest from providing advice to the CPSC regarding these matters. Paragraph (1) of subsection (b) excludes officers or employees of the United States from service on these panels. However, the Committee is aware that it has been difficult to find qualified individuals to serve on some panels because of these statutory limitations. Therefore, the amendment made by this section would permit Federal employees from the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research to serve on a chronic hazard advisory panel. Enlarging the resource pool from which members of these panels may be selected in this way will provide more expert assistance to the CPSC in evaluating chronic hazards, without creating the potential for conflicts of interest.

SECTION 13.—AUTHORIZATION OF APPROPRIATIONS

This section authorizes appropriations of $34,500,000 for FY 1989, $36,500,000 for FY 1990, and $38,179,000 for FY 1991. The FY 1989 figure is the appropriated amount, and the subsequent years are adjusted for inflation in accordance with inflation estimates of the Congressional Budget Office.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

CONSUMER PRODUCT SAFETY ACT

Section 4 of that Act

CONSUMER PRODUCT SAFETY COMMISSION

SEC. 4. (a) An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of [five] *three* Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. *In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, and qualified to serve as members of the Commission.* The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b) * * *

(c) Not more than [three] *two* of the Commissioners shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engate in any other business, vocation, or employment.

(d) No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but [three] *two* members of the Commission shall constitute a quorum for the transaction of business. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

(e) through (f) * * *

[(g)(1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.]

(g)(1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, an Associate Executive Director for Engineering Sciences, an Associate Executive Director for Epidemiology, an Associate Executive Director for Compliance and Administrative Litigation, an Associate Executive Director for Health Sciences, an Associate Executive Director for Economic Analysis, an Associate Executive Director for Administration, an Associate Executive Director for Field Operations, a Director for Office of Program, Management, and Budget, and a Director for Office of Information and Public Affairs. Any other individual

appointed to a position designated as an Associate Executive Director shall be appointed by the Chairman, subject to the approval of the Commission. The Chairman may remove an individual from any position specified in paragraph (1) of this subsection only with the approval of the Commission. The Chairman may appoint only an individual who is an attorney as the Associate Executive Director for Compliance and Administrative Litigation. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(2) through (4) * * *

(5) No individual may be appointed on an acting basis to any position specified in paragraph (1) of this subsection for a period in excess of 90 days unless such appointment is approved by the Commission.

(h) through (i) * * *

(j) At least 30 days before the beginning of each fiscal year, the Commission shall establish priorities for its actions pursuant to the Acts under its jurisdiction. Before establishing such priorities, the Commission shall conduct a public hearing on the priorities and shall provide reasonable opportunity for the submission of comments.

Section 6 of that Act

PUBLIC DISCLOSURE OF INFORMATION

SEC. 6. (a)(1) * * *

(2) through (7) * * *

(8) The provisions of paragraphs (2) through (6) shall not prohibit the disclosure of information to other [officers or employees] *officers, employees, or representatives of the Commission (including contractors)* concerned with carrying out this Act or when relevant in any administrative proceeding under this Act, or in judicial proceedings to which the Commission is a party. Any disclosure of relevant information in Commission administrative proceedings, or in judicial proceedings to which the Commission is a party, shall be governed by the rules of the Commission (including in camera review rules for confidential material) for such proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(b) through (d) * * *

Section 7 of that Act

CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. (a) * * *

(b)*(1)* The Commission shall rely upon voluntary consumer product safety standards rather than promulgate a consumer product safety standard prescribing requirements described in subsection (a) whenever compliance with such voluntary standrds would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.

(2) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (1) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(c) * * *

Section 9 of that Act

PROCEDURE FOR CONSUMER PRODUCT SAFETY RULES

SEC. 9. (a) * * *

(b)(1) * * *

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (a)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard.

the Commission shall terminate any proceeding to promulgate a consumer product safety rule respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, *except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. Prior to relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) who were not involved in the development of such standard a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.*

(c) No consumer product safety rule may be proposed by the Commission unless, not less than 60 days after publication of the notice required in subsection (a), the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) through (3) * * * *

(4) a description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits, and a brief explanatin of why such alternatives should not be published as a proposed rule.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. *Any proposed consumer product safety rule shall be issued within 12 months after the date of publication of an advance notice of proposed rulemaking under subsection (a) of*

this section relating to the product involved, unless the Commission determines that such proposed rule is not likely to eliminate or reduce the risk of injury associated with the product. The Commission may extend the 12-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Such notice shall include an explanation of the reasons for such extension, together with an estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register.

(d) through (h) * * *

(i) The Commission shall approve or deny any petition requesting the Commission to initiate a rulemaking under section 553(e) of title 5, United States Code, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for approving or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the peitition, and it is likely that there will be substantial compliance with the standards.

Section 12 of that Act

IMMINENT HAZARDS

SEC. 12. (a) * * *

(b) through (e) * * *

(f) Nothing in this section shall be construed to require the Commission, in determining whether to bring an action against a consumer product under this section, to prepare a comnparison of the costs that would be incurred in complying with the relief that may be ordered in such action with the benefits to the public from such relief.

Section 15 of that Act

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

SEC. 15. (a) * * *

(b) Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule[; or] *or with a voluntary consumer product safety standard upon which the Commission has relied under section 9;*

(2) contains a defect which could create a substantial product hazard described in subsection (a)(2)[,] *; or*

(3) creates an unreasonable risk of serious injury or death,

shall immediately inform the Commission of such failure to [comply or of such defect,] *comply, of such defect, or of such risk,* unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such [defect or failure to comply.] *defect, failure to comply, or such risk.*

(c) through (g) * * *

(h) Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

Section 20 of that Act

CIVIL PENALTIES

SEC. 20. (a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed [$2,000] *$5,000* for each such violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (7), (8), (9), or (10) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed [$500,000] *$1,250,000* for any related series of violations. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed [$500,000] *$1,250,000* for any related series of violations.

(2) * * *

(b) through (d) * * *

Section 28 of that Act

CHRONIC HAZARD ADVISORY PANEL

SEC. 28. (a) * * *

(b) Each Panel shall consist of 7 members appointed by the Commission from a list of nominees who shall be nominated by the President of the National Academy of Sciences from scientists—

(1) who are not officers or employees of the United States *(other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research),* and who do not receive compensation from or have any substantial financial interest in any manufacturer, distributor, or retailer of a consumer product; and

(2) who have demonstrated the ability to critically assess chronic hazards and risks to human health presented by the exposure of humans to toxic substances or as demonstrated by the exposure of animals to such substances.

The President of the National Academy of Sciences shall nominate for each Panel a number of individuals equal to three times the number of members to be appointed to the Panel.

Section 32 of that Act

AUTHORIZATION OF APPROPRIATIONS

SEC. 32. (a) There are authorized to be appropriated for the purpose of carrying out the provisions of this Act (other than the provisions of section 27(h) which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 30, not to exceed—

(1) through (7) * * *

(8) $33,000,000 for the fiscal year ending September 30, 1982; [and]

(9) $35,000,000 for the fiscal year ending September 30, 1983[.]; *(10) $34,5000,000 for the fiscal year ending September 30, 1989, together with such sums as may be necessary for increases in pay and retirement benefits provided by law;*

(11) $36,500,000 for the fiscal year ending September 30, 1990, together with such sums as may be necessary for increases in pay and retirement benefits provided by law; and

(12) $38,179,000 for the fiscal year ending September 30, 1991, together with such sums as may be necessary for increases in pay and retirement benefits provided by law.

For payment of accumulated and accrued leave under section 5551 of title 5, United States Code, severance pay under section 5595 under such title, and any other expense related to a reduction in force in the Commission, there are authorized to be appropriated such sums as may be necessary.

(b) through (c) * * *

FEDERAL HAZARDOUS SUBSTANCES ACT

Section 6 of that Act

SEIZURES

SEC. 3. (a) * * *

(b) through (f) * * *

(g)(1) * * *

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (f)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation under section 2(q)(1) or subsection (e) of this section, respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, *except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in exist-*

ence. Prior to relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) who were not involved in the development of such standard a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(h) through (i) * * *

(j) The Commission shall approve or deny any petition requesting the Commission to initiate a rulemaking under section 553(e) of title 5, United States Code, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for approving or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

Section 5 of that Act

PENALTIES

SEC. 5. (a) * * *

(b) * * *

(c)(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed $5,000 for each such violation. Subject to paragraph (2), a violation of section 4 (a), (b), (c), (d), (f), (g), (i), and (j) shall constitute a separate offense with respect to each substance involved, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations. A violation of section 4(e) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violations shall constitute a separate offense, except that the maximum civil penalty shall not exceed $1,250,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 4—

(A) if the person who violated such subsection is not the manufacturer or private labeler or a distributor of the substances involved; and

(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(5) As used in the first sentence of paragraph (1), the term "knowingly" means (A) the having of actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

Section 15 of that Act

NOTICE AND REPAIR, REPLACEMENT, OR REFUND

SEC. 15. (a) * * *

(b) through (f) * * *

(g) Nothing in this section shall be construed to require the Commission, in determining that an article or substance distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

FLAMMABLE FABRICS ACT

Section 4 of that Act

REGULATION OF FLAMMABLE FABRICS

SEC. 4. (a) * * *

(b) through (g) * * *

(h) (1) * * *

(2) * * *

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(i) through (j) * * *

(k) The Commission shall approve or deny any petition requesting the Commission to initiate a rulemaking under section 553(e) of title 5, United States Code, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for approving or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

○

Exhibit 127

HOUSE OF REPRESENTATIVES—*Thursday, March 16, 1989*

The House met at 11 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Our prayers, O gracious God, are with all those who do not share the traditions of freedom and liberty that we celebrate each day. We remember specially the hostages who are separated from families and friends and we pray that Your bountiful spirit will overcome all the boundaries that separate people from those they love. We pray that Your blessing, O God, will be upon all hostages and their families and give them Your peace and love that passes all human understanding. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Would the gentleman from Vermont lead our colleagues in the Pledge of Allegiance?

Mr. SMITH of Vermont led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 148. Joint resolution designating the month of March in both 1989 and 1990 as "Women's History Month."

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 23. Concurrent resolution providing for a conditional recess or adjournment of the Senate from March 17, 1989, until April 4, 1989, and a conditional adjournment of the House from March 23 or 24, 1989, until April 3, 1989.

THE RURAL ELECTRIFICATION ADMINISTRATION LENDING ASSISTANCE ACT OF 1989

(Mr. BATES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BATES. Mr. Speaker, the "Rural Electrification Administration Lending Assistance Act of 1989" authored by myself and the gentleman from California [Mr. HUNTER] is a sensible first step to prune unnecessary and generous benefits from those who do not need such high subsidies from the American taxpayers.

This legislation would replace the current high subsidy interest on the direct loan program with a Federal guarantee program, when assisting legitimate rural borrowers. It would reduce our budget outlays by $5 billion over the next 5 years. In a recent 6-year period, 20 percent of all REA loans, designated for rural borrowers, went to urban areas. Additionally, Government subsidized loans have powered nontaxpaying cooperatives to recharge golf carts at Hilton Head Island and to provide power to ski lifts at Vail, Aspen, and Snowmass. I can assure you that this was not the original intent of President Roosevelt when the REA Program was enacted in 1936.

I urge my colleagues to cosponsor my legislation, H.R. 1232 and help us reduce our massive deficit. It is time to bring the REA into the 1980's and off our golf courses.

TEXTILE MACHINERY MODERNIZATION ACT

Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, today, I am introducing the Textile Machinery Modernization Act. The legislation establishes a fund within the Department of the Treasury to support research for the modernization of the American textile machinery industry.

My legislation requires that a portion of existing revenues collected from duties levied on imports of textile machinery be applied to support research and development of our domestic industry. The Secretary of Commerce would administer the funds in the form of grants to finance the research projects. This bill in no way attempts to roll back or freeze imports of textile machinery.

Based on information from the Department of Commerce, industry shipments of textile machinery increased 4.9 percent in 1988. However, the value of all products and services sold by the U.S. textile machinery industry have declined steadily since 1974. Similarly, the value of foreign imports has steadily increased during this period. The simple fact is that foreign producers of textile machinery maintain a substantial advantage over U.S. manufacturers in the development and commercialization of new technologies.

Research and development is crucial to the future viability of the domestic textile machinery industry. This legislation would establish the necessary R&D funds without raising tariffs or restricting imports. With the concern over the lack of civilian research and development, I believe it is time we took action to bolster a crucial domestic industry and preserve American jobs.

CONDITIONAL RECESS OR ADJOURNMENT OF THE SENATE FROM MARCH 17, 1989, UNTIL APRIL 4, 1989, AND CONDITIONAL ADJOURNMENT OF THE HOUSE FROM MARCH 23, 1989, OR MARCH 24, 1989, UNTIL APRIL 3, 1989

The SPEAKER laid before the House a privileged Senate concurrent resolution (S. Con. Res. 23) providing for a conditional recess or adjournment of the Senate from March 17, 1989, until April 4, 1989, and a conditional adjournment of the House from March 23 or 24, 1989, until April 3, 1989.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 23

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Friday, March 17, 1989, it stand recessed or adjourned until 2:15 post meridiem on Tuesday, April 4, 1989, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this resolution; and that when the House adjourns on Thursday, March 23, 1989, or on Friday, March 24, 1989, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12:00 o'clock meridian on Monday, April 3, 1989, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this resolution.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly

after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and the House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

ADJOURNMENT TO MONDAY, MARCH 20, 1989

Mr. KILDEE. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at noon on Monday next.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. KILDEE. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday, March 22, 1989.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

HOUR OF MEETING ON WEDNESDAY, MARCH 22, 1989

Mr. KILDEE. Mr. Speaker, I ask unanimous consent that when the House adjourns on Tuesday, March 21, 1989, it adjourn to meet at 3 p.m. on Wednesday, March 22, 1989.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

REMEMBER TERRY ANDERSON

(Ms. SLAUGHTER of New York asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SLAUGHTER of New York. Mr. Speaker, I rise again today to remind my colleagues and the American people of the captivity of Terry Anderson and the eight other American hostages still held in Lebanon. This is the third time, since I came to Congress in 1987, I have come to this podium to call attention to Terry's plight on the anniversary of his captivity. Today marks the beginning of the fifth year of Terry's ordeal. By now, it should be clear to those who are holding Terry that they are not accomplishing anything by doing so. It has been 4 years since Terry Anderson was abducted and Islamic Jihad, the organization that holds Terry, still has not gained anything, except the contempt of the civilized world. Once again I urge those holding Terry and the other hostages in Lebanon to unconditionally release them immediately. This moral outrage must end and end at once.

I had the privilege to attend a ceremony this morning that highlighted the plight of Terry Anderson and the other hostages in Lebanon. It was sponsored by the organization, No Greater Love and by the Journalists Committee to Free Terry Anderson. It brought home to all of us the amazing resilience of the human spirit in the face of adversity, not only on the part of the hostages but on the part of their relatives and friends. In particular, Peggy Say, Terry Anderson's sister, has been a source of inspiration to all of us. She has untiringly worked for Terry's release, meeting with government officials here in the United States and in other countries as well. She has kept the hostages' plight on the international agenda and has shown incredible perseverance and courage in the face of discouragement and difficult obstacles. I commend her efforts and look forward to the day when they will be rewarded with the release of her brother.

□ 1110

TERRY ANDERSON BEGINNING FIFTH YEAR OF CAPTIVITY

(Mr. PAXON asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. PAXON. Mr. Speaker, today I rise to join my distinguished colleague, the gentlewoman from New York [Ms. SLAUGHTER], to recall a sad anniversary in this, the life of our country, for this day, March 16, 1989, marks the passing of yet another year in which Terry Anderson remains a hostage of Shiite Muslim terrorists in Lebanon.

Mr. Speaker, since his kidnaping on March 16, 1985, Terry Anderson has been imprisoned in various locations throughout Lebanon as his captors continue to impose their reign of terror on the nine Americans, and five others, who are currently being held hostage there.

Reports of the hostages' cruel and barbaric treatment have reached us here at home in the descriptions relayed by former captives Rev. Benjamin Weir and Rev. Martin Jenco. Reverends Weir and Jenco have described in brutal detail the beatings and death threats that Terry Anderson and the others have endured at the hands of their captors.

Terry Anderson grew up and attended high school in Batavia, NY, a city not far from the heart of my congressional district, where concerned citizens and family members have gathered together to form a group known as the Western New York Friends of Terry Anderson. On Monday, March 13, 1989, I was honored to join with these loyal supporters as well as with religious and community leaders at St. Paul's Episcopal Cathedral in Buffalo, NY, for a spiritual interfaith candlelight ceremony of hope for the release of Terry Anderson, the longest held American hostage, and the other hostages in Lebanon.

In commemoration of this tragic anniversary, let us once again renew our resolve, Mr. Speaker, to do everything possible to secure freedom for these innocent men. Let us also vow never to forget them and refuse to rest until every hostage is returned home to their families and loved ones.

OLDER WOMEN'S CANCER PREVENTION ACT

(Mrs. KENNELLY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KENNELLY. Mr. Speaker, I am pleased to introduce today the Older Women's Cancer Prevention Act.

More than 1 in 10 American women will develop breast cancer sometime in their lives. Fortunately, early detection and treatment, with a low-level xray called a mammogram, can reduce fatality rates significantly.

I believe, however, that the $50 reimbursement cap in current law will not be sufficient to ensure that mammograms will be readily available to women who need them.

In most areas of the country, the only providers who can offer mammograms for $50 are mobile vans that generally hold make-shift screening clinics at shopping centers and other public places.

Such vans, while valuable, should not become the main provider of these important tests.

Screening tests for breast cancer must be readily available in the office of primary-care physicians so women will get them on a regular basis.

The $50 cap on Medicare reimbursement will prevent this from happening. My bill would merely raise the cap to make sure the test will be provided in a variety of settings. This is crucial for an effective cancer-detection program.

FDA SHOULD LIFT THE BAN

(Mr. ROTH asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, America must not allow itself to succumb to blackmail in any form. The FDA ban on fruit imports from Chile should be lifted without further delay.

Of course, it's always better to err on the side of caution. However, FDA in-

vestigators have inspected 12,000 crates of Chilean imported fruit, and what have they found? Traces of cyanide in only two seedless red grapes, and at a level well below what would cause illness. In fact, U.S. officials say that a child would have to eat 2,000 such grapes to ingest a fatal dose.

Some terrorist thug is playing us like a pipe. The anonymous telephone call, warning that poison had been put in United States-bound Chilean fruit, was clearly an attempt to accomplish three political objectives—an attempt which to some extent is succeeding.

One objective is to sabotage the Chilean economy at a time when the country is making a transition to democracy. The enemies of the Chilean people cannot stand the fact that Chile has the strongest economy in South America—an economy which is actually running a trade surplus with Japan.

I hope that the perpetrators of this crime are apprehended and duly punished. The fruit ban triggered by this hoax has brought one of Chile's most vital industries to a virtual standstill. Fresh fruit represents about 10 percent of Chile's total foreign sales, or about 600 million dollar's worth, and the United States normally purchases upward of two-thirds of that amount. According to the Chilean Government, nearly 17,000 Chilean farm workers have been laid off and the number could climb as high as 100,000. Economic losses could run into the hundreds of millions of dollars.

A second terrorist objective is to embitter—or perhaps I should say poison—United States-Chilean relations, and whip up anti-Yankeeism in Chile. The Chilean Government is quite put out with the United States and we have not exactly endeared ourselves to the Chilean farm workers who have been thrown out of work. The United States ability to exert a constructive influence on Chile's transition to democracy will be nil unless normal commercial relations are promptly restored.

A third terrorist objective is to disrupt the operations of the U.S. Government and inflict losses on American businessmen. The Food and Drug Administration has had to devote 15 percent of its 7,000-member staff to this case. American supermarkets and wholesalers may lose tens of millions of dollars in sales, particularly since most U.S. fruit distributors have no insurance covering goods damaged or spoiled due to terrorist acts.

The FDA did what it thought it had to do. But it is time now to lift the ban on Chilean fruit. If we impose a total ban on fruit imports every time one of our Embassies in Latin America receives a threatening phone call, we will be jeopardizing the livelihoods of millions of our Latin neighbors and undermining their ability to achieve stable democratic institutions.

GOOD ECONOMIC REPORT SHOULD NOT OBSCURE NATION'S HOUSING CRISIS

(Mr. PICKETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PICKETT. Mr. Speaker, recent favorable economic data should not obscure the very real housing crisis that continues to grip this Nation.

According to a recent study by MIT, homeownership for young people under 34 is down 8 percent since 1980. Real rents are higher than they have been in decades. Mortgage rates are increasing. Many public housing projects stand in disrepair. And thousands of our countrymen are homeless.

These troubling facts dictate that immediate action be taken. Much can be done without the expenditure of additional Federal dollars, things like better coordination with State and local governments, increased incentives for private investors, more realistic specifications, support for housing project associations, and more opportunity for self help.

It is not enough to simply rearrange ownership of the existing housing stock. We must adopt policies that increase the supply of housing units if we are ever to cope successfully with the housing crisis.

NEW LEGISLATION WOULD EXPAND USE OF THE DEATH PENALTY

(Mr. GEKAS asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, I am today reintroducing legislation that would allow a jury to impose the death penalty for certain heinous crimes committed here and abroad. It would cover that unfortunate tragic situation which we hope will never occur again, the assassination of the President of the United States, God forbid, and other crimes, including treason, espionage, mass murders, and all the kinds of things we read about in the headlines which, even after they occur, the Federal Government is unable to tackle because of the nonexistence of a Federal death penalty statute.

In the last session we were successful in at least plugging that loophole just a little bit with respect to drug offenses. We now have the death penalty for drug dealers who kill, but to leave the remainder of the law unattended with respect to the death penalty is an affront to the criminal justice system.

Mr. Speaker, 80 percent of the American people, according to one poll, favor the imposition of the death penalty in proper cases. It is a deterrent and a just penalty for some of these rampant killings and intentional maimings and destruction of life that occur on a daily basis.

EL SALVADOR

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, on March 19, for the fifth time since 1982 the Government of El Salvador will hold elections. Over the last 7 years, the United States has insisted that elections are the best means to end the civil war, however the war still rages on with no signs of stopping. At least 70,000 Salvadorans have lost their lives in this bloody struggle. The number of people killed by death squads in 1988 was triple the number murdered during 1987.

In spite of overwhelming U.S. support, the current ruling party, the Christian Democrats, has been unable to produce either prosperity or peace. President Duarte's centrist coalition has crumbled, leaving the country more polarized than ever.

Regardless of the outcome of the elections, little economic progress can be made until the war is stopped; a military victory would do nothing to change the dismal socioeconomic situation. The standard of living for the average Salvadoran continues to decline. The infant mortality rate in El Salvador is one of the highest in the world, and one out of every four children is malnourished.

All of this despite the fact that over the last 8 years the United States has pumped more than $3 billion into El Salvador. Instead of helping to end the civil war in El Salvador, United States policy is perpetuating it and ignoring the very conditions which gave rise to the conflict.

After 8 years, I'm convinced that the ballot box, by itself, will not bring peace to El Salvador. There will be no peace in El Salvador without direct negotiations between the Government, the armed forces, and the rebels.

We must send a clear signal to the Government of El Salvador that we support a negotiated end to the war and that a lack of negotiations will have a direct effect on United States financial support.

□ 1120

S&L LEGISLATION IN CONGRESS

(Mr. BEREUTER asked and was given permission to address the House for 1 minute and to revise and extend

his remarks and include extraneous matter.)

Mr. BEREUTER. Mr. Speaker, I bring to the attention of my colleagues a recent editorial which appeared in the Washington Post regarding the lobbyists for the S&L industry. In the next few weeks, the Banking Committee will markup legislation to bailout the FSLIC and to restructure the savings and loan industry.

At this time, I would discourage my colleagues from making premature commitments to weaken the President's reform plan and the legislation currently before the House Banking Committee. If Members are pressed to take a position on the FSLIC and S&L legislation by that industry or the credit union lobbyists I would ask that you wait until after the Banking Committee has completed its markup in April, and a bill is reported to the full House. In short, keep your powder dry.

Legislation to remedy the current situation at FSLIC is going to be costly for the Federal Government, the financial industry, and taxpayers. Regrettably, we can no longer avoid the S&L problem; nor can we procrastinate in legislating. The longer we delay legislation, the more expensive the solution.

Congress cannot acquiesce to some representatives of the S&L industry again as it did in 1987 when we passed the inadequate provisions of its Competitive Equality Banking Act [CEBA]. Congress was rolled through the early commitment of many of its members and the majority advice of the Banking Committee was rejected on the level of capitalizations. We must have the courage to pass legislation that will put a plan in place that will address the S&L problem once and for all, and more importantly, prevent it from ever happening again.

[From the Washington Post, Mar. 9, 1989]

S&L RECRIMINATIONS

While the savings and loan lobby deserved the denunciations loaded upon it by various outraged senators this week, blame-laying is hardly the main issue now. That lobby—the U.S. League of Savings Institutions—bears much responsibility for the financial disasters of the S&L industry, but one of its gravest sins was to have had too much influence in Congress and to have been too successful in persuading senators to do things that, in retrospect, they wish that they had not done. The U.S. League was appearing before the Senate Finance Committee to protest that President Bush's cleanup bill is too onerous. That bill may not be perfect, but it is very good on those points about which the U.S. League complains most loudly. The real test of senatorial indignation will be the votes on the bill.

The crucial battle is going to be over the capital requirement for S&Ls. The whole explanation of the magnitude of the S&L failures, and the enormous burden now falling on the taxpayer, is that the federal government did not enforce adequate capital requirements in the past. As these institutions' capital fell, the regulators—pushed, let us note, by Congress—kept relaxing the rules and making more exceptions. That's why it is now going to cost perhaps $100 billion in federal deposit insurance to put them out of business. There are hundreds more S&Ls whose capital is dangerously low, threatening further bankruptcies and greater burdens on the deposit insurance fund.

The administration's bill would require the S&Ls to meet the same capital requirements as banks, with no exceptions. Many strong and well-managed S&Ls welcome that standard and are ready to meet it. But there are other institutions that will fight it desperately.

A lot of S&Ls got into trouble because they were operating under loose and permissive state laws allowing them to engage in extremely risky lending practices. The administration's bill would impose federal rules on lending, as a condition of federal insurance. That's going to be another point of much dissension.

Similarly, there's going to be a struggle over the character of the supervision exercised by the federal regulators. Supervision of the S&Ls has for years been inadequate by a wide margin. Now Congress has a chance to build a stronger system of enforcement that will be less vulnerable to political interference.

It is gratifying to know that senators on the Finance Committee realize the extent to which the S&L industry's largest political operation misled them. The question is what they intend to do about it.

UTAH'S WILDERNESS

(Mr. OWENS of Utah asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of Utah. Mr. Speaker, John Kennedy many years ago said "It is our task, in our time and in our generation, to hand down undiminished to those who come after us, the natural wealth and beauty which is ours." Today, with the introduction of H.R. 1500 I am dedicating a portion of my efforts to accomplishing that task with respect to Utah's public domain.

In 1936 naturalist Bob Marshall, the father of the modern wilderness preservation system, who said that Utah's wilderness is second only to Alaska's in beauty and majesty, inventoried 18 million acres of roadless and wild lands in the State of Utah. Much of that land has disappeared from the wilderness category. My bill would protect, through official wilderness designation, the most important and most beautiful 5 million acres that remains.

Some people worry about creating new wilderness—wilderness is not created by legislation—it is the work of God and nature. These 5 million are already public land—already held in trust by the Federal Government for the benefit of all Americans. The real issues presented by this bill are: First, what quality of stewardship will be exercised over Utah's remnant of wilderness and second, how concerned are we that our children have opportunity to see and experience unimpacted wilderness?

The erosional handiwork of the Colorado River has created a national treasure that has already prompted the creation of five national parks. H.R. 1500 would establish protection for the remaining unimpacted wild lands that surround and lie amidst these parks. The uniqueness of this landscape is world renowned, it must not be lost.

A YELLOW RIBBON FOR TERRY ANDERSON

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, it was 4 years ago today that American Terry Anderson was kidnapped by radical Muslims in Lebanon.

Since 1985, other Americans have been taken and released, and there are others who remain captive, but none has been imprisoned longer than Terry Anderson.

Today, the entire Western World is appalled by the death threat against Salman Rushdie issued by the Ayatollah Khomehni. We here in the United States have been especially disturbed because freedom of thought and speech are rights that serve as the foundation of our democracy. Even though Mr. Rushdie is not a citizen of our country, the world still looks to us to lead the battle against all threats to individual freedom. This we have done.

But we cannot forget our own citizens whose freedoms have been taken away by terrorists. We cannot forget Terry Anderson.

We cannot forget his 4 years of suffering.

That's why I've asked my colleagues to join me in placing a yellow ribbon on their office door.

A yellow ribbon that will serve as a constant reminder that Terry Anderson remains separated from those who love him and separated from the freedoms we too often take for granted.

CAPITAL INTRIGUE

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, I take this time today to explain to those who may be observing the actions in the Chamber today about what we characterize as capital intrigue.

Now many newspapers have reported a silence among Democrats who are unwilling to respond in support of the Speaker amid charges that have been

raised against him that are now pending before the Committee on Standards of Official Conduct.

I want to explain that I talked to at least six news reporters yesterday, at least six, during which time I expressed enthusiastic, unequivocal and even undaunted support for the Speaker in my belief that he has committed no wrong, and will be exonerated and that the Committee on Standards of Official Conduct will find that he has not violated a single rule of this House.

The explanation about capital intrigue is that in Washington they have the hanging before they have the trail, and that explanation should be made to the American people who are watching and observing the news media today.

I applaud the Speaker's leadership and his initiative that led to the Central American peace plan. Speaker WRIGHT's courageous role in the Central American peace process is the real basis for much of the discontent among some of our colleagues; it is the Speaker's success in that role that originally created the envy and animosity in the partisan efforts to vilify the Speaker. Democrats should not falter under this attack, but should stand up for fair and unbiased treatment of the Speaker, who has devoted decades of able and dedicated service for our country.

STOP THE KILLING IN EL SALVADOR

(Mrs. MORELLA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MORELLA. Mr. Speaker, on Sunday, the people of El Salvador go to the polls to begin the process of choosing their next President. And while I applaud the regular occurence of elections, I also acknowledge that to most of those who vote, and to the large number who cannot, or have determined that they will not, the result will not matter.

It will not matter because the civil war—which has cost that country more than 70,000 lives and our country more than $3 billion—continues unabated. In such an atmosphere, human rights abuses, in spite of fluctuations in recent months and years, continue at a pace unacceptable in any civilized society. In too many cases, the military fails to distinguish between civilians and guerrillas, and the FMLN engages in such appalling tactics as the killing of mayors and this morning's attack on the Presidential palace. We must recognize that the vast majority of Salvadorans, fearing that the conflict can only intensify further and knowing that this war will not be won on the battlefield, want a negotiated settlement to end it.

Mr. Speaker, the time has come to recognize that the policy set by the Reagan administration achieve as much as it ever will. An FMLN victory has been prevented, democratic institutions have taken root, and the guerrillas have made a commitment to participate in the electoral process. But real democracy and respect for human rights, not withstanding Vice President QUAYLE's recent laudatory efforts, cannot exist in the midst of the civil war.

A process has recently begun in El Salvador, in which all parties to the conflict, spanning the ideological spectrum, have begun to explore the possibilities for a negotiated peace. I commend the President for the support which his administration has given to these talks, and I urge him to strengthen this position.

It is appropriate to recall the words of President Kennedy, whose Alliance for Progress first began to focus American attention on the problems of poverty and injustice in Latin America: "Is not peace, in the last analysis, basically a matter of human rights?"

A KEY MOMENT IN EL SALVADOR-UNITED STATES RELATIONS

(Mr. MOODY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOODY. Mr. Speaker, this Sunday El Salvador will hold the first step in its Presidential elections, with the final winner determined in April.

For the first time in years, the main pillar of U.S. policy in that unfortunate country—Napoleon Duarte—will be gone.

At the same time, independent observers are reporting a marked increase in terror and violence against civilians by both sides of the conflict, including increased killing by right-wing death squads. The Catholic Church's human rights office in El Salvador, Tutela Legal, reports a doubling of human rights abuses over the last 2 years.

Not one single army officer has been charged for killing civilians, despite documented cases by the score.

It is definitely time, Mr. Speaker, for a review of United States policy toward El Salvador.

A recent GAO study for Congress finds that $3.3 billion in United States aid to El Salvador has produced very little benefit and has been marked by tremendous waste and corruption.

The GAO's summary conclusions are:

First, the United States should continue to support a negotiated settlement in that country.

Second, we should condition U.S. assistance on government actions to deal with human rights abuses.

Third, we should enforce far stricter financial controls over our aid.

Fourth, we should implement work toward implementing democratic reforms.

Mr. Speaker, these four key points should underpin future United States policy toward El Salvador.

APEX LEGISLATION

(Mrs. VUCANOVICH asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. VUCANOVICH. Mr. Speaker, in May, 1988, an explosion destroyed the Pepcon plant in Henderson, NV, which severely reduced the Nation's capacity to produce solid rocket fuel. Pepcon is only one of two companies that produce ammonium perchlorate in the country. The other company is Kerr-McGee, which is also located in Henderson, a rapidly growing community.

The bill I have introduced today will allow Clark County, NV, to acquire land in an unpopulated area for use as an industrial park. It will also provide for Kerr-McGee to immediately purchase part of that land to relocate its ammonium perchlorate plant. I am pleased that my colleague from Nevada, Congressman BILBRAY, is an original cosponsor, as well as the distinguished chairman of the Science and Technology Committee, Mr. ROE, Mr. WALKER, the ranking minority member, and Mr. MCCURDY, a member of the Science and Technology Committee.

Ammonium perchlorate is the principal component of solid rocket fuel that is essential to the Nation's defense and space programs. It is imperative that the ammonium perchlorate production lost in the Pepcon accident be replaced as quickly as possible as well as firm up existing production capabilities.

This bill will do that. It will provide an immediate location for Kerr-McGee to maintain its existing operations, without the contraints that presently exist because of the population density in henderson.

This is a good bill that will provide desperately needed location for continuation of ammonium perchlorate production. It will also provide Clark County with additional private land for future growth.

THE UNFAIR BUSH BUDGET FREEZE

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, the debate in the coming weeks over the budget will not necessarily be a debate

between Democrats and Republicans. The first stage of that debate may be within the Bush administration itself, a debate between those who would want a kinder and gentler agenda and those who would pursue the so-called flexible freeze; for you see, the flexible freeze is certainly not kind nor gentle to important programs which America has come to value and has come to appreciate as important for our future.

Let me give a few examples. The flexible outlay freeze proposed by President Bush would cut the funds for compensatory education by 46 percent.

It would cut the funds for vocational education by 44 percent.

It would cut student financial assistance and would reduce the amount of money for the Superfund, that is the fund to clean up toxic waste, by 83 percent.

Those are the realities of the flexible freeze. If they sound inconsistent with a kinder and gentler agenda, they are.

At some point the Bush administration must come forward and really spell out to Congress what they stand for. We have all saluted the President for the fine opening that he has in his administration, the good appointments which he has made to his Cabinet, many of the statements he has made, but now in fact we have to sit down at the table, roll up our sleeves and come up with a budget.

In the next few weeks, as a member of the Budget Committee, I will be working with my colleagues on both sides of the aisle to try to promulgate a budget resolution which is realistic in light of this deficit, but which is truly kinder and gentler.

Our Human Resources Task Force is now considering the needs of veterans, the needs of children when it comes to WIC Programs and Head Start Programs.

I am certain that working together with an administration that has come together with real grips on the budget can lead us to a satisfactory conclusion.

For the time being and perhaps during the Easter work period the Bush administration will have time to make its choice between the flexible freeze and the kinder and gentler agenda, which was part of the President's campaign.

SUPPORT HUMAN RIGHTS AND DEMOCRACY IN HONG KONG

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, I am introducing a resolution in support of human rights and democracy in Hong Kong.

In just 8 years, Hong Kong's 5½ million citizens will come under the control of the People's Republic of China. This year, the prospect of Chinese interference is expected to result in the departure of over 45,000 Hong Kong residents.

The territory's post-1997 constitution is being drafted right now and will be finalized in the next 2 years. The present version provides little hope for optimism. Under the draft, the Chief Executive and Legislative Counsel will not be directly elected until at least 2011, and then only if the sitting Chief Executive, who will be favorable to Beijing, concurs. In addition, the provisions of two international covenants on human rights apparently will be left out of Hong Kong's constitution.

In light of the developments in Hong Kong, it is essential that the Congress fully debate this issue in the 101st Congress, and stand firmly in support of human rights and democracy in Hong Kong.

NATIONAL JOURNALISM EDUCATION WEEK

(Mr. BUECHNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BUECHNER. Mr. Speaker, I rise today to introduce legislation designating the week of January 7, 1990, as National Journalism Education Week.

The longevity of our Republic speaks to the virtues of a free and untrammeled press far better than I. However, to briefly note its impact—who among us does not sometimes curse, sometimes praise, but always anticipate our morning newspaper? Who among us has not directly benefited from the free exchange of ideas in the journalistic market place? And who among us does not praise the wisdom of the Founding Fathers in preserving as foremost among equals, our first amendment right to engage in free and open discourse.

We in America often take for granted this most precious of our rights. We forget that the values and skills that accompany the crafting of information must be learned. My legislation is a recognition of this fact—as well as a partial payment on the debt we owe to concerned educators past and present. By establishing a week dedicated to journalism education we pay tribute to those who by their teaching have helped preserve and strengthen the foundations on which our democracy rest. In this we will also indicate a commitment to our young people that they be taught the wise use of the written word—and a dedication to use wisely that which they are taught.

AUTHORIZING PRINTING OF COMMITTEE PRINT ENTITLED "COASTAL WATERS IN JEOPARDY: REVERSING THE DECLINE AND PROTECTING AMERICA'S COASTAL RESOURCES"

Mr. BATES. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the resolution (H. Res. 107) authorizing the printing of the committee print entitled "Coastal Waters in Jeopardy: Reversing the Decline and Protecting America's Coastal Resources" as a House document and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore (Mr. LANCASTER). Is there objection to the request of the gentleman from California?

Mr. ROBERTS. Reserving the right to object, Mr. Speaker, I do so to allow the gentleman from California to explain the resolution, and I yield to the gentleman for that purpose.

Mr. BATES. Mr. Speaker, the resolution provides for the printing of 2,500 copies of a document entitled "Coastal Waters in Jeopardy: Reversing the Decline and Protecting America's Coastal Resources," the oversight report of the Committee on Merchant Marine and Fisheries. The Merchant Marine and Fisheries has exhausted its supply and has asked for 2,500 additional copies. The cost for the additional copies will be $960. The request comes from Chairman JONES and is supported by the ranking minority party member of the committee, Representative DAVIS.

Mr. ROBERTS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 107

Resolved, That the committee print entitled "Coastal Waters in Jeopardy: Reversing the Decline and Protecting America's Coastal Resources", dated December 1988, shall be printed as a House document. In addition to the usual number, 2,500 copies of the document shall be printed for the use of the Committee on Merchant Marine and Fisheries of the House of Representatives.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1140

GENERAL LEAVE

Mr. BATES. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days during which to revise and extend their remarks on

House Resolution 107, the resolution just agreed to.

The SPEAKER pro tempore (Mr. LANCASTER). Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. WEISS] is recognized for 5 minutes.

[Mr. WEISS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. ROTH] is recognized for 5 minutes.

[Mr. ROTH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

[Mr. ANNUNZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. KYL] is recognized for 60 minutes.

[Mr. KYL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

[Mr. GONZALEZ addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. PETRI] is recognized for 60 minutes.

[Mr. PETRI addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. SMITH] is recognized for 60 minutes.

[Mr. SMITH of Florida addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DREIER] is recognized for 60 minutes.

[Mr. DREIER of California addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

TRIBUTE TO THE LATE FORMER CONGRESSMAN JAMES KEE OF WEST VIRGINIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from West Virginia [Mr. RAHALL] is recognized for 30 minutes.

Mr. RAHALL. Mr. Speaker, it is with great sadness that I learned this last weekend of the passing of former West Virginia Congressman James Kee. I attended Jim's funeral service in Oak Hill, WV, yesterday at the St. Andrew's Episcopal Church. Officiating was Rev. Curtis Cowell, who spoke from his heart about his friendship with Jim Kee. Jim Kee and his parents through diligent and tireless public service to our great State became true West Virginia legends. Few families in the Nation have such a unique history as the Kee family.

Jim served in the House of Representatives from 1965 to 1973 and represented the former Fifth District of West Virginia. His defeat in the 1972 Democratic primary after West Virginia lost a congressional seat ended 40 years of congressional service by the Kee family.

His father, John Kee was first elected to the House in the 1932 Roosevelt landslide and was chairman of the House Foreign Affairs Committee when he died during his 10th consecutive term in 1951. John's widow, Elizabeth, who had been his executive secretary while he was a Member, was elected to complete the unexpired term in a special election. Mrs. Kee was reelected subsequently six times. She holds the distinct honor of being West Virginia's only woman to serve in the U.S. House of Representatives. Shortly after coming to Congress my legislation designated the Federal building in Bluefield, WV, the "Elizabeth Kee Federal Building," in which one of my district offices is located.

Jim was born in Bluefield, WV, and attended Sacred Heart School in Bluefield, Greenbrier Military School, Southeastern University School of Law and the School of Foreign Service at Georgetown University.

His background before he was elected to serve the people of West Virginia was indeed impressive. He served as assistant to the Clerk of the House of Representatives and housing adviser to the former U.S. Housing Authority. He served in the U.S. Army Air Force and was a career Foreign Service staff officer of the U.S. Department of State. For 12 years prior to his election, Jim served as administrative assistant to his mother.

The Kee's constituency through their 4 decades in Congress was predominantly coal miners. Throughout much of the Kee era, the Fifth District was the biggest coal producer among the Nation's congressional districts. It was reputed at one time that the old Fifth District was the most heavily Democratic congressional district outside the "solid South."

Jim's legislative career was dedicated to serving the people of West Virginia and advancing the economic development of the State. Through his years of service he was successful in securing $1.5 billion in assistance for the Fifth Congressional District. This assistance provided new hospitals, recreation and tourism facilities, postal facilities, general and commercial airports, vocational and educational institutions, sewer and water facilities, elementary, secondary and higher education assistance and much more.

He championed many causes close to my fellow West Virginians' hearts. He was a true friend to the coal miners of my State. He introduced the very first bill in Congress, H.R. 9850, dealing with the respiratory problems of coal miners which later became known as the first black lung legislation. He sponsored and conducted the first congressional districtwide series of conferences dealing with narcotics and dangerous drug abuse in the United States, bringing in representatives from all facets of the local community.

Even after his retirement, Jim was very active in his community of Fayetteville, WV. He was an active member of the Lions Club, the American Legion, the Elks Club and several other organizations dedicated to serving others.

When Jim retired in 1972 many of his colleagues had kind words for a man they admired and respected. I would like to share with you a few words former Representative Don Clausen said about Jim, "The Jim Kee I know and will remember is a courageous, concerned, considerate, and compassionate man that really loved his family, his people and his country—he is truly a 'card carrying American'." I too, share those thoughts.

Mr. Speaker, the people of West Virginia have lost a true friend, one who fostered many causes for the people of my great State of West Virginia. I am one of the many of his admirers who is honored to have known this great West Virginian legend. I would like to offer Jim's wonderful wife, Cookie, and his fine children, many of whom spoke in such a touching manner at their father's funeral yesterday, my love and prayers.

Mr. MOLLOHAN. Mr. Speaker, there has been sadness in the West Virginia congressional delegation this week because of the death of a man who, for more than 32 years served his fellow West Virginians and America in public service. Former Congressman James Kee was a Member of the U.S. House of Representatives for 7 years, from 1965 to 1972, but he was a vital public servant to the institution and to the people of West Virginia in different capacities for many decades. His passing last weekend gives us cause to note his contributions and accomplishments.

It is no exaggeration to say that James Kee's life revolved around the Federal Government and the U.S. House of Representatives. Both of his parents were Members of Congress—his father, from 1933 to 1951, and his mother from 1951 to 1965. James Kee, quite literally, grew up with politics and congressional affairs at the family dinner table. He also grew up with something else—a deep family commitment to helping the people of his district and his State. In living up to that commitment, he made a place for himself in the hearts and memories of his fellow Mountain State residents.

Assistant to the Clerk of the U.S. House of Representatives; housing adviser to the

former U.S. Housing Authority; career foreign Service staff officer with the U.S. Department of State; administrative assistant to his mother, Congresswoman Kee; and finally, U.S. Congressman—James Kee's résumé was a stunning record of service and success.

His service in the House as a staffer and as a Member led to legislation like the Public Works and Economic Development Act; the Appalachian Regional Development Act; Federal Coal Mine Health and Safety Act and much much more. He supported legislation involving watersheds, soil conservation, highways, recreation, tourism, Social Security, veterans' affairs, housing, mining, water pollution, sewer and water systems, and other vital legislative measures and issues that still bear his mark.

He was an early supporter of efforts to find answers to narcotics and dangerous drug abuse and introduced the very first bill in Congress to deal with respiratory problems of coal miners which later became known as black lung legislation.

Mr. Speaker, West Virginians are saddened by the passing of a fine legislator, leader, and friend. I join my colleagues in paying tribute to his memory, his service, and his vision for America.

Mr. WISE. Mr. Speaker, I rise today to pay tribute to a fellow West Virginian and a former Member of this body, James Kee, who passed away on March 11, in Montgomery, WV.

James Kee's service in the House of Representatives from 1965 to 1972 was but one chapter in a life of public service, but it is perhaps the one for which he is best remembered. As a member of legislation which was instrumental in building the infrastructure of America, improving water quality, providing relief from natural disasters, and promoting economic development in the Appalachian region. Through his membership on the Interior and Insular Affairs Committee, he was in the forefront of legislation to improve health and safety coverage in the coal mining industry and to provide for coal miners who suffered with black lung disease.

Congressman Kee came from a tradition of service to West Virginia in the House of Representatives, following both his father, John, and his mother, Elizabeth, as a Member of this body. After graduating from law school, he served as an assistant to the Clerk of the House of Representatives, and as housing advisor to the U.S. Housing Authority. He served in the Army Air Force in World War II, and then as a career Foreign Service officer.

Though his duties took him to many countries, James Kee always remained a servant of his beloved State of West Virginia. He served as president of the West Virginia Society of the District of Columbia and was very active in civic activity in West Virginia through such organizations as the Elks, Kiwanis, and the American Legion. In the House, he worked tirelessly on behalf of his constituents.

While some remain in Washington after leaving public life, Congressman Kee returned to West Virginia, where he lived out his life as a well-respected and active member of his community.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SMITH of Vermont) to revise and extend their remarks and include extraneous material:)

Mr. ROTH, for 5 minutes, today.

(The following Members (at the request of Mr. COSTELLO) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. FORD of Michigan, for 60 minutes, on March 21.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. SMITH of Vermont) and to include extraneous material:)

Mr. KOLBE.

Mr. GOODLING.

Mr. SCHULZE.

Mrs. MORELLA.

Mr. FISH.

Mr. CONTE.

Mr. PARRIS in three instances.

Mr. LAGOMARSINO.

(The following Members (at the request of Mr. COSTELLO) and to include extraneous material:)

Mr. MCCLOSKEY.

Mr. FAZIO.

Mr. PENNY.

Mr. CAMPBELL of Colorado.

Mr. FORD of Tennessee.

Mrs. KENNELLY.

Ms. PELOSI.

Mr. KENNEDY in two instances.

ENROLLED JOINT RESOLUTION SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 148. Joint resolution designating the month of March in both 1989 and 1990 as "Women's History Month."

ADJOURNMENT TO MONDAY, MARCH 20, 1989

Mr. BATES. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 44 minutes a.m.), under its previous order, the House adjourned until Monday, March 20, 1989, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

786. Under clause 2 of rule XXIV, a letter from the Acting Administrator, General Services Administration, transmitting informational copies of a report of building project survey for Asheville, NC, and several lease prospectuses, was taken from the Speaker's table and referred to the Committee on Public Works and Transportation.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BALLENGER (for himself, Mr. DERRICK, Mr. GINGRICH, Mr. HEFNER, Mr. NEAL of North Carolina, Mr. FRANK, Mr. COBLE, Mr. MCMILLAN of North Carolina, Mr. JONES of North Carolina, Mrs. LLOYD, Mrs. BYRON, Mr. LANCASTER, Mr. ROSE, and Mr. VALENTINE):

H.R. 1461. A bill to amend the Tariff Act of 1930 to require that certain revenues attributable to tariffs levied on imports of textile machinery and parts thereof be applied to support research for the modernization of the American textile machinery industry; to the Committee on Ways and Means.

By Mr. CAMPBELL of Colorado (for himself, Mr. BROWN of Colorado, Mr. SCHAEFER, Mr. HEFLEY, Mr. SKEEN, Mr. RICHARDSON, Mrs. SCHROEDER, and Mr. SKAGGS):

H.R. 1462. A bill to provide for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District of the State of Colorado and for the protection of fish and wildlife habitat on the Conejos River; to the Committee on Interior and Insular Affairs.

By Mr. DELLUMS (for himself, Mr. FARRIS, Mr. STARK, Mr. FAUNTROY, Mr. HOYER, Mrs. MORELLA, Mr. MCMILLEN of Maryland, and Mr. WOLF):

H.R. 1463. A bill to amend the National Capital Transportation Act of 1969 relating to the Washington Metrorail System; to the Committee on the District of Columbia.

By Mr. GEKAS (for himself, Mr. HARRIS, Mr. DENNY SMITH, Mr. ARMEY, Mrs. BENTLEY, Mr. WILSON, Mr. LAGOMARSINO, Mr. PARRIS, Mr. BUECHNER, Mr. MOORHEAD, Mr. COX, Mr. DORNAN of California, Mr. DEWINE, Mr. CLINGER, Mr. EMERSON, and Mr. SHAW):

H.R. 1464. A bill to amend title 18, United States Code, to provide procedures for the imposition of the death penalty; to the Committee on the Judiciary.

By Mr. JONES of North Carolina (for himself, Mr. DAVIS, Mr. STUDDS, Mr. LENT, Mr. HUGHES, Mr. YOUNG of Alaska, Mr. TAUZIN, Mr. HUBBARD, Mr. HUTTO, Mr. FOGLIETTA, Ms. SCHNEIDER, Mr. HERTEL, Mr. DYSON, Mr. LIPINSKI, Mr. BORSKI, Mr. CARPER, Mr. BOSCO, Mr. TALLON, Mr. ORTIZ, Mr. BENNETT, Mr. MILLER of Washington, Mr. MANTON, Mrs. BENTLEY, Mr. PICKETT, Mr. HOCHBRUECKNER, Mr. SOLARZ, Mr. COBLE, Mrs. SAIKI, Mr. LAUGHLIN, Mrs. UNSOELD, Mr. GOSS, Mr. PASCELL, Mr.

MINETA, Mr. THOMAS of Georgia, Mr. ABAKA, Mr. DE LUGO, Mr. WALGREN, Mr. DWYER of New Jersey, Mr. TRAFICANT, Mr. KENNEDY, Ms. PELOSI, Mrs. BOXER, Mr. FRANK, and Mr. ECKART):

H.R. 1465. A bill to establish limitations on liability for damages resulting from oil pollution to establish a fund for the payment of compensation for such damages, and for other purposes; jointly, to the Committees on Merchant Marine and Fisheries and Public Works and Transportation.

By Mr. MICHEL (for himself, Mr. TAUKE, Mr. SHAW, Mrs. JOHNSON of Connecticut, Mr. BARTLETT, Mr. GUNDERSON, and Mr. SCHUETTE):

H.R. 1466. A bill to amend the Internal Revenue Code of 1986 to authorize a child tax credit and a refundable child and dependent care tax credit; to the Committee on Ways and Means.

By Mr. MICHEL (for himself, Mr. TAUKE, Mr. SHAW, Mrs. JOHNSON of Connecticut, Mr. BARTLETT, and Mr. GUNDERSON):

H.R. 1467. A bill to authorize additional appropriations for the Head Start program; to the Committee on Education and Labor.

By Mr. GOODLING (for himself, Mr. PETRI, Mr. GAYDOS, Mr. MCDADE, Mr. MURTHA, Mr. YATRON, Mr. WALKER, Mr. GEKAS, Mr. WELDON, Mr. MURPHY, Mr. CLINGER, Mr. BROOMFIELD, Mr. GUNDERSON, Mrs. SAIKI, Mr. DENNY SMITH, Mr. HARRIS, Mr. CALLAHAN, Mr. EMERSON, Mr. SENSENBRENNER, Mr. ERDREICH, Mr. WHITTAKER, Mr. LANCASTER, Mrs. BENTLEY, Mr. MONTGOMERY, Mr. FAWELL, and Mr. VALENTINE):

H.R. 1468. A bill relating to decennial censuses of population for purposes of congressional apportionment, to exclude illegal aliens from the census count, to include in the census count members of the uniformed services and civilian employees of the Government and their dependents assigned to posts of duty outside the United States, and to include in the census count students who are citizens of the United States engaged in academic study in areas outside the United States; jointly, to the Committees on Post Office and Civil Service, Education and Labor, and the Judiciary.

By Mr. HUGHES (for himself, Mr. SAXTON, and Mr. PALLONE):

H.R. 1469. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972 to establish uniform penalties for violations of title I of such act; to the Committee on Merchant Marine and Fisheries.

By Mr. SIKORSKI (for himself, Mr. CONTE, Mr. BOEHLERT, Mr. UDALL, Mr. RINALDO, Mr. MARKEY, Mr. TAUKE, Mr. FLORIO, Mr. GREEN, Mr. ACKERMAN, Mr. ATKINS, Mr. BATES, Mr. BEILENSON, Mr. BERMAN, Mr. BILBRAY, Mr. BOSCO, Mrs. BOXER, Mr. BROWN of California, Mr. CAMPBELL of California, Mr. CHANDLER, Mr. CLAY, Mrs. COLLINS, Mr. CONYERS, Mr. COUGHLIN, Mr. DEFAZIO, Mr. DELLUMS, Mr. DE LUGO, Mr. DIXON, Mr. DONNELLY, Mr. DOUGLAS, Mr. DOWNEY, Mr. DREIER of California, Mr. DWYER of New Jersey, Mr. DYMALLY, Mr. DYSON, Mr. EARLY, Mr. EDWARDS of California, Mr. FAZIO, Mr. FISH, Mr. FOGLIETTA, Mr. FORD of Tennessee, Mr. FRANK, Mr. GALLO, Mr. GARCIA, Mr. GEJDENSON, Mr. GILMAN, Mr. GLICKMAN, Mr. GONZALEZ, Mr. GOODLING, Mr. GUARINI, Mr. HAWKINS, Mr. HAYES of Illinois, Mr. HOCHBRUECKNER, Mr. HORTON, Mr. HOUGHTON, Mr. HUGHES, Mrs. JOHNSON of Connecticut, Mr. KASTENMEIER, Mr. KENNEDY, Mrs. KENNELLY, Mr. KOSTMAYER, Mr. LAFALCE, Mr. LANTOS, Mr. LEACH of Iowa, Mr. LEHMAN of California, Mr. LELAND, Mr. LEVINE of California, Mr. LEWIS of Georgia, Mrs. LOWEY of New York, Mr. MCDERMOTT, Mr. MCGRATH, Mr. MCHUGH, Mr. MACRTLEY, Mr. MARTIN of New York, Mr. MARTINEZ, Mr. MATSUI, Mr. MAVROULES, Mr. MFUME, Mr. MILLER of California, Mr. MINETA, Mr. MOAKLEY, Mrs. MORELLA, Mr. MORRISON of Connecticut, Mr. MRAZEK, Mr. NAGLE, Mr. NEAL of Massachusetts, Mr. NELSON of Florida, Mr. NOWAK, Mr. OBERSTAR, Mr. OWENS of New York, Mr. OWENS of Utah, Mr. PALLONE, Mr. PANETTA, Mr. PAYNE of New Jersey, Ms. PELOSI, Mr. PICKLE, Mr. RANGEL, Mr. RAVENEL, Mr. ROBINSON, Mr. ROE, Mr. ROSE, Mrs. ROUKEMA, Mr. ROWLAND of Connecticut, Mr. ROYBAL, Mr. SABO, Mrs. SAIKI, Mr. SAVAGE, Mr. SAXTON, Mr. SCHEUER, Ms. SCHNEIDER, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SHAYS, Mr. SKAGGS, Ms. SLAUGHTER of New York, Mr. SMITH of New Jersey, Mr. SMITH of Iowa, Mr. SMITH of Vermont, Mr. SMITH of New Hampshire, Mr. SOLARZ, Mr. SOLOMON, Mr. STARK, Mr. STUDDS, Mr. TALLON, Mr. TORRES, Mr. TORRICELLI, Mr. VENTO, Mr. WALGREN, Mr. WALSH, Mr. WAXMAN, Mr. WEBER, Mr. WEISS, Mr. WILSON, Mr. WYDEN, Mr. YATES, Mr. ABAKA, Mr. BRYANT, Mr. ENGEL, Mr. FASCELL, Mr. KLECZKA, and Mr. MOODY).

H.R. 1470. A bill to amend the Clean Air Act to control acid deposition; to the Committee on Energy and Commerce.

By Mrs. KENNELLY (for herself, Mr. DONNELLY, Mr. MFUME, Mr. FAUNTROY, Mr. SHAYS, Mr. YATES, Mr. KOSTMAYER, Mr. COYNE, Mr. FASCELL, Mr. MATSUI, Mr. FUSTER, Mr. MILLER of California, Mr. DYMALLY, Mrs. MORELLA, Mrs. BOGGS, Mr. MORRISON of Connecticut, Ms. PELOSI, Mr. LAGOMARSINO, Ms. KAPTUR, Mr. RANGEL, Mr. DORGAN of North Dakota, Mr. MARTINEZ, Mrs. COLLINS, Mrs. LLOYD, Mr. TORRES, Mr. FAZIO, Mr. LEWIS of Florida, Mrs. SAIKI, Mr. MCGRATH, Ms. SLAUGHTER of New York, Mr. KASTENMEIER, Mr. OWENS of New York, Mrs. BOXER, Mr. HUGHES, Mr. ATKINS, Mr. MRAZEK, Mr. MCDERMOTT, Mr. DE LUGO, Mr. FRANK, Mr. DWYER of New Jersey, Mrs. BENTLEY, Mr. SOLARZ, Mr. OBERSTAR, Mr. GIBBONS, Mr. YATRON, Mr. LANCASTER, Mr. TOWNS, Mr. GLICKMAN, Mr. CROCKETT, Mr. ANDREWS, Mr. NEAL of Massachusetts, Mr. SMITH of New Jersey, Mr. BORSKI, Mr. ABAKA, Mr. NEAL of North Carolina, Mr. FOGLIETTA, Mr. JONTZ, and Mr. ACKERMAN):

H.R. 1471. A bill to amend title XVIII of the Social Security Act to provide payment for screening mammography in the same amounts as is provided for similar mammography; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. KILDEE (for himself, Mr. LEVIN of Michigan, Mr. WOLPE, Mr. HENRY, Mr. BONIOR, Mr. TRAXLER, Mr. CONYERS, Mr. CARR, Mr. DINGELL, Mr. HERTEL, Mr. VANDER JAGT, Mr. FORD of Michigan, and Mr. SCHUETTE):

H.R. 1472. A bill to establish the Grand Island National Recreation Area in the State of Michigan, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. LAGOMARSINO (for himself and Mr. GALLEGLY):

H.R. 1473. A bill to designate certain lands in Los Padres National Forest as wilderness, to designate Sespe Creek and the Sisquoc River in the State of California as wild and scenic rivers, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. MARTINEZ:

H.R. 1474. A bill to establish the Community Service Corps, to provide for education and training of participants in such corps, and for other purposes; jointly, to the Committees on Education and Labor and Interior and Insular Affairs.

By Mr. PARRIS:

H.R. 1475. A bill to amend the Export Administration Act of 1979 and the Federal Deposit Insurance Act to authorize controls on the export of capital from the United States, to control exports supporting terrorism, to prohibit ownership of U.S. banks by Warsaw Pact countries, and for other purposes; jointly, to the Committees on Banking, Finance and Urban Affairs and Foreign Affairs.

By Mr. RAHALL (for himself, Mr. WISE, Mr. MOLLOHAN, Mr. STAGGERS, Mr. CLINGER, Mr. STENHOLM, Mr. WILSON, Mr. SKEEN, Mr. SARPALIUS, and Mr. HALL of Texas):

H.R. 1476. A bill to amend the Internal Revenue Code of 1986 to clarify the application of the credit for producing fuel from a nonconventional source with respect to gas produced from a tight formation and to make such credit permanent with respect to such gas and gas produced from Devonian shale; to the Committee on Ways and Means.

By Mr. RINALDO:

H.R. 1477. A bill to amend title 18, United States Code, to provide procedures for the imposition of the death penalty, and for other purposes; to the Committee on the Judiciary.

H.R. 1478. A bill to amend title 18, United States Code, to impose criminal penalties for early disclosure and use of certain time sensitive official economic information; to the Committee on the Judiciary.

H.R. 1479. A bill to amend the Internal Revenue Code of 1986 to increase to $150,000 the amount of group term life insurance which may be provided by an employer and excluded from the gross income of an employee; to the Committee on Ways and Means.

By Mr. SCHULZE (for himself, Mrs. BENTLEY, Mr. ATKINS, Mr. FASCELL, Mr. HARRIS, Mr. KOSTMAYER, Mr. ROE, Mr. HAYES of Louisiana, Mr. DE LUGO, Mrs. MEYERS of Kansas, Mr. MARTINEZ, Mrs. MARTIN of Illinois, and Mr. FOGLIETTA):

H.R. 1480. A bill to provide that pattern coinage of the Bureau of the Mint be deposited at the Smithsonian Institution; to the Committee on Banking, Finance and Urban Affairs.

H.R. 1481. A bill to authorize the Director of the Mint to transfer to the Smithsonian Institution 200 proof sets for purposes of trading these sets with foreign mints, and for other purposes; jointly, to the Committees on Banking, Finance and Urban Affairs and House Administration.

By Mr. VANDER JAGT:

H.R. 1482. A bill to suspend for a 3-year period the duty on diphenyldichlorosilane and phenyltrichlorosilane; to the Committee on Ways and Means.

H.R. 1483. A bill to repeal the temporary suspension of duty on C-Amines; to the Committee on Ways and Means.

By Mr. VENTO (for himself, Mr. ATKINS, Mr. AKAKA, Mr. BATES, Mr. BEILENSON, Mr. BENNETT, Mr. BONIOR, Mr. BORSKI, Mr. BOSCO, Mr. BOUCHER, Mrs. BYRON, Mr. CLARKE, Mr. COELHO, Mrs. COLLINS, Mr. DARDEN, Mr. DEFAZIO, Mr. DELLUMS, Mr. DE LUGO, Mr. FASCELL, Mr. FISH, Mr. FOGLIETTA, Mr. GEJDENSON, Mr. GORDON, Mr. HERTEL, Mr. HORTON, Mr. HUCKABY, Mr. JOHNSON of South Dakota, Mr. JONTZ, Mr. KILDEE, Mr. KLECZKA, Mr. KOSTMAYER, Mr. LEVINE of California, Mr. LEWIS of Georgia, Mr. MARKEY, Mr. MCDERMOTT, Mr. MINETA, Mr. MRAZEK, Mr. MURPHY, Ms. OAKAR, Mr. OLIN, Mr. OWENS of Utah, Mr. PALLONE, Mr. PEASE, Ms. PELOSI, Mr. RAHALL, Mr. RAVENEL, Mr. RAY, Mr. SCHUMER, Mr. SLATTERY, Mr. SMITH of Florida, Mr. STUDDS, Mr. SYNAR, Mr. TOWNS, Mr. TRAFICANT, Mr. WALGREN, Mr. WAXMAN, Mr. WHEAT, Mr. WILSON, Mr. WISE, Mr. NELSON of Florida, Mr. FAUNTROY, Mr. KOLTER, Mr. RICHARDSON, Mr. MAVROULES, Ms. KAPTUR, and Mr. BILBRAY):

H.R. 1484. A bill to establish a National Park System Review Board, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mrs. VUCANOVICH (for herself, Mr. BILBRAY, Mr. ROE, Mr. MCCURDY, and Mr. WALKER):

H.R. 1485. A bill to provide for the sale of certain Federal lands to Clark County, NV, for national defense and other purposes; to the Committee on Interior and Insular Affairs.

By Mr. BUECHNER:

H.J. Res. 206. Joint resolution designating the week beginning on January 7, 1990 as "National Journalism Education Week"; to the Committee on Post Office and Civil Service.

By Mr. FAZIO (for himself, Mr. AUCOIN, Mr. BROWN of California, Ms. SCHNEIDER, Mr. PANETTA, Mr. MOORHEAD, Mr. MILLER of California, Mr. OBEY, Mr. FLORIO, Mr. MATSUI, Mr. WEISS, Mr. LEHMAN of California, Mr. FRANK, Mr. DIXON, Mrs. BOXER, Mr. DYMALLY, Mr. MARTINEZ, Mr. HAWKINS, Mr. ROYBAL, Mr. EDWARDS of California, Mr. BILEY, Mr. LEVINE of California, and Ms. PELOSI):

H.J. Res. 207. Joint resolution to establish that it is the policy of the United States to reduce the generation of greenhouse gases, and for other purposes; jointly, to the Committees on Energy and Commerce; Foreign Affairs; and Science, Space, and Technology.

By Mr. GEKAS (for himself, Mr. SCHUMER, Mr. FISH, Mr. MAZZOLI, Mr. LEVIN of Michigan, Mr. SMITH of Florida, Mr. LANTOS, Mr. COSTELLO, Mr. BEVILL, Mr. SHAW, Mr. LEHMAN of Florida, Mr. LAGOMARSINO, Mr. HEFNER, Mr. JONES of North Carolina, Mr. THOMAS of Georgia, Mr. TOWNS, Mr. FAWELL, Mr. LIPINSKI, Mr. ESPY, Mr. DE LUGO, Mr. QUILLEN, Mr. FUSTER, Mr. HYDE, Mrs. COLLINS, Mr. LIVINGSTON, Mr. LANCASTER, Mr. RANGEL, Mr. RAVENEL, Mr. DEWINE, Mr. MARTIN of New York, Mr. PURSELL, Mr. CROCKETT, Mr. HAYES of Louisiana, Mr. DORNAN of California, Mr. NATCHER, Mr. CONYERS, Mr. HANSEN, Mr. GINGRICH, Mr. CLARKE, Mr. STALLINGS, Mr. BROWN of Colorado, Mr. BORSKI, Mr. DONNELLY, Mr. MOORHEAD, Mr. WOLPE, Mr. BARNARD, Mr. RUSSO, Mr. CARPER, Mr. HILER, Mr. HORTON, and Mr. VALENTINE):

H.J. Res. 208. Joint resolution designating the week of April 9, 1989, as "Crime Victims Week"; to the Committee on Post Office and Civil Service.

By Mr. PARRIS:

H. Con. Res. 78. Concurrent resolution expressing the sense of the Congress with respect to the proposed amendment to the Constitution of the United States relating to compensation for Senators and Representatives; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII,

36. The SPEAKER presented a memorial of the Legislature of the State of Wyoming, relative to the future management of Federal lands within the boundaries of the State of Wyoming; to the Committee on Interior and Insular Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 293: Mr. MINETA and Mrs. BENTLEY.

H.R. 520: Mr. TORRICELLI, Mr. BORSKI, Mr. EMERSON, Mr. YATRON, Mr. WALSH, and Mrs. BENTLEY.

H.R. 521: Mr. TORRICELLI, Mr. BORSKI, Mr. EMERSON, Mr. YATRON, Mr. WALSH, and Mrs. BENTLEY.

H.R. 522: Mr. TORRICELLI, Mr. BORSKI, Mr. EMERSON, Mr. YATRON, Mr. WALSH, and Mrs. BENTLEY.

H.R. 523: Mr. TORRICELLI, Mr. BORSKI, Mr. EMERSON, Mr. YATRON, Mr. WALSH, and Mrs. BENTLEY.

H.R. 762: Mr. OLIN, Mr. HATCHER, Mr. WEBER, Mr. BEVILL, Mr. WILLIAMS, and Mr. COLEMAN of Missouri.

H.R. 832: Mr. GEJDENSON.

H.R. 833: Mr. GEJDENSON.

H.R. 855: Mrs. COLLINS, Mr. DWYER of New Jersey, Mr. JONTZ, Ms. OAKAR, Mr. HAYES of Illinois, Mr. RAVENEL, and Mr. HILER.

H.R. 930: Mr. LEHMAN of Florida, Mrs. BOXER, Mr. AKAKA, Mr. FRANK, Mr. MATSUI, Mr. STOKES, Mr. MILLER of California, Ms. PELOSI, Mr. ATKINS, Mr. DYMALLY, Mr. HATCHER, Mr. HOCHBRUECKNER, Mr. DIXON, Mr. GREEN, Mr. RANGEL, Mr. OWENS of New York, Mr. WEISS, Mrs. UNSOELD, Mr. CHANDLER, Mr. FAZIO, Mr. BEILENSON, and Mr. AUCOIN.

H.R. 1109: Mr. COLEMAN of Missouri, Mr. DEFAZIO, Mr. SLATTERY, and Mrs. VUCANOVICH.

H.R. 1153: Mr. CAMPBELL of California.

H.R. 1165: Mr. GORDON, Mr. PENNY, Mr. BROOMFIELD, Mr. BOUCHER, Mr. HORTON, Mr. WHEAT, Mr. OWENS of New York, Mr. ROWLAND of Connecticut, Mr. DWYER of New Jersey, Mr. DYMALLY, Mr. EMERSON, Mr. LANCASTER, Mr. DORNAN of California, Mr. QUILLEN, Mr. LIPINSKI, Mr. CRAIG, Mrs. SAIKI, Mr. HUGHES, Mrs. COLLINS, Mr. WALSH, Mr. UPTON, Mr. FOGLIETTA, Mr. ATKINS, and Mrs. MORELLA.

H.R. 1199: Mrs. COLLINS, Mr. OWENS of New York, Mr. ERDREICH, Mr. MOAKLEY, Mr. BURTON of Indiana, Mr. BROWN of California, Mr. FISH, Mr. FRANK, Mr. DE LUGO, Mr. NAGLE, Mr. ACKERMAN, and Mr. COLEMAN of Texas.

H.R. 1236: Mr. GLICKMAN, Mr. FEIGHAN, Mr. SMITH of Florida, Mr. STAGGERS, Mr. SYNAR, Mrs. SCHROEDER, Mr. EDWARDS of California, and Mr. FRANK.

H.R. 1286: Mr. FRANK and Mr. HAWKINS.

H.R. 1311: Mr. SMITH of Florida and Mr. BENNETT.

H.J. Res. 132: Mr. MATSUI, Mr. WISE, and Mr. TRAFICANT.

H.J. Res. 188: Mr. MCCOLLUM.

H. Con. Res. 28: Mr. DYMALLY, Mr. BATES, Mr. WHEAT, Mr. OWENS of New York, Mr. MCMILLEN of Maryland, Mr. DELLUMS, Mr. FAZIO, Mr. THOMAS A. LUKEN, Mr. LEWIS of Georgia, Mr. EDWARDS of California, Mr. BILBRAY, Mr. FOGLIETTA, Mrs. COLLINS, and Mr. DE LUGO.

H. Con. Res. 60: Mr. SKAGGS.

H. Res. 18: Mr. WELDON, Mr. BARTLETT, Mr. ARMEY, Mr. RAY, Mr. HEFLEY, Mr. PAXON, Mr. SENSENBRENNER, Mrs. VUCANOVICH, Mr. OXLEY, Mr. UPTON, Mr. SLATTERY, Mr. DORNAN of California, Mr. ROGERS, Mr. LAGOMARSINO, Mr. MICHEL, Mr. SLAUGHTER of Virginia, Mr. BUNNING, Mr. BERGER, Mr. LEWIS of Florida, Mr. MACHTLEY, Mr. BALLENGER, Mrs. ROUKEMA, Mr. BILBRAY, Mr. TAUKE, and Mr. CARPER.

H. Res. 106: Mr. CHENEY, Mr. FISH, Mr. GREEN, Mr. HENRY, Mr. HOUGHTON, and Mr. MOORHEAD.

SENATE—*Thursday, March 16, 1989*

(Legislative day of Tuesday, January 3, 1989)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

The guest chaplain, Father Robert R. Smith of St. James Episcopal Church, 7 Potomac Avenue, Indian Head, MD, offered the following prayer.

Let us pray:

Lord our Governor, You know the hopes, fears, and concerns of us all. Remind us that our national cares are Your cares. Remind us that You love us all.

Grant that in this knowledge we may enact what pleases You and benefits the people we are called to serve in Your name.

Make us instruments of justice and peace at home; give us our share in making America a blessing for justice and peace among all nations and peoples.

Bless us with the awareness that amid painful questions and difficult decisions, Your wisdom is our guide, Your Spirit is our strength, and Your love is our life and our redemption. In Your holy name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 16, 1989.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is now recognized.

THE JOURNAL

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

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

SCHEDULE

Mr. MITCHELL. Mr. President, there will be a period for morning business until 10:30 a.m., at which time the Senate will proceed to S. 20, the whistleblower bill. That bill is under a time agreement, and any rollcall votes ordered in relation thereto will be stacked to begin at 2 p.m.

The Senate will be in recess from 12 noon until 2 p.m., and after the vote or votes on the whistleblower bill, the Senate will go into closed session to deliberate on Judge Hastings' motions to dismiss certain articles of impeachment.

Mr. President, I reserve the remainder of my time, and I reserve the distinguished Republican leader's time as well.

SENATE CONCURRENT RESOLUTION 23—PROVIDING FOR A CONDITIONAL RECESS OR ADJOURNMENT OF THE SENATE FROM MARCH 17, 1989, UNTIL APRIL 4, 1989, AND A CONDITIONAL ADJOURNMENT OF THE HOUSE FROM MARCH 23 OR 24, 1989, UNTIL APRIL 3, 1989

Mr. MITCHELL. Mr. President, I send to the desk a concurrent resolution and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. PRYOR). The clerk will state the concurrent resolution.

The assistant legislative clerk read as follows:

S. CON. RES. 23

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Friday, March 17, 1989, it stand recessed or adjourned until 2:15 post meridian on Tuesday, April 4, 1989, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this resolution; and that when the House adjourns on Thursday, March 23, 1989, or on Friday, March 24, 1989, pursuant to a motion made by the majority leader, or his designee, in accordance with this resolution, it stand adjourned until 12 o'clock meridian on Monday, April 3, 1989, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this resolution.

SEC. 2. The majority leader of the Senate and the Speaker of the House, acting jointly after consultation with the minority leader of the Senate and the minority leader of the House, shall notify the Members of the Senate and the House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 23) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order there will be now a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m. with Senators permitted to speak therein for 5 minutes each.

VICTIMS' RIGHTS

Mr. REID. Mr. President, last week I introduced legislation to protect and ensure victims' rights.

We can never fully understand the trauma and degradation these people suffer. But we can be more responsive to their needs.

The Chairman of the President's Task Force on Victims of Crime found that "the neglect of crime victims is a national disgrace * * * you cannot appreciate the victim problem if you approach it solely with your intellect. The intellect rebels."

And so, Mr. President, the legislation I propose approaches the victim problem with the heart as well as the mind.

Our heart must respond to the victims who are treated as just another piece of evidence.

We are all familiar with a law enforcement officer's standard response to a suspected criminal. "Let me read you your rights," the officer says. "You have the right to remain silent * * * " and so the recognizable litany begins.

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

The suspect is made aware of his rights; the victim is not.

One victim said, "They explained the defendant's constitutional rights to the *n*th degree. And I wondered what mine were. And they told me, I haven't got any."

The victim does have rights, but they are rarely honored.

My bill mandates establishment of a system to evaluate and report on compliance with existing statutes protecting victims' rights.

Last month, on February 22, the Supreme Court ruled that a State has no constitutional due process obligation to protect individuals from private violence.

Supreme Court Justice William Rehnquist said the intent of the Constitution is to "protect the people from the state, not to ensure that the state protected them from each other."

According to this decision, a State is not constitutionally obliged to protect Americans from each other.

My bill will help ensure that, by statute, Americans will get some of the protections they deserve.

In addition, the legislation I propose includes a Federal child victims' bill of rights. Children need special protection and attention. This bill is designed to address their unique needs.

Let me give you a few examples. Young children often lack the maturity to put into words what has happened to them. This is particularly evident in testimony of sexual abuse. My bill allows the court to use anatomical dolls, which will make the child's difficult task somewhat easier.

The child is placed under tremendous anxiety and confusion that results from testifying in the presence of the accused. The suspect is often the child's parent or relative. From the witness chair, the child must look at and incriminate a person he has depended on for love and protection.

My bill enables children to testify outside the courtroom, away from such pressure.

The legislation also includes a provision that allows the court to approve a child attendant—someone who can protect the child's emotional needs. Reaching out to help a child cope with his experience is imperative.

What we can do now with these children may prevent future heartache and suffering for them and their families.

The legislation also requires the court to abide by the assumption that the child is competent to testify.

There is an organization in California called Believe the Children. We should believe them from the beginning. Some argue that children have vivid imaginations that often distort the truth of what transpired. Mr. President, my courtroom experience, and that of many others, dictates just the opposite. Adults, however, are generally more well-schooled in spinning a yarn. They've had many more years to perfect the art of fabrication.

I have talked extensively with individuals and groups interested in improving victims' rights. I found that most of those involved were motivated due to a personal crisis that they or one of their loved ones underwent as a victim.

We cannot wait until we are all victims to exert effort to ensure justice.

Surgeon General C. Everett Koop tells us that "the number of children who are not loved and who are not safe constitutes one of the major health problems that we face in our country today."

I urge my colleagues to cosponsor my victims' rights legislation. Let us show the American people that we are ready to confront this problem head on.

TRIBUTE TO THE MEMORY OF STEPHEN DAVISON BECHTEL

Mr. WILSON. Mr. President, on behalf of myself and my colleague from California, Senator CRANSTON, I rise today to pay tribute to the memory of Stephen Davison Bechtel, a giant of a man who left a legacy as soaring as the Hoover Dam, as broad as the San Francisco-Oakland Bay Bridge, and as enduring as the Saudi Arabian city of Jubail, or the Canadian Trans Mountain Pipeline, or countless other structures which he created for this and future generations, as one of our Nation's foremost construction engineers.

This splendid American and treasured Californian, whose long and productive life left an indelible mark upon the world he so enriched with his vision and talent, will be remembered and revered not only by the writers of history but by those who admire incredible feats of engineering. They will record, as I do here, that Stephen Bechtel was a man of bold enterprise who turned dreams of seemingly complex and impossible construction projects into realities which have positively impacted the lives of millions of people on every continent. They will also record that this man, having inspired and crafted some of the world's most respected engineering marvels, was also a man of the people, equally at ease conferring with heads of state or inquiring about the health and well-being of an employee.

Innumerable awards in the construction and engineering fields, as well national and worldwide recognition, are eloquent testament to the respect this remarkable individual garnered during his lifetime as a pioneering leader of his industry.

The dreams he dreamed, his energy, and his indomitable spirit, will long endure to guide the future of the Bechtel Group, a company he built, with an insistence upon excellence and creative genius, into one of the largest engineering and construction corporation in the world.

I am privileged to honor this man of accomplishment, a man who deserved the renown that had been visited upon him, and I do so with the greatest respect and admiration for what he achieved in his lifetime and for the enduring legacy that he has left behind.

Mr. President, I ask unanimous consent that a more extensive chronicle of the remarkable achievements of this remarkable man be printed in the RECORD.

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

STEPHEN DAVISON BECHTEL, BUILDER TO AN AGE

SAN FRANCISCO, March 14, 1989.—Stephen Davison Bechtel, Senior Director of Bechtel Group, Inc., died today at Merritt Peralta Medical Center in Oakland at the age of 88, following a brief illness.

Of all the many titles he acquired, the one Steve Bechtel liked best was "builder." Fortune magzine called him "the boldest and maybe the biggest builder in the world," placing his name alongside Henry Ford, John D. Rockefeller, Andrew Carnegie and other industrial giants in its Hall of Fame of Business Leadership.

Mr. Bechtel was a world business leader who knew presidents, prime ministers and kings on a first-name basis. He was just as warm and friendly dealing with the thousands of people who worked in his firm, establishing a tradition of first-name conversation with employees at all levels that continues today.

Most of all Mr. Bechtel was a builder who thought big, often bigger than his competitors, his clients, his industry and his times.

During a career that spanned three-quarters of a century, Mr. Bechtel and his organization helped build thousands of projects in more than one hundred nations. Among them: Hoover Dam; the San Francisco-Oakland Bay Bridge; World War II shipyards that turned out more than 500 vessels; the San Francisco Bay Area Rapid Transit system; the Saudi Arabian city of Jubail; plus thousands of miles of pipelines and scores of hotels, oil refineries and power plants.

Mr. Bechtel was named one of the Top Ten Construction Men of the Half-Century by the American society of Civil Engineers, as he made the family name synonymous with macroengineering on a global scale. Since 1960 his son, Stephen D. Bechtel Jr., now 63, has headed the organization that has worked on all seven continents.

The late Robert Gordon Sproul, longtime President of the University of California, on presenting Mr. Bechtel with an honorary degree in 1954, described him as "an engineer with an affinity for large ideas, ingenious in devising means to solve complicated problems, and truly one who is helping to make this a better world in which to live."

Mr. Bechtel, a resident of Oakland for more than half a century, was known for his ability to look at a problem and instantly design a solution. A few doodles on the back of an envelope often were the key concepts for complex projects.

For example, during a 1949 luncheon, Mr. Bechtel overheard an oil company executive

remark that a pipeline from the Alberta oil fields to the Pacific, across the Rocky Mountains, was a great idea, but impossible. Mr. Bechtel pulled out a pen and began sketching a plan on the tablecloth.

Less than five years later, 80,000 barrels of oil a day were flowing through the 718-mile Canadian Trans Mountain Pipeline, the most difficult pipeline job in history.

A WARM PERSONALITY

In addition to his engineering and corporate leadership successes, Mr. Bechtel had a unique ability to understand client needs. A friend once said of him: "When the competition for a job gets hot, we fly Mr. Bechtel in for lunch."

He never lost that special ability, which is why he never completely retired. Even as Senior Director, he stayed in the mainstream of the business, visiting jobsites around the world, calling on clients, closing agreements. Few associates were surprised when, at the age of 84, he was instrumental in helping his company forge an historic joint engineering venture with the People's Republic of China.

"Rapid expansion of a company is a fairly common twentieth century achievement" Fortune editors wrote in1986. "Rarer is the rapid elevation of a company to far more sophisticated levels of technology and management. That's what happened to the Bechtel [companies], along with expansion during the years of Stephen D. Bechtel's leadership."

Born in Aurora, Indiana on September 24, 1900, Mr. Bechtel was the second of four children born to Warren A. and Clara West Bechtel, founders of the Bechtel engineering and construction organization.

GROWING UP IN CONSTRUCTION CAMPS

Steve Bechtel literally was "on the job" for infancy, living with his family in makeshift railroad cars on rugged railroad construction sites as he grew up in the West. By the time he was 13, he was working beside his father and brothers on construction jobs during school vacations.

After serving in World War I with the 20th Engineers, American Expeditionary Force as a motorcycle dispatch rider, Mr. Bechtel attended the University of California, Berkeley.

"But Dad needed me," he said of the family's growing construction company. And so, at the age of 19, he joined his brothers, Warren Jr. and Kenneth, full time in the family business.

In 1935, two years after his father's death, Mr. Bechtel assumed the presidency of the company, a position he held for a quarter-century. In 1960 he turned over day-to-day management of the Bechtel companies to his son, Stephen D. Bechtel Jr. Mr. Bechtel remained Chairman of the Board of Directors until 1965 when he "retired" to become the orgnization's Senior Director.

The firm he inherited from his father was a growing, but still regional, constructor of railroads, highways, pipelines and dams. When he stepped down from line management 25 years later, it had become one of the largest engineering and construction companies in the world.

Always a dreamer, he expanded the scope of the company's services, opening the door to international markets and devising new ways to manage the sophisticated and far-flung enterprises that came as a result. In the process, he broadened not only his own company but the entire engineering and construction industry as well.

One early success, Hoover Dam, both enhanced Mr. Bechtel's reputation and stimulated his ambitions.

HOOVER DAM A MAJOR FEAT

Mr. Bechtel and his firm played a major role in Six Companies, Inc., a joint venture that constructed the dam, then the largest construction project ever undertaken. It was completed in 1935, less than five years after it was begun; two years ahead of schedule and $1.5 million under budget. The Hoover Dam job was made more difficult by the sudden death in 1933 of Mr. Bechtel's father, W.A. Bechtel, who was serving as President of Six Companies. Steve Bechtel, still in his early thirties, took on bigger roles both at Hoover and in his own company, to carry the load.

From that point, he began shaping his company to meet the construction needs of industries with strong, long-term potential, such as the petroleum and power businesses.

It resulted in ever more sophisticated engineering and design projects—refineries, pipelines, chemical plants, powerhouses and other facilities linked with energy and oil.

The name Stephen D. Bechtel today is associated with many of the world's most remarkable pipeline systems.

Besides Canada's Trans Mountain oil line, they include: Canol, a monumental 1600-mile oil and products pipeline system from the Yukon to Alaska built under intense emergency conditions during World War II; the 2200-mile Trans Canada gasline; the Trans-Alpine and the Trans-European oil pipeline systems; and the 1100-mile Trans-Arabian pipeline in the Middle East, an outstanding feat of desert construction.

Pipelining was a studied choice. He understood petroleum economics and anticipated the large volume of refinery work that would follow.

Such projects soon became a major source of the company's revenue. The company built many of the terminals and oil refineries in the Middle East, Europe, North Africa, the South Pacific and Canada.

By 1940, the Bechtel companies began to acquire the characteristics of the comprehensive organization their president had envisioned, one that could perform a turnkey service.

DEVELOPS NEW CONSTRUCTION CONCEPTS

"Turnkey"—taking on full responsibility for a project from concept to completion—was a concept developed by Mr. Bechtel. Soon the majority of the company's work was in this category.

Project management—coordinating the work of many specialized contractors on behalf of a client—was another innovation by Mr. Bechtel that became an important element in the company's work.

During World War II, the Bechtel organization was deeply involved in the nation's defense. It constructed and managed shipyards that produced more than 500 ships in record time. It also constructed military aircraft plants, mines, powder and aviation gasoline plants, pipelines, refineries, naval bases, airports and marine terminals on some 28 islands in the Pacific, in the Caribbean and the Middle East.

After the war, Mr. Bechtel led his company through greater growth and expansion. New project lines included chemical and petrochemical facilities as well as plants for food processing, soap making, steel forming and paper manufacturing and hotels, mines, and space facilities in the United States and overseas.

More recently, Mr. Bechtel played key roles in building the U.S.'s first modern rapid transit system, the San Francisco Bay Area's BART; and Jubail, an industrial city for 250,000 residents created from a fishing village in the Saudi Arabian desert.

HELPS DEVELOP NUCLEAR POWER

When electricity demand began to increase rapidly after World War II, Mr. Bechtel decided to develop the staff and the knowledge to harness the potential of atomic energy.

The company was one of the developers of the boiling water nuclear reactor. It did much of the early engineering work for the Atomic Energy Commission (AEC) and built the AEC's Experiemental Breeder Reactor Number 1 at Arco, Idaho in the late 1940's. During the 1950's, Bechtel also built the Dresden Power Station in Illinois, the first large, full-scale central nuclear power station to go into operation.

As a result, the company emerged as a leader in the field of nuclear power plant design and construction.

When he received the University of California's Berkeley Citation in 1975, the provost of the professional schools and colleges presented the award saying: "He has set a high standard. It's going to be a darn tough act to follow."

No one knows that better than his son, Steve Bechtel Jr. "My father was a remarkable man," he said. "He was also the best of fathers."

Mr. Bechtel is survived by his wife, Laura Peart Bechtel, of Oakland; their two children, Stephen Davision Bechtel Jr., Chairman of Bechtel Group, Inc., and Barbara Bechtel Davies; seven grandchildren and nineteen great-grandchildren.

At Mr. Bechtel's request, funeral services will be private. The family indicates that contributions in lieu of flowers can be made to the Ladies Home Society of Oakland, 360—42nd Street, Oakland, CA 94609, or the Piedmont Community Church, 400 Highland Avenue, Piedmont, CA 94611.

HONORS AND MEMBERSHIPS (PARTIAL LIST)

Mr. Bechtel was accorded many honors in his lifetime, among them:

Hall of Fame of Business Leadership, Fortune magazine;

"Top Ten Construction Men of the Half-Century," American Society of Civil Engineers;

1988 Distinguished Citizen of the Year, The Commonwealth Club of California;

Member of the Business Council since 1950, two years as Chairman;

Former trustee of Standard University;

Honorary doctor of laws degrees, University of California at Berekeley, Loyola University; Golden Gate University (San Francisco), and Carroll College (Helena, Montana);

Honorary doctor engineering degrees, University of the Pacific (Stockton, California) and Washington University;

Honorary doctor degree of public service, University of San Francisco; 1982

Alumni Association Award from the University of California at Berkeley;

Berkeley Citation from the University of California, Berkeley, College of Engineering;

1986 Alexis de Tocqueville Award, United Way of Bay Area;

1986 Citizen Diplomacy Award, International Visitors Center of the San Francisco Bay Area;

1987 Marcus A. Foster Educational Institute Distinguished Alumni Award;

1968 California Industrialist of the Year (California Museum of Science and Industry);

1978 International Executive of the Year, Brigham Young University School of Management;

John Fritz Medal and Certificate;

Order of the Cedar (Lebanon), Knight Order of St. Sylvester (Pope Pius);

Medal of Honor from the Government of Indonesia, first time a business leader headquartered outside that country had been so honored;

Inspector General Honorary of the Supreme Council, Ancient and Accepted Scottish Rite of Freemasonry (33rd degree);

Officer of the American Society of the Most Venerable Order of the Hospital of St. John of Jerusalem;

1981 Man of the Year from Brazilian-American Chamber of Commerce;

Member of the Director's Advisory Council of Morgan Guaranty Trust Company of New York and served on its board of directors for many years;

Member of President Eisenhower's Advisory Commission on the National Highway Program, basis for the present Interstate highway system;

Good Scout Award from the Boy Scouts of America;

William F. Knowland Award for his efforts in bringing together minorities, government officials and business community of Oakland;

Easter Seal Society of Alameda County Hummanitarian of the Year Award;

Member of the California Institute of Technology Associates;

The Stephen D. Bechtel Engineering Center at the University of California, Berkeley was named in Mr. Bechtel's honor in 1980.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

OPPORTUNITY IN VIENNA

Mr. WIRTH. Mr. President, last week representatives of the 35 member nations of the Conference on Security and Cooperation in Europe [CSCE] met in Vienna to begin a new phase in European arms control. The opening of conventional force negotiations among the CSCE signatories and between NATO and the Warsaw Pact presents us with an extraordinary opportunity to wind down the military confrontation in Europe. I am greatly encouraged by the initial proposals outlined by the two alliances last week in Vienna, and am hopeful that these negotiations will succeed where the negotiations on mutual and balanced force reductions [MBFR] failed.

The Vienna talks come at a time of profound transition and change in United States-Soviet relations. The negotiations on conventional armed forces in Europe [CFE] between NATO and the Warsaw Pact and the talks on confidence- and security-building-measures [CSBM's] among the CSCE 35 stand to benefit from improved East-West relations and will in turn, I hope, help reshape the post-war security order in Europe away from confrontation and conflict towards cooperation.

Powerful economic incentives are at work in East and West to reduce the burden of military expenditures on our economies and societies. We face serious budgetary problems in our country which will manifest themselves in every aspect of Federal spending, including the defense budget. Partly as a function of the deficit, we are also witnessing increased concern about the high-level of U.S. spending for NATO defense, now approximately $160 billion annually. The combination of the concern about burden sharing and the emerging squeeze on scarce defense resources suggest that there will be growing pressure to reduce United States forces in Europe in the 1990's.

I mention this, Mr. President, because it is evident that General Secretary Gorbachev acknowledges the serious economic problems facing the Soviet Union—and the harm done to that economy by excessive defense spending. This recognition is reflected in the intensive debate within the Soviet Union on conversion of defense industry to civilian applications, and in the fact that the announcement of Soviet and East European unilateral force reductions have all been accompanied by statements of intent to reduce defense expenditures.

These economic incentives coincide with a recognition that the level of military confrontation in Central Europe is out of proportion to any reasonable defense needs or political rationale. The presence of 5 million troops and associated equipment has itself become a source of tension in Europe, sustained by inertia—and the need to field sufficient forces to deter aggression.

The new dimension in the European security debate is largerly a result of the restructuring efforts undertaken by General Secretary Gorbachev. A fundamental shift of Soviet military strategy away from reliance on offensive forces toward defensive sufficiency has resulted in a series of previously unimaginable Soviet actions. Within the last 3 years, the Soviet Union has agreed to onsite inspections in the 1986 Stockholm CSCE document; asymmetrical nuclear reductions to achieve equal outcomes—the INF Treaty; and a public commitment to engage in far-reaching unilateral force reductions—the U.N. speech.

The Vienna negotiations began last week against this background. Many potentially contentious issues have already been settled in the mandate: the geographic area covered by the talks will be the Atlantic to the Urals, with an agreed exception zone in Turkey; nuclear, chemical and naval forces will not be addressed; the elimination of disparities is to be pursued, as is "the elimination, as a matter of priority, of the capability for launching surprise attack and for initiating large-scale offensive action."

What a remarkable change from the world only a few years ago.

More so than in any other arms control negotiation, the opening positions of the two sides are more remarkable for their similarities than for their differences. The announcement of the NATO opening proposal by British Foreign Minister Sir Geoffrey Howe and the Warsaw Pact proposal by Soviet Foreign Minister Shevardnadze earlier this week made clear that both alliances will seek asymmetrical reductions in specified categories of armaments to reach equal residual levels.

This, too, is remarkable that both sides are so close. We have seen the Soviet Union change. We are seeing our ability to respond to that change, as well. Remaining are of course important differences. But those clearly can be resolved by both sides if we have sufficient political will and imagination.

NATO's proposal calls for reductions to 90 to 95 percent of current NATO levels in three categories of armaments, yielding equal limits of 20,000 tanks; 16,500 artillery weapons; and 28,000 armored troop carriers. The proposal also calls for a 30-percent limit on any one country's share of total equipment holdings in Europe, and places sublimits on stationed forces holdings in order to reduce the weight of Soviet military power in Eastern Europe: no nation may deploy more than 3,200 tanks, 1,700 artillery and 6,000 armored troop carriers on another nation's territory.

The Warsaw Pact proposal calls for a three-phase process. The first stage foresees mutual reductions to levels 10- to 15-percent below the lowest level on either side in a wider range of systems: Tanks, artillery, multiple rocket launchers, mortars, armored troop carriers, combat helicopters, tactical fighter aircraft, surface-to-surface missiles and troops. The Soviet proposal also calls for the creation of a special zone along the East-West border in which destabilizing forces would be withdrawn—including short-range nuclear forces. The second stage of the Soviet proposal foresees further reductions of 25 percent in troops and armaments, to be followed by a third phase in which only strictly defensive forces would remain.

While there are important differences in the two sides' proposals, the opening positions at Vienna are re-

markably close on many essential points. The Soviet proposal calls for modestly greater reductions in the three categories outlined by NATO—as well as reductions in additional categories: troops, aircraft, armed helicopters, multiple rocket launchers, and mortars. Some NATO observers had speculated that the Warsaw Pact proposal would seek much more dramatic reductions in order to capture public support. Instead, the Eastern proposal tracks the NATO position quite closely. The differences between the two proposals should not be hard to bridge with sufficient political will and imagination.

The prospects for meaningful and relatively early progress in Vienna have also been much improved by the unilateral reductions General Secretary Gorbachev outlined in his speech to the United Nations on December 7. The removal of 6 tank divisions and a total of 5,000 tanks and 50,000 troops from East Germany, Czechoslovakia and Hungary by 1991—if implemented to achieve Gorbachev's professed defensive intent—would deny the Soviet Union the military option of an unreinforced surprise attack against Western Europe. The forces to be withdrawn from Eastern Europe constitute 50 percent of forward-deployed tanks. These withdrawals are greater than the entire holdings of the United States 7th Army deployed in Europe, and represent 20 percent more equipment than was contemplated in the most ambitious MBFR proposal. In NATO's critical Northern Army Group [Northag] area, the ratio of tanks would be reduced from 2.8:1 to 1.3:1 as a result of the promised unilateral Soviet reductions.

Less noticed, Mr. President, is the fact that five East European states have also announced their intent to reduce their forces unilaterally: Bulgaria, Hungary, East Germany, Czechoslovakia and Poland. Overall, these 5 countries plan to reduce 1,900 tanks and 56,000 troops in conjuction with Soviet reductions of 10,000 tanks and 240,000 troops in the Atlantic to the Urals area. The significance of these unilateral efforts can be measured by the fact that the total number of tanks to be withdrawn by 1991—12,000—represents the holdings of 40 Warsaw Pact tank divisions.

The announced unilateral reductions, which are to occur over the next 2 years, will help set the pace for the Vienna talks. We should applaud those as well. Good faith implementation of these reductions would constitute a confidence building measure in its own right, especially if Western observers are allowed to monitor the process. I am further encouraged by the Warsaw Pact proposal's call for even further deep reductions on the Eastern side—an additional 20,000 Warsaw Pact tanks would be cut under either proposal now on the table in Vienna. Given the large asymmetries between the conventional forces of the two alliances, acceptance of asymmetrical reductions to reach equal limits is a prerequisite for progress in Vienna. That condition appears to have been accepted by both sides last week at the Hofburg Palace—against the background of initial unilateral reductions promised by the Soviet Union and five East European states.

The NATO and Warsaw Pact initial proposals at Vienna both address the stated goal of reducing the capacity for surprise attack. An equally important stated objective for NATO military planners is the elimination of the capability for large-scale, reinforced offensive operations. The source of this concern is not the ready, forward-deployed divisions of the Warsaw Pact in Eastern Europe, but the ability to generate numerically superior forces through wide-scale mobilization in the Soviet Union. The reductions foreseen in the NATO proposal would not eliminate the potential for large-scale offensive operations.

NATO has been reluctant to embrace deep force reductions for a variety of reasons, the most critical being the perceived need to maintain a stalwart forward defense through retention of an operational minimum deployment of one division per 25 to 30 kilometers of NATO-Warsaw Pact border. This formula neglects the altered political-military landscape which would result from mutual reductions to 50 percent of current NATO levels, and reflects the dominance of military rather than political input in NATO deliberations on this score. I believe NATO must elaborate a broader vision of the role conventional arms control might play in building a more cooperative European security order. Continuation of the status quo in alliance strategy and force structure will not be adequate to meet the challenges of transition NATO will face in its fifth decade.

The problems to be overcome in the new conventional force talks should not be underestimated. Differences over what systems to include in first phase reductions, how to count those systems, the issue of special withdrawal zones, and the vast challenge of verifying compliance with such an ambitious regime all remain to be worked out in the course of the negotiations. But I believe that with sufficient political will and with the imagination that should come in with the new energy of a new administration we should be able to overcome these obstacles.

The primary challenge will not likely be, as with MBFR, arriving at an agreed data base. There are large differences in NATO and the Warsaw Pact view of the relevant balance of conventional forces which will take time to resolve. These differences stem largely from varying counting rules. The Warsaw Pact figures for tanks and artillery, for example, encompass a broader definition of what constitutes a tank or artillery. These differences should be relatively easy to surmount through sustained negotiation on counting rules and methodology—and an open data base concerning the disposition of forces from the Atlantic to the Urals.

More difficult will be the negotiation of which systems to include in a reduction regime. The most troublesome issue in that regard will clearly be aircraft: the Warsaw Pact insists that strike aircraft be included, while NATO resists their inclusion, arguing that aircraft do not seize and hold territory and cannot be meaningfully limited because of their mobility. Some NATO observers believe that we will have to include aircraft in the negotiations at some point, and that a careful calculation of the relevant balance would yield rough parity in current deployment numbers. The contention that aircraft are not relevant to negotiations on reduction of offensive forces will be difficult to sustain.

Another difference in the current positions of the two sides is whether to include troops, as opposed to equipment, in a reduction regime. NATO has been unwilling to repeat the MBFR focus on troop reductions, in part because of the daunting verification problems. Two factors suggest that limits on soldiers as well as weapons may make sense at some point in the Vienna process. First, demographic trends will place significant pressure on manning levels in the 1990's. Second, deep force reductions may be easier to monitor if implemented by units, rather than categories of armaments. Ambitious transparency measures may be necessary to monitor compliance with reduction of armaments and troops in units.

As both sides work through these issues in Vienna, we should simultaneously be pursuing early implementation of military glasnost: a set of ambitious confidence- and security-building measures aimed at providing greater transparency of military deployments, activities and doctrine. Sustained and structured discussions between East and West on military doctrine could help evolve a mutual understanding of defensive defense and provide critical insight on the restructuring of forces in that direction.

Much can be done on both sides to improve the appearance of each side to the other. If each of us understands what the other side is doing, each of us is going to be less afraid of surprise attack, each of us is going to be more willing to deal with and trust the other side.

This whole package of confidence and security-building measures, Mr.

President, are items that we can do right away while we work through the remaining differences on conventional arms control. There is an enormous amount that can be done on the CSCE side as well.

As the two-tier negotiations continue we must embrace the concept of conventional arms control along with confidence-building measures.

Much more demanding levels of military openness from the Atlantic to the Urals would build confidence in the process of conventional force reductions—and, in the case of verification, represent an absolute prerequisite to negotiated cuts.

Such measures might include expanding the number of onsite inspections at short notice permitted each year beyond the current CSCE agreed limit of three per year per country. The practice of allowing multinational observers at military exercises could be enhanced by providing for permanent observers at key military sites and roving monitors to complement the inspections and observers. More ambitious still would be an agreed regime for aerial observation by aircraft and helicopters—similar to President Eisenhower's 1955 "Open Skies" proposal. A package of such measures could and should be designed to serve the complementary purposes of monitoring Gorbachev's promised reductions, providing the foundation for a conventional arms control verification regime, and enhancing stability by providing greater warning time of military preparation.

In addition to military benefits, such measures would also generate significant political momentum for the conventional arms control process and help clarify some of the differences in the announced perspectives of the two alliances on the relevant balance of conventional forces from the Atlantic to the Urals. The Mutual and Balanced Force Reduction Talks [MBFR] dragged on for 15 years without result, hung up in large measure over lack of agreed data on the military forces of the two alliances. We have an opportunity now to overcome that impasse and go well beyond it through cooperative monitoring measures.

As the two-tier negotiations on CSBM's and force reductions begin in Vienna, NATO should embrace a strategy toward those talks which combines a willingness to embrace far-reaching change in the European security system with a pragmatic approach to step-by-step implementation of specific measures. Ambitious monitoring provisions can help the West measure the scope and pace of the East's promised unilateral reductions. Successful implementation of those measures over the next 2 years would help build confidence in the more ambitious reductions foreseen in the NATO proposal and the first phase of the Eastern proposal. Such an incremental approach would hold out the possibility of even further reductions to 50 percent or less of current NATO forces.

Decades of mutual mistrust and military confrontation cannot easily or quickly be made to disappear. The new political landscape provides us, however, with an unparalleled opportunity to begin unwinding the cold war confrontation and to build a more cooperative European security order.

Mr. President, I ask unanimous consent that the January 17, 1989, "Mandate for the Negotiations on Conventional Armed Forces in Europe," the speeches delivered on March 6 in Vienna by Foreign Ministers Howe and Shevardnadze outlining the opening proposals of the two alliances, an article entitled "Down to Business" and the associated table of data from the March 11 Economist, data on the conventional balance in Europe compiled by the Arms Control Association, and an article titled "Big Difference between NATO, Warsaw Pact Conventional Force Tallies" in the March edition of the Armed Forces Journal appear in the RECORD.

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

MANDATE FOR THE NEGOTIATIONS ON CONVENTIONAL ARMED FORCES IN EUROPE (CAFE), JANUARY 17, 1989

PARTICIPANTS

The participants in this negotiation shall be the 23 above-listed States [list at end of text] hereinafter referred to as "the participants."

OBJECTIVES AND METHODS

The objectives of the negotiation shall be to strengthen stability and security in Europe through the establishment of a stable and secure balance of conventional armed forces, which include conventional armaments and equipment, at lower levels; the elimination of disparities prejudicial to stability and security; and the elimination, as a matter of priority, of the capability for launching surprise attack and for initiating large-scale offensive action. Each and every participant undertakes to contribute to the attainment of these objectives.

These objectives shall be achieved by the application of militarily significant measures such as reductions, limitation, redeployment provisions, equal ceilings, and related measures, among others.

In order to achieve the above objectives, measures should be pursued for the whole area of application with provisions, if and where appropriate, for regional differentiation to redress disparities within the area of application and in a way which precludes circumvention.

The process of strengthening stability and security should proceed step-by-step, in a manner which will ensure that the security of each participant is not affected adversely at any stage.

SCOPE AND AREA OF APPLICATION

The subject of the negotiation shall be the conventional armed forces, which include conventional armaments and equipment, of the participants based on land within the territory of the participants in Europe from the Atlantic to the Urals.

The existence of multiple capabilities will not be a criterion for modifying the scope of the negotiation:

No conventional armaments or equipment will be excluded from the subject of the negotiation because they may have other capabilities in addition to conventional ones. Such armaments or equipment will not be singled out in a separate category.

Nuclear weapons will not be a subject of this negotiation.

Particular emphasis will initially be placed on those forces directly related to the achievement of the objectives of the negotiations set out above.

Naval forces and chemical weapons will not be addressed.

The area of application 1 shall be the entire land territory of the participants in Europe from the Atlantic to the Urals, which includes all the European island territories of the participants. 2 In the case of the Soviet Union the area of application includes all the territory lying west of the Ural River and the Caspian Sea. In the case of Turkey the area of application includes the territory of Turkey north and west of the following line: the point of intersection of the border with the 39th parallel, Muradive, Patnos, Karayazi, Tekman, Kemalive, Feke, Ceyhan, Gozne, and thence to the sea.

EXCHANGE OF INFORMATION AND VERIFICATION

Compliance with the provisions of any agreement shall be verified through an effective and strict verification regime which, among other things, will include on-site inspections as a matter of right and exchanges of information.

Information shall be exchanged in sufficient detail so as to allow a meaningful comparison of the capabilities of the forces involved. Information shall also be exchanged in sufficient detail so as to provide a basis for the verification of compliance.

The specific modalities for verification and the exchange of information, including the degree of detail of the information and the order of its exchange, shall be agreed at the negotiation proper.

PROCEDURES AND OTHER ARRANGEMENTS

The procedures for the negotiation, including the agenda, work program and timetable, working methods, financial issues and other organizational modalities, as agreed by the participants themselves, are set out in annex 1 of this mandate. They can be changed only by consensus of the participants.

The participants decided to take part in meetings of the States signatories of the Helsinki Final Act to be held at least twice during each round of the Negotiations on Conventional Armed Forces in Europe in order to exchange views and substantive informaton concerning the course of the Negotiations on Conventional Armed Forces in Europe. Detailed modalities for these meetings are contained in annex 2 to this mandate.

The participants will take into consideration the views expressed in such meetings by other CSCE participating States concerning their own security.

Participants will also provide information bilaterally.

Participants undertake to inform the next CSCE Follow-up Meeting of their work and possible results and to exchange views, at their meeting with the other CSCE participating States on progress achieved in the negotiation.

The participants foresee that, in the light of circumstances at the time, they will pro-

vide in their timetable for a temporary suspension to permit this exchange of views. The appropriate time and duration of this suspension is their sole responsibility.

Any modification of this mandate is the sole responsibility of the participants, whether they modify it themselves or concure in its modification at a future CSCE Follow-up meeting.

CHARACTER OF AGREEMENTS

Agreements reached shall be internationally binding. Modalities for their entry into force will be decided at the negotiation.

SPEECH BY THE FOREIGN SECRETARY, SIR GEOFFREY HOWE, AT THE OPENING OF THE CONVENTIONAL FORCES IN EUROPE CONFERENCE IN VIENNA, ON MONDAY, MARCH 6, 1989

Six weeks ago, we assembled here in Vienna to mark the successful conclusion of the third Helsinki review meeting.

We celebrated agreement then on a concluding document which we hope will strengthen peace and stability on our continent, and help to bring down the barriers that divide East from West.

We meet here again today as a result of that agreement to begin new talks of equal significance.

Four hundred years ago the English seafarer, Sir Francis Drake, said: "There must be a beginning of any great matter, but the continuing to the end until it is thoroughly finished yields the true glory." Besides being one up the great figures from our military history, Francis Drake was someone who was not afraid to explore new territory. I hope we can approach our work in Vienna in the same spirit.

The last conventional arms control talks to be held here—the MBER talks—went on for 16 years, what might be described as the longest phantom pregnancy in the history of arms control. But the MBER talks were not a total failure. They taught more than one important lesson. In particular, there can be no agreement without a climate of confidence in East-West relations.

A CHANGED CLIMATE

Now there is a real sense of hope that we can put the 40 years cold war behind us. This feeling was evident when we met here in January. It has shown itself in other ways. That is a very real gain. Even 5 years ago the prospects for these negotiations would not have looked good.

So what is new? There is nothing new about Western readiness to negotiate seriously. Even during the difficult years, that readiness was always there. There is, however, on our side a new belief that changes in Eastern Europe offer prospects for a different East-West relationship. The real change has come with a willingness from our Eastern partners to think, speak—and sometimes to act—in a new way.

It is interesting to compare what was being said from international platforms five years ago with what is being said today. For instance, at the United Nations in 1984 Mr. Gromyko had the following to say about the international situations "The threat of war has grown, and the foundations of peace have become more shaky."

He was also dismissive of Western verification proposals at the Stockholm conference when he said. "What is proposed under the guise of military and technical measures is a programme of poorly disguised espionage."

Four years later, however, President Gorbachev at the United Nations last December gave a very different assessment of the state of the world when he spoke: "Forces have already taken shape in the world which . . . are inducing the start of a period of peace."

And our colleague, Mr. Shevardnadze, in his speech to last years U.N. General Assembly, also saw verification in a different light: "Verification is something more than a technical check on the parties, compliance to their obligations. It is a material expression of sincerity and honesty, without which it is impossible to make headway today."

I heartily agree with every word of that statement. That is the measure of the change we have seen in the climate of East-West relations.

Five years ago they were characterised by bloc-to-bloc confrontation, pessimism and suspicion. Dialogue, to the extent if continued at all, was sterile. Progress was suspended in all the key sets of security talks: INF, START and MRFR. The Stockholm conference opened in January 1984 against a background of events less favorable and less positive than at any time since the CSCE process began.

Today, the INF Agreement is in place, not least because of Western refusal to be intimidated into abandoning our own deployment. We are making progress over strategic, nuclear and chemical weapons. We have also, in the verification measures of the Stockholm document, a notable success for East-West security. We are talking to, not past, one another.

But we have not yet entirely escaped the legacy of the past. Misunderstandings and misperceptions remain. Mutual trust does not yet run deep enough to prevent the over-concentration of arms in Europe, East and West.

THE WAY FORWARD

How then can we safely slow down the military carousel?

Not by hastening the denuclearization of Europe. The longest uninterrupted peace that Europe has ever seen is largely due to the existence of nuclear weapons. It is impossible to disinvent them, or to find a substitute of comparable deterrent force. Our approach accepts those realities.

Let me here offer the first of several comments that I propose to make, with respect, on Mr. Shevardnadze's thoughtful speech, to which we have just listened.

I note that Mr. Shevardnadze did spread his remarks into nuclear territory. But as he well knows, nuclear weapons are no part of our remit. That is clear from the mandate. Our aim is to tackle the conventional imbalances that lie at the heart of our continent's security. We must concentrate on that central task.

That is why the answer lies in building confidence in each others intentions, by addressing fears directly, through concrete measures to remove the appearance and reality of threat.

So the West has come to Vienna in that spirit. We are ready with bold and specific new proposals for the discussion that lies ahead.

THE WIDER CONTEXT

Let us remember why we are here today, because Europe has been the crucible of the two most catastrophic wars ever seen in the world. Because Europe is still the focus of the heaviest concentrations of forces to be found in the world. Also because all of us want a more stable and secure future for our continent, and have expressed that commitment by participating in the work of the CSCE.

We must not lose sight of that wider context, defences and pursuing arms control. The CSCE process rests on two more basic concepts: First, confidence between states and their neighbours, and secondly, confidence between states and their citizens.

We have long accepted that confidence between states and their neighbours within Europe must rest upon acknowledgment of the fact that we are all sovereign nations. All of us have our own identities, our own traditions, and our own interlocking histories.

As nation states, we are evolving new patterns of relations. In Europe Europe, in the European community, we are combining in a new and active partnership.

In Eastern Europe, too, there are signs of an evolving new relationship. But it has a long way to go before Eastern Europe escapes domination of one nation by another, and all the abuses, resentment and stagnation which have accompanied such domination in the past.

States must trust their neighbours. They must also trust their citizens, trust the people. That is the essence of a free society.

NEGOTIATIONS ON CONVENTIONAL ARMED FORCES

The recent improvement in East-West relations has been welcomed in every home and family in Europe because it offers the hope of lasting peace. We have to give substance to that hope.

Our main objective for the conventional armed forces talks is simple. It is to make it impossible for any country, or group of countries, to threaten or intimidate others by force of arms. It is to make successful aggression a physical impossibility.

Central to this objective are three goals: Fewer forces, a balance of forces, and less threatening deployments of those forces.

We want fewer forces. There are far too many lethal weapons, especially those intended for surprise attack and the conquest of territory—tanks, artillery and armoured troop carriers.

Let me at this point make two further observations on Mr. Shevardnadze's speech. First, to correct a misunderstanding of our own position, by answering his specific question on personnel. We do not, or course, intend to neglect personnel. But one of the lessons of the MBER negotiations is that if we want results then the main focus should be on equipment. And second, on naval forces, although it is clear that the question of naval forces is dear to Mr. Shevardnadze's heart, naval forces are excluded from these negotiations by the mandate. Moreover, NATO needs secure sealanes to ensure its security, just as Warsaw Pact countries need safe land communications to protect their territory.

Let me then return to my three points. Fewer forces certainly, but we want as well a balance of forces. Europe can never feel sure while the Soviet Union and its allies have forces far larger than necessary for their own defence. Even when recently announced reductions are complete, the Warsaw Pact will still outnumber NATO by almost two-to-one in tanks and artillery. The Soviet Union alone possesses more than half the total number of tanks and artillery in Europe.

PART TWO OF TWO PARTS

We want—and this is my third point—less threatening deployments to give substance to concepts of defensive military doctrine and reasonable sufficiency. We shall expect to see these concepts translated into reality. So we are concerned not only with numbers of weapons, but also where they are, whose

they are, and how quickly they could be used for aggression.

We and our allies will therefore propose the following specific measures:

First: an overall limit to the total number of tanks, artillery and armoured troop-carriers in Europe. For tanks, a limit of 40,000. For artillery, 33,000. For armoured troop-carriers, 56,000. Each alliance to be entitled to up to half the total.

Result: a reduction of around 50 percent in tanks and artillery, and a substantial cut in the number of armoured troop-carriers.

That is a truly bold proposal. It would reduce those weapons to levels undreamed of by any of us twenty or even ten years ago

Second: no one country to have more than 30 percent of these tanks, 10,000 artillery pieces and 16,800 armoured troop-carriers.

Result: a reduction by some two-thirds in the massed ranks of Soviet tanks and artillery in Europe, and by well over half in armoured troop-carriers. They have been the cutting edge of the Iron Curtain. Will Mr. Gorbachev have the courage and imagination to turn them into scrap iron?

That will not harm Soviet security. The Soviet Union will still have more tanks within the area than the United States and the Federal Republic of Germany combined.

But even so, the rest of us will feel a lot safer.

Third: Limitations on these types of forces when stationed outside their own country. It is the huge weight of Soviet armour and artillery deployed in Eastern Europe that we find so threatening. So besides the cuts in numbers, we want to see some of the remaining forces pulled back, so as to reduce the risk of surprise attack.

We agree with Mr. Gorbachev that both sides should cut to below the level of the weaker side, that is, below that of NATO. So we propose a limit of 3,200 tanks stationed outside national borders for each side, 1,700 artillery pieces and 6,000 armoured troop-carriers.

Fourth: we need to prevent undue concentration of forces. This will be done through a series of geographical sub-limits. The aim is to spread security evenly. We are not in the business of creating zones of differing security in Europe.

Mr. Shevardnadze, in his speech, suggests a corridor or zone of disengagement. But we must deal with the huge concentration of forces in Europe as a single problem. Isolating a narrow corridor down the middle of Europe could compound European insecurity, not cure it. It carries the flavour of different levels of security within an alliance—an idea which is certainly alien to the Atlantic Alliance.

We shall also be proposing other measures to reduce the threat of surprise attack, for example, the monitoring of equipment in storage. Of course, we also intend to propose a rigorous verification regime.

Taken together, and translated into practice, these proposals would make a dramatic difference to Europe's military landscape. They go far beyond bean-counting as the saying goes. They address the location, nationality and state of readiness of forces. Their thrust is clear—not superiority, not advantage, but equal and assured security for each side.

For years, Soviet negotiating intransigence kept the security ice pack hard fast and frozen. But recently the Soviet Union has done some ice-breaking of its own in the new East-West climate. Mr. Gorbachev's announcement at the United Nations of unilateral reductions in Soviet tank, artillery and other forces was welcome.

Now NATO is offering a channel to the open sea. Are the Soviet Union and her allies ready to go the full distance, to follow in these negotiations the logic of the first steps they have taken towards righting the military imbalance? That is the challenge and the opportunity that NATO extends today

NEGOTIATIONS ON CONFIDENCE BUILDING

Confidence building is the other, and we attach the same importance to that. We value in particular the fact that all European countries will take part in these CBBM negotiations.

Three years experience of the operation of the Stockholm document has been encouraging. All sides have notified military activities as required. Observation arrangements have generally worked well and challenge inspections—once regarded with horror—have proved to be effective and relatively painless.

Our proposals for these talks consolidate this progress. The measures we propose are intrusive. I see nothing wrong with that. Advances in technical intelligence gathering have made it increasingly difficult to conceal military capabilities and deployments. Concealment, when discovered, can only increase mistrust. We can save ourselves time, effort and money and strengthen confidence—by displaying greater openness now.

So we shall be proposing:

First: a comprehensive annual exchange of information about the size, location and equipment of participating states armed forces, and especially important, a system of random checking to ensure that the information exchanged 18 correct. The proposal echoes the measure proposed by the Western allies at Stockholm, but rejected by the East at that time. The world has since moved on. I hope the Eastern attitude has moved on with it.

Second: notifications of military exercises should provide more detailed information. Suspicion feeds on ignorance.

Third: improved arrangements for observing military activities.

Fourth: other measures to reinforce openness and predictability, including for example, improved access by accredited diplomatic and military personnel to government authorities, and greater freedom for them to travel.

Fifth: a stronger on-site challenge inspection regime. A good idea is always worth improving.

In all this, the key to confidence is information, information that can be checked by direct observation. And the key to information is openness: openness that helps to allay our mutual fears and mistrust, not the kind of selective display which raises more questions and doubts than it answers. We experienced such dissembling at the Soviet chemical weapons establishment in Shikany last June. We must be prepared to discuss and agree measures that leave no room for prevarication.

The Warsaw Pact recently made an important step in the right direction by publishing for the first time its own interpretation of the military balance. Despite certain shortcomings, it confirms after all imbalances whose existences we in the West have asserted.

I hope that our Eastern partners will continue to be willing to acknowledge such realities during our negotiations. I call on them to show the same imagination as the West has unfailingly displayed at Stockholm and now here in Vienna.

We look forward to discussing our proposals and to studying those of others. I hope that these will be offered in the same spirit as our own.

Mr. Shevardnadze's proposals with interest and attention. Many of them clearly deserve to be discussed carefuly once the negotiations start. The important message that I draw is that Soviet thinking is in many ways close to our own. We must build on the common ground. The Vienna negotiations must not become a competition for who can put forward the more radical proposals. They are a serious quest for stability and security, not a competitive striptease.

After so many years of immobility in conventional arms, it will be a historical achievement to do away with the imbalances and go a little further. What happens after that should be reviewed in the very different circumstances which will then apply.

Three principles underlie the proposals I have set out today: openness, honesty and assurance.

Honesty, I echo and emphasise the very word stressed by Mr. Shevardnadze.

The proposals are realistic. They are specific. They are based on clear objectives which aim to achieve equal security for both sides, and they could prove historic.

Reducing the weapons that guard a divided Europe should be only the prelude to tackling the division itself. We are not negotiating for our generals, but for our people. So let us, from the start, resolve to earn their trust through our conduct of these talks. Our success could transform the prospects for the security of the continent and so build a safer, better Europe.

ADDRESS BY EDUARD SHEVARDNADZE, FOREIGN MINISTER OF THE SOVIET UNION, AT THE VIENNA MINISTERIAL MEETING MARCH 6, 1989

Mr. Chairman, ladies and gentlemen, we are opening unique negotiations—unique not only as regards their formula, format, and set of participants. Memory prompts us that never before has an undertaking with so momentous an objective been conceived.

Reason convinces us that the road leading to that objective is the right one.

Instincts tell us that the willingness to reach the end of the road is common to all of us.

The very chance that has been given to us is unique.

Political intuition and objective analysis makes us conclude that if we make use of it we will get a Europe of new quality and value.

We are in effect opening negotiations not just on reducing troops and conventional arms and on confidence-building measures—we are undertaking the task of overcoming the split of Europe. As we are getting underway, it is appropriate to present our vision of the current state of affairs and of the goals shared by all.

For the better we know each other's views the easier it will be to identify reasonable defense requirements of the European countries. Furthermore, reasonable requirements can only be identified on the basis of reasonable perceptions.

Well, reason is today, more than ever before, a solid pillar of politics, and this, I believe, is also a unique feature of the moment, and the greatest achievement of the new times. Being very different in terms

of outlook, convictions, and value systems, and having no intention of betraying them, we have finally been able to perceive ourselves as a single nucleus of the European entity.

The negotiations of 35 and of 23—the two new branches of Helsinki—are starting at a time when in Europe things that a few years ago seemed impossible have become routine.

The routine nature of these things reveals new standards of international existence.

Soviet and American nuclear missiles are being destroyed as a matter of routine.

Inspections of military facilities are being conducted on a workaday basis.

Notifications of planned military exercises, troop movements, and strategic missile launches are being sent in an equally ordinary way.

These routine things have become the norm, the rule, the canon. It is our duty to extend that also to the reduction of conventional armed forces.

In fact, they are already being reduced—reduced unilaterally by the Soviet Union, Bulgaria, Hungary, the GDR, Poland, Romania, and Czechoslovakia; reduced on a large scale. Thus deeds come ahead of words, obligations precede agreements.

During this year, the Soviet armed forces deployed in the allied countries of Eastern Europe will be cut by over 20,000 men, 2,700 tanks and 300 combat aircraft. Twenty-four tactical missile launchers will be withdrawn from the German Democratic Republic.

By 1991 the armed forces of the Warsaw Treaty countries will have been reduced by 300,000 men, 12,000 tanks, and 930 combat aircraft.

The composition of the remaining Soviet units and formations in those countries will also change substantially. There will be 40 percent fewer tanks in motorized rifle divisions, and 20 percent fewer in tank divisions.

This diplomacy of example, diplomacy of deeds, calls for something more than just a chorus of praise and approval. Let those in the West who are applauding our unilateral steps respond with a step of their own in those categories of arms where they have an advantage.

However substantial the numerical reductions may be, their main significance probably lies in the political signal that they send.

The actions taken by the Soviet Union and other socialist countries reflect above all a new approach to assessing the probability and degree of military threat posed by the West. They reflect growing confidence that security can to an increasing extent be assured by non-military means. The outdated criterion that more weapons means a better guarantee of security has been replaced by a new and all-pervasive resource—the emerging factor of trust.

For our part we would like to hope that our way of thinking and acting is no longer identified in the West with ill will or evil intentions.

The mutual "image of the enemy" that used to pervade both Western and our propaganda is giving way to a more objective and serious look at each other.

Let us together pledge that that image, which not only affects people's feelings but also leaves a grave imprint on policy making, dialogue, and communication, shall not burden these negotiations.

Now, let me present to you our specific positions.

They call for a three-stage reduction of armed forces in Europe down to levels sufficient exclusively for defense.

Recently NATO, too, has put forward a proposal on stability at lower levels of armaments.

These two approaches can be bridged. Notwithstanding serious differences, they can be brought together. For both NATO and the Warsaw Treaty Organization call for eliminating the potential for carrying out a surprise attack and launching large-scale offensive operations. Furthermore, both sides believe that a lower level of overall military confrontation in Europe has to be attained.

That is already a kind of starting point for the negotiations, which is not bad.

This is what we propose. In the first phase, with a duration of 2 or 3 years, imbalances and asymmetries would be eliminated, as regards both troop numbers and the main categories of arms.

To achieve this, it is proposed that reductions focus mainly on the most destabilizing kinds and categories of arms such as front-line attack combat airplanes of tactical aviation, tanks, combat helicopters, combat armored vehicles and armored personnel carriers, and artillery, including multiple rocket launcher systems and mortars.

NATO and the Warsaw Treaty would reduce their armed forces and conventional arms down to equal collective "ceilings" which would be 10-15 percent lower than the lowest levels possessed by either of the political-military alliances.

A small remark here. We do not know what proposals our negotiating partners from NATO will bring to this rostrum, but it is clear from our discussions that they would prefer not to affect troop numbers and would artificially restrict the list of destabilizing armaments subject to priority reductions.

Let me ask: What kind of reductions are these if they do not affect the main component of armed forces—their personnel? And surely airplanes and helicopters can be used for a surprise attack.

The next element: Strips (zones) with reduced levels of arms, from which most dangerous and destabilizing types of conventional arms and hardware would be withdrawn, reduced, or restricted and within which there would be limitations on military activities, would be created along the line of contact between the military-political alliances.

Tactical nuclear arms would also be withdrawn from those zones. Nuclear weapons delivery vehicles would be pulled back from the line of contact to a distance that would make it impossible for them to reach the other side's territory.

All those elements are treated in detail in the proposals of our allies.

In the second phase, also lasting 2-3 years, further cuts would be carried out on an equal-percentage basis to reduce the identical ceilings attained during the first phase.

During that stage the armed forces of each side would be reduced by another 25 percent (i.e., approximately by 500,000 men) with their organic armaments. At the same time other categories of arms would be reduced, and further steps taken to restructure the armed forces on the basis of the principles of sufficiency for defense.

Finally, during the third phase the armed forces would be given a strictly defensive character, and agreements would be reached on ceilings limiting all other categories of arms and on the principles of armed forces development by which the participating countries would have to abide.

One of the most difficult problems, it would seem, is how to avoid the sterile data debate which Vienna has already heard as the requiem for talks on disarmament in central Europe.

It is clear even now that the published figures are causing a great deal of mutual arguments and objections. That is understandable. Differing approaches were applied, and hence the conclusions turned out to be different. We would think that it is not productive now to argue who is right and who is wrong.

Would it not be better just to avoid sterile arguments about data while giving priority to strategy and large-scale politics?

We are not citing any absolute figures for future "ceilings." This is what experts should work on; it is for them to develop a common approach, a single method of account, which must be scientific, fair, and objective.

Any ingenious strategem or undisguised attempt to retain an advantage in a particular kind of arms could torpedo the negotiations.

This is not a matter of arithmetic but more properly of morality. Honesty and fair play are indispensable components of the process of negotiations.

If we—both in the West and in the East—are convinced that growing trust creates a chance to lower military confrontation, that conviction should be translated in practice into greater openness and glasnost, and lower levels of troops and armaments, the only correct and acceptable way to achieve security is to create a situation that rules out mutual threats.

That is why we are saying that at each stage of the process of disarmament the interests of mutual security must be observed. Without that we shall not be able to stop the arms race. It cannot be stopped selectively. True, we can move faster in one area while postponing a decision in another, but it would be naive to think that one has no relation to the other. And since that is so, we have to take, so to say, a broad-spectrum approach, to move ahead, across the broadest front of disarmament, ridding ourselves of nuclear, chemical, conventional, and any other weapons.

We continue to be fully confident of an early conclusion of the Soviet-American treaty to reduce strategic offensive arms by 50 percent. We hope that the day of the signing of the convention banning and eliminating chemical weapons is not far off.

I also want to emphasize that the Vienna mandate is based on the Madrid mandate, which provides that confidence- and security-building measures must apply not only to Europe but also to the adjacent sea area and the air space above.

In going back to this question it is not at all our aim formally to reaffirm our position about the need to include naval armaments, too, within the context of confidence-building measures. Technological advances are changing the role of those armaments. As ships are equipped with long-range cruise missiles, which can perform strategic tasks even though conventionally armed, attack capabilities of naval fleets will be even more powerful than they are now. Surface ships and submarines are becoming ideal offensive weapons, best fit for a surprise attack. Measures that give ground forces a strictly defensive structure, withdrawals of tanks and artillery, and all other steps to rule out surprise attack logically bring about the need for serious efforts to limit destabilizing offensive functions and capabilities of naval forces.

The issue of naval forces has been raised on the eve of these negotiations not as a condition but with only one aim in mind: We have to understand clearly even now that the scope of eventual agreements will to some extent be affected by, among others, the factor of naval arms.

This is equally true of the question of modernizing tactical nuclear arms, if such plans are translated into practical actions.

The reason is not even that modernization is a way to maintain and build up nuclear arsenals. What is more, it can destroy the fragile trust that has just begun to emerge in Europe as a result of decisions genuinely significant militarily, and important politically and psychologically.

If it happens, Europe will be pushed back to what it was before the conclusion of the Soviet-American treaty eliminating INF missiles.

The Soviet Union proposes that separate negotiations be started as soon as possible on reducing and completely eliminating tactical nuclear weapons in Europe.

What Europe needs is not modernization of missiles, but a modernized system of security based on drastic reductions of troops and armaments.

But even then we would of course have to be confident that the new formula of security would work in all situations.

To have such confidence, the most rigorous and reliable verification must be assured. As we see it, that should not be a big problem. In principle we know how it could be done. What is more, we have systems in operation and well-tested methods of control and verification. The implementation of the Stockholm agreements and the practice of monitoring compliance with Soviet-American agreements makes us confident that the problem of verification can be solved in this area as well.

We shall insist on the most stringent and rigorous verification, including inspections without right of refusal, aerial monitoring of the situation, and checking the routes of communication used to reinforce troops and equipment.

In other words, there is no verification measure that we would not be ready to consider and accept on the basis of reciprocity.

Such is our long-term programme of reducing conventional armed forces.

Its implementation begins, naturally, with first steps. Let us try to take them and to conclude the initial agreement within a short time.

We have all that is needed for that.

At the negotiations of 35 we would like not only to improve what was done in Stockholm but also to reach agreement on a new generation of large-scale confidence-building measures under which openness and glasnost would go hand in hand with limitations on all kinds of military activities and with confidence-building measures extended to naval and air forces.

Neutral and non-aligned countries could play an important role here. We for our part will do our best to make sure that their national security interests are fully taken into account.

Let me add another remark.

The evolution of the situation in some regions adjoining Europe makes one think of new dimensions of European security.

In the Near and Middle East, i.e., in close proximity to Europe, powerful weapons arsenals are being created. It is not enough just to mention that 25,000 tanks and 4,500 aircraft are deployed and ready for combat in the Middle East and there is a real danger of nuclear and chemical weapons appearing there—missiles have already appeared with an operational range of 2,500 km; that is, of precisely the same class that is being eliminated from Europe. This new situation is emerging against the background of the mounting trend toward European disarmament. The conclusion is obvious: The processes of disarmament in Europe and settlement in the Middle East have to be synchronized. While the Mediterranean is, in some way, joining in the all-European process, the Near and Middle East remain outside our collective concern. I say collective concern because certain attempts are being made on an individual basis.

Today they are clearly insufficient.

While welcoming the Europeans' Middle East initiative, the Soviet Union is calling for joining the efforts of all premanent members of the United Nations Security Council, the UN secretary general, and the European Community to help the peoples of the region to establish peace, put an end to the arms race, and initiate wide-ranging economic and environmental cooperation. To do so, it is imperative to get rid of the rudimentary mentality that requires acting against each other rather than together with others. There should be no playing on any contradictions—whether it is Israel's conflict with the Arabs or the difficulties in the West's relations with Iran.

There should be respect for the values of those with whom we coexist on our planet—even if they do not fit our own standards.

Going back now to the topic of the coming negotiations of 23 and 35, let me express confidence that they have good chances of succeeding.

I want to assure you that the Soviet Union will do its best to help them succeed. It will do so guided by our view of today's world and of ways to assure its security and solve global and regional problems, as set forth by Mikhail Gorbachev at the session of the United Nations General Assembly.

We have a very difficult road ahead of us. Our experience—the experience of 5 Soviet-American summits and more than 30 ministerial meetings—tells us that without such intensive work on problems of real disarmament there would be no treaty eliminating INF missiles today.

These negotiations will require something similar, but on a larger scale. At certain stages the matter could be considered at the highest level. It is possible that more than one all-European summit meeting will be required. We have to anticipate that at decisive moments, possibly twice a year, foreign ministers might have to meet in order to keep the fire burning at these negotiations and prepare for the summit.

In this area, which is of major importance for the future of Europe, there is a need for maximum concentration of efforts and active cooperation among all states participating in the Helsinke process.

We are firmly counting on that.

Let me wish the participants in these negotiations an early and productive implementation of the mandate.

Our wholehearted gratitude goes to Austria, which has assumed the difficult function of hosting these talks. We thank the government of the Republic and the Austrian people.

ACTIVE OR READY DIVISION CHARACTERISTICS

	Personnel	Tanks	Artillery
U.S. divisions:			
Armored	16,600	348	72
Mechanized	16,800	290	72
Infantry	17,700	116	75
Soviet divisions:			
Tank	11,470	325	110
Motorized rifle	13,500	250	140

Source: CRS Report 88-425, April 1988.

	Warsaw Pact forces		NATO forces	
	Warsaw Pact estimate [1]	NATO estimate	Warsaw Pact estimate	NATO estimate
Personnel	3,573,100	3,090,000	3,660,200	2,213,593
Tanks	59,470	[2] 57,300	30,690	[2] 22,224
Combat aircraft	7,876	8,250	2,130	3,977
Artillery	71,560	[3] 46,270	57,090	[3] 17,328
IFV/APC [3]	70,330	[4] 22,400	45,900	[4] 14,153

[1] Warsaw Pact estimates of personnel and armaments include naval forces.
[2] NATO tank estimates include approximately 5,800 tanks in storage for both sides. Artillery estimates include approximately 2,870 pieces in storage for each side.
[3] Infantry fighting vehicles/armored personnel carriers
[4] NATO estimates include only infantry fighting vehicles.

Sources: Conventional Forces in Europe: The Facts, NATO, November 1988. Statement by the Committee of Ministers of Defense of the Warsaw Treaty Member States, January 1989.

WARSAW PACT VERSUS NATO EQUIPMENT IN EUROPE—IISS ESTIMATE, THE MILITARY BALANCE 1988–89, ATLANTIC TO THE URALS

	Warsaw Pact	NATO	Warsaw Pact:NATO
Weapon type:			
(1) Main battle tanks	53,000	22,200	2.4:1
(2) Artillery (including MRL)	36,000	10,600	3.4:1
(3) ATGW launchers	13,700	11,000	1.2:1
(4) AIC (including APC/IFV	23,600	6,200	3.8:1
(5) Armed helicopters	1,220	864	1.4:1
(6) Air defense/fighters and interceptors	4,432	1,178	3.8:1
(7) Fighter-bomber and ground attack	3,218	3,215	1.0:1

DOD ESTIMATES—SOVIET MILITARY POWER 1988

Weapon	Warsaw Pact	NATO	Warsaw Pact: NATO
In place in Europe/rapidly deployable:			
(1)	32,400	21,100	1.5:1
(2)	23,800	15,300	1.6:1
(3)	20,100	13,200	1.5:1
(4)	42,000	28,500	1.5:1
(5)	1,000	600	1.7:1
(6)	2,700	1,100	2.5:1
(7)	3,000	2,200	1.4:1
Fully reinforced:			
(1)	53,100	25,300	2.1:1
(2)	44,000	18,500	2.4:1
(3)	30,800	22,900	1.3:1
(4)	60,000	34,400	1.7:1
(5)	1,250	1,300	.96:1
(6)	3,100	1,140	2.7:1
(7)	3,450	3,850	.90:1
In place/rapidly deployable (including France and Spain):			
(1)	32,400	23,400	1.4:1
(2)	23,800	19,060	1.3:1
(3)	20,100	14,900	1.4:1
(4)	42,000	34,200	1.2:1
(5)	1,000	700	1.5:1
(6)	2,700	1,380	2.0:1
(7)	3,000	2,600	1.2:1
Fully reinforced (including France and Spain):			
(1)	53,100	28,200	1.9:1
(2)	44,000	22,200	2.0:1
(3)	30,800	24,600	1.3:1
(4)	60,000	39,800	1.5:1
(5)	1,250	1,480	.84:1
(6)	3,100	1,470	2.2:1
(7)	3,450	4,250	.81:1

A MEAN BEAN COUNT

	Warsaw Pact	NATO	Pact advantage
Mean of estimates:			
Total military manpower	3,573,000	2,686,300	1.3
Main battle tanks	47,000	19,000	2.5
Armored vehicles	68,400	33,400	2.0
Antitank missiles	23,900	11,900	2.0
Artillery/rocket systems	34,700	12,600	2.8
Combat aircraft	7,000	3,600	1.9
Division equivalents	136	96	1.4

Note.—The range of estimates results from differences in weapon category definition. The mean and its ratio are derived from a wide range of sources, not simply the high and low estimates.

Note.—Adapted from Brookings Review (Winter 1988–89), p. 58.

IN PLACE AND IMMEDIATE REINFORCING DIVISIONS IN CENTRAL EUROPE

	In place	Reinforcing
NATO country:		
United States	5⅓	6
West Germany	12	3⅓
France	3	12
Britain	3	⅔
Belgium	⅔	1⅓
Netherlands	⅓	3
Canada	⅓	
Total	24⅔	26⅓
Total divisions	51	
Total armor division equivalents	34	
WTO country:		
USSR	24	7
East Germany	6	4
Czechoslovakia	6	

IN PLACE AND IMMEDIATE REINFORCING DIVISIONS IN CENTRAL EUROPE—Continued

	In place	Reinforcing
Poland	0	8
Total	36	19
Total divisions	55	
Total armor division equivalents	34	

Source: "Soviet Readiness for War", House Armed Services Committee (Dec. 5, 1988), p. 6.

ARMS CONTROL: DOWN TO BUSINESS

After three days of speechifying from their foreign ministers, negotiators from the 23 countries of NATO and the Warsaw pact sat down together in Vienna on March 9th in an effort to cut their non-nuclear forces in Europe. Europe, for their purposes, stretches from the Atlantic to the Urals, but also includes Britain, Iceland, the Azores and the Canaries. One small region of southern Turkey is left out. Encouragingly, the two sides' opening positions are not that far apart.

The western allies' proposal was outlined on March 6th by Britain's foreign secretary, Sir Geoffrey Howe. It calls for both sides to cut to the same levels, slightly below NATO's present numbers, in tanks, armoured personnel-carriers and artillery. No single country could possess more than 30% of the total allowed to both sides in any of these three categories. And for each alliance there would be limits on the number of these weapons which could be stationed outside the country that owns them (see table).

This would require much deeper cuts by the Warsaw pact than by NATO. The Soviet Union has already accepted the idea of making the big cuts. NATO's 30% rule is aimed mainly at the Russians, who now field around half of the Warsaw pact's armoured vehicles and artillery. The effect of the NATO proposal would be to require even greater reductions in Soviet forces than those Mr. Gorbachev has already promised to make unilaterally by 1991.

The western allies also want sub-limits within each of three geographical areas. For example, each side could have no more than 8,000 of its 20,000 allowed tanks, 11,000 of its armoured personnel-carriers and 4,500 of its artillery pieces within an area consisting of the Benelux countries, the two Germanies, Poland and Czechoslovakia. That is to ensure that neither side can concentrate its forces rapidly for attack.

The Warsaw-pact position was outlined in rather less detail by the Soviet foreign minister, Mr. Edward Shevardnadze. He proposed a three-stage reduction. The first stage (shown in our table), over two to three years, would cut each side's main weapons and troop number to 10–15% below the numbers NATO now has. The Russians also want to cut ground-attack aircraft and helicopters. NATO dislikes this idea, but will eventually have to go along.

EUROPE

	NATO proposal—NATO figures (Note 1)						Warsaw-pact proposal—Warsaw pact figures (Note 1)		
	NATO now	Warsaw pact now	Each side after cuts	NATO "stationed forces" now (Note 2)	Warsaw pact "stationed forces" now	"Stationed forces" after cuts	NATO now	Warsaw pact now	Each side after cuts (12.5%)
Troops	[1]	[1]					2.98m	3.24m	2.60m
Tanks	[2] 22,224	51,500	20,000	5,121	9,790	3,200	30,890	59,470	26,854
Armoured personnel-carriers	[3] 32,875	[3] 70,000	[3] 28,000	[3] 8,500	[3] 13,800	6,000	46,900	70,330	41,038
Artillery	[3] 17,328	43,400	16,500	[3] 850	4,960	1,700	57,060	71,560	49,928
Attack aircraft	[1]	[1]					5,450	5,355	4,686
Combat helicopters	[1]	[1]					5,270	2,785	2,437

[1] Not part of proposal.
[2] Includes equipment in storage.
[3] The Economist estimates.
[4] Of these, no more than 12,000 may be fighting vehicles with mounted guns.

Note 1: NATO and Warsaw-pact figures are not directly comparable because the two sides use different definitions of equipment.
Note 2: "Stationed forces" are forces stationed outside their own national territory.

It will also resist including manpower. The West shied away from proposing manpower limits because the now-defunct MBFR talks found numbers too difficult to nail down. Accurately checking the number of men on the ground will be hard, but if the Russians insist on trying NATO may have to go along with this, too.

The Warsaw pact would also like to apply special limits in a sub-zone, probably a strip about 100 kilometers wide on each side of the border between East and West Germany. There would be limits on military maneuvers in the area, and all tactical nuclear weapons would be barred. However, NATO is committed to defending West Germany smack on its border with the East, so this idea is out. Nor is NATO likely to accept a related proposal to pull all nuclear-weapons launchers—including aircraft, artillery pieces and rocket launchers—so far back that they could not reach enemy territory.

In the second stage, also two to three years long, each side would cut its forces by a further 25%. In the final stage all other weapons would be cut so as to leave each side able to fight only defensively.

Mr. Shevardnadze also served notice that the Warsaw pact's negotiating position will be influenced by "the factor of naval arms". Precisely how remains to be seen. The mandate for these talks, which he initialled in January, specifically excludes both nuclear weapons and naval forces.

Because of the different sorts of cuts being suggested, it is hard to compare the two sides' proposals directly. The Russians are asking for bigger percentage cuts, but they have generally counted more sorts of weapons. The stage-one proposals are therefore within shouting distance of each other.

Mr. Shevardnadze's second and third stages will be a problem. NATO generals do not like the idea of cuts that would weaken the central front by more than about 10%. They believe they could then no longer keep to the agreed strategy of forward defence—they would have to pull back from the front and prepare to fight a war of delay and manoeuvre, which would mean abandoning much of West Germany. They could live with stage one; what is not clear is how hard the Soviet Union will stick to its demand to go on to stages two and three.

Despite the obvious problems ahead, most of those involved in the Vienna talks are optimistic about the prospects of a deal. Sure, the old MBFR talks, which were trying to do much the same things, dragged on for years with no success. But this time things seem different. Many observers believe Mr. Gorbachev wants a deal and will make concessions to get one.

[From the Armed Forces Journal, March 1989]

SOVIET MILITARY DEVELOPMENTS

BIG DIFFERENCES BETWEEN NATO, WARSAW PACT CONVENTIONAL FORCE TALLIES

(By Steven J. Zaloga)

The Warsaw Pact has weighed in on the "bean count" with its first public estimate of the NATO-Warsaw Pact military balance. Not surprisingly, its numbers portray the balance as much less lopsided than NATO's figures do and show a much more modest advantage for the Warsaw Pact in most ground weapons, but a big NATO advantage in tactical air and naval forces.

The Soviet assessment includes naval aviation forces, which NATO's most recent figures did not consider. In other categories, the NATO and Warsaw Pact figures cannot be directly compared because of different counting rules, leading to a skewed apples-and-oranges tally.

The new data were released by the Warsaw Pact Defense Ministers' Committee in the Soviet newspaper Pravda on January 30th as a response to NATO's document "Conventional Forces in Europe: The Facts," released in November (Jan AFJI).

TANKS AND FIGHTING VEHICLES

The issue of the tank imbalance has always been the heart of the bean count. NATO finds a 3.1:1 Warsaw Pact advantage, whole the Soviet figures suggest a more modest 1.9:1 advantage. One reason is that the Soviets label their figures as "tanks" rather than reflecting the NATO criterion of "main battle tank." Since the Warsaw Pact has few light scout tanks (PT-76) in service, NATO light tanks such as the Scorpion and M-41 push up the NATO tank figures. NATO's comparison of the balance includes light scout tanks under the heading of "Other Armed Vehicles."

For example, NATO lists Belgian strength as 320 tanks. This refers to Leopard Is in fully or partialy manned units; however, Belgium has another 14 Leopard Is and about 40 old M-47s in storage. But the Soviets also include 136 Scorpion light scout tanks, bringing the Belgian total to 530.

Many of the other discrepancies are even more difficult to justify, and some appear to be outright fabrications. Several NATO countries are credited with tank inventories far in excess of actual numbers, even allowing for the different Soviet standards. For example, the Warsaw Pact more than doubles Spain's inventory, even though Spain has no substantial quantity of either light tanks or MBTs in storage. Canada is credited with 150 tanks, even though it has purchased only 114 Leopards and stations the majority in Canada. The figures credit France with nearly triple the number given by NATO, which is implausible even if one counts the AMX-13 light tanks in storage. Portugal is an even more ludicrous example. The Warsaw Pact bean count credits Portugal with a total of 470 tanks: Portugal has 66 operational M-48A5s, 16 1944-vintage M-24 light tanks, and about 65 M-47s in various states of dispair. The Portuguese cleared their junkyards of ex-US World War II tanks in the late 1970s and early 1980s, selling them as scrap to logging concerns in the southern US (for use as tractors) and to military vehicle collectors in Europe and the US. The Soviets still seem to be counting 50-year-old Portuguese M-3 Stuart light tanks and similar junk, all of which still fall short of the recently released figures.

The figures also make it difficult to determine whether the Soviet bean counters included their own substantial reserves of stored tanks in their numbers. NATO's figures do not include stored tanks, since they are so difficult to tally.

NATO VERSUS WARSAW PACT TANK COUNTS

	NATO	WP
Belgium	320	530
Canada	60	150
Denmark	228	350
France	1,250	3,180
Germany	4,330	4,980
Greece	1,420	2,000
Italy	1,500	2,330
Netherlands	750	1,250

NATO VERSUS WARSAW PACT TANK COUNTS—Continued

	NATO	WP
Norway	117	370
Portugal	66	470
Spain	866	1,850
Turkey	3,900	4,320
United Kingdom	717	2,060
United States	1,900	6,980
Total	16,424	30,690
Bulgaria	1,800	2,200
Czechoslovakia	1,800	4,585
East Germany	3,000	3,140
Hungary	1,300	1,435
Poland	3,400	3,330
Romania	1,200	3,200
USSR	37,000	41,580
Total	51,580	59,470

NATO figures cover only main battle tanks, not light scout tanks (see Light Armored Vehicle table). NATO figures do not include 5,200 MBT's held by NATO countries in storage; comparable figures for the Warsaw Pact are not available but are believed to exceed NATO holdings. Warsaw Pact data include light tanks as well as main battle tanks. Warsaw Pact figures include NATO tanks in storage, but it is unclear if they include Warsaw Pact stored tanks.

The situation is even more complicated when it comes to light armored vehicles. NATO tallies these vehicles under two headings, "Armored Infantry Fighting Vehicles (AIFV)" and "Other Armored Vehicles" in order to distinguish the high-quality types like the Bradley and Marder from older, poorly armed APCs. The Soviets lump all these together. Even if both NATO categories are combined, it is still difficult to make a meaningful comparison between the two sets of figures because of remaining ambiguities. The NATO figures include armored command vehicles (like the M-577), while the Warsaw Pact does not include its own armored command vehicles (like the BTR-60PU). Until both sides explicitly list what vehicles they do and do not include, a reasonable side-by-side comparison of these categories is impossible.

There are similar difficulties in comparing artillery and antitank systems. The greatest discrepancies between the NATO and Warsaw Pact figures come in the artillery category. The Warsaw Pact figure for NATO artillery is more than three times higher than NATO's figure. The Soviets expand the category to include field pieces as small as 75-mm (NATO starts at 100-mm) and include mortars as small as 50-mm. But this does not explain such an enormous discrepancy. For example, Turkey is credited with 2,800 artillery pieces by NATO, but a whopping 14,900 by the Warsaw Pact. The only plausible explanation is that the Warsaw Pact figures include a whole range of weapons not normally considered artillery, like old bazookas, recoilless rifles, and antitank rocket launchers as well as large quantities of stored 81-mm mortars. One presumes that the Soviets do not cover their own large stores of 82-mm mortars, given the modest artillery figures they attribute to themselves. Likewise, the antitank figures are impossible to compare, since NATO's cover vehicles and helicopters with a secondary ATGM mounting (like a BMP with an AT-3 Sagger), which the Soviets exclude. The Soviets count only antitank guided missiles, not all antitank weapons like T-12 towed 100-mm guns or SPG-9 antitank rocket launchers, which would increase the Warsaw Pact total.

NATO VERSUS WP LIGHT ARMORED VEHICLE COUNTS

	NATO	WP
Belgium	1,586	2,020
Canada	400	500

NATO VERSUS WP LIGHT ARMORED VEHICLE COUNTS—Continued

	NATO	WP
Denmark	787	1,090
France	3,850	4,520
Germany	7,440	6,840
Greece	1,853	1,720
Italy	4,900	6,440
Netherlands	2,920	3,240
Norway	356	190
Portugal	260	280
Spain	2,740	1,720
Turkey	1,700	5,480
United Kingdom	5,848	5,480
United States	6,550	7,580
Total	39,499	46,900
Bulgaria	4,400	2,365
Czechoslovakia	6,100	4,900
East Germany	6,500	5,900
Hungary	2,000	2,310
Poland	6,200	4,855
Romania	4,200	5,000
USSR	64,000	45,000
Total	93,408	70,330

NATO figures combine "AIFV" and "Other Armored Vehicles," which include light tanks. NATO figures do not include 575 AIFV and 7,560 other armored vehicles in storage; comparable data for Warsaw Pact vehicles are lacking, but numbers are believed in excess of NATO holdings. Warsaw Pact figures do not include light tanks, which are covered in Tank Table; they do include NATO stored armored vehicles, but it is unclear if they include Warsaw Pact stored armored vehicles. They appear to include NATO armored command vehicles, but exclude comparble Warsaw Pact types.

NATO VERSUS WARSAW PACT ARTILLERY COUNTS

	NATO	WP
Belgium	243	1,520
Canada	35	170
Denmark	542	1,750
France	780	8,150
Germany	2,220	3,190
Greece	1,752	3,950
Italy	2,100	5,510
Netherlands	667	1,410
Norway	552	2,320
Portugal	260	1,870
Spain	1,033	5,010
Turkey	2,800	14,900
United Kingdom	394	3,320
United States	1,100	3,520
Total	14,458	57,050
Bulgaria	2,000	3,950
Czechoslovakia	2,110	3,445
East Germany	1,700	2,435
Hungary	800	1,750
Poland	2,500	3,065
Romania	1,300	6,600
USSR	33,000	50,275
Total	57,050	71,560

NATO data exclude 2,870 artillery pieces in storage; figures for Warsaw Pact storage are lacking but presumed higher. NATO data include artillery, MRL, and mortars 100-mm and larger, Warsaw Pact data include fired pieces 77-mm and larger and mortars 50-mm and larger.

AIRCRAFT

While there are many mysteries as far as army equipment is concerned, the figures on aircraft and helicopters give a clear idea of the double standards applied by the Soviets to the counting exercise. Unlike the case with ground equipment, both NATO and Warsaw Pact estimates list the type of aircraft which they include in the tally. This makes their counting rules much less enigmatic than in the case of the army equipment.

The combat aircraft category is a bone of contention, since the Soviets argue it should include US and other NATO carrier-based aviation, which NATO does not include. This considerably boosts the NATO tally, although not enough to tip the balance in favor of NATO. The other technique used by the Warsaw Pact which skews the numbers in their favor is counting classes of aircraft for NATO, but not the comparable Warsaw Pact types. So NATO combat-capa-

ble trainers like the Alpha Jet are included, but not comparable Warsaw Pact aircraft like the L-29 or L-39. The Warsaw Pact data also exclude Tu-22M Backfire bombers. The Soviets argue that they are counterparts to British and French strategic nuclear systems and are not relevant to the NATO-Warsaw Pact balance. However, NATO does include Tu-22M Backfires in its tally.

The same problem applies to helicopters: NATO counts only transport and attack helicopters. The Warsaw Pact figures include a wide range of other NATO helicopters, including scout and light liaison helicopters like the OH-6, OH-58, and Bo-105; but they exclude comparable Pact helicopters like the Mi-2 Hoplite.

NATO VERSUS WARSAW PACT ANTITANK GUIDED MISSLE SYSTEM COUNTS

	NATO	WP
Belgium	518	560
Canada	45	70
Denmark	330	310
France	1,460	2,800
Germany	1,710	2,760
Greece	2,267	320
Italy	2,200	2,130
Netherlands	674	764
Norway	550	150
Portugal	362	40
Spain	1,222	190
Turkey	2,480	2,350
United Kingdom	1,196	1,480
United States	3,300	4,940
Total	18,240	18,070
Bulgaria	580	360
Czechoslovakia	2,000	540
East Germany	1,700	620
Hungary	800	270
Poland	2,000	435
Romania	700	400
USSR	36,500	8,840
Total	44,200	11,465

NATO data include helicopters and armored vehicles with ATGM launchers, but not intended primarily as antitank systems. Such secondary role systems account for 2,400 NATO ATGM systems, 23,000 Warsaw Pact. Excluded from NATO data are 2,700 antitank systems in storage, comparable figures for the Warsaw Pact are lacking.

NATO VERSUS WARSAW PACT COMBAT AIRCRAFT COUNTS

	NATO	WP
Belgium	144	170
Canada	40	50
Denmark	97	100
France	450	880
Germany	547	850
Greece	319	450
Italy	258	450
Netherlands	162	200
Norway	78	100
Portugal	99	150
Spain	186	295
Turkey	378	640
United Kingdom	445	835
United States	800	1,960
Total	3,977	7,130
Bulgaria	250	234
Czechoslovakia	480	447
East Germany	350	307
Hungary	150	113
Poland	700	480
Romania	350	380
USSR	6,050	5,955
Total	8,250	7,876

NATO data include combat-capable trainers, land-based naval aircraft, and Tu-22M Backfires. Warsaw Pact data include land-based naval aircraft (except Air Force and Navy Tu-2M Backfire bombers) and exclude combat-capable Warsaw Pact trainers.

NAVAL FORCES

The Warsaw Pact count includes naval forces. NATO figures do not include a naval count, but the Annual report to Congress of the Secretary of Defense does have such an assessment. As in the case of the other categories, the Warsaw Pact figures bear little resemblance to the US figures, due to completely different counting rules. The Soviets exclude small warships like corvettes, which constitute about a quarter of the surface warships of their fleets opposite Europe, while the US tally includes them. As a result, the US counts 302 Warsaw Pact surface warships, but the Warsaw Pact counts only 78. The US figures include some amphibious warfare ships such as LHAs under the heading of "V/STOL and Helicopter Carriers," but not other amphibious warfare ships such as LSDs and LPAs. On the other hand, the Soviets do include amphibious warfare ships in their tallies, adding 84 ships to the NATO total. Both sides count submarines, excluding ballistic missle subs. But the US figures 229 NATO and 308 Warsaw pact submarines, while the Pact counts 200 NATO vs 228 WP subs—due to unexplained counting differences.

Both sides tally aircraft and helicopter carriers in a different fashion. The Warsaw Pact counts nine US aircraft and helicopter carriers and six NATO carriers, while the US total listed in the SecDef's Annual Report to Congress tallies 14 aircraft carriers, 12 helicopter carriers, and nine NATO carriers.

NATO VERSUS WARSAW PACT HELICOPTER COUNTS

	NATO	WP
Belgium	0	0
Canada	0	10
Denmark	0	0
France	220	700
Germany	554	460
Greece	64	130
Italy	170	540
Netherlands	54	20
Norway	0	0
Portugal	0	0
Spain	160	160
Turkey	160	310
United Kingdom	287	700
United States	700	2,180
Total	2,369	5,200
Bulgaria	100	51
Czechoslovakia	200	181
East Germany	150	174
Hungary	100	96
Poland	200	43
Romania	100	220
USSR	2,850	2,200
Total	3,700	2,885

NATO data cover antitank and assault/transport helicopter, but exclude 180 helicopters in storage; comparable data for Warsaw Pact helicopter in storage are lacking. WP figures include naval helicopters and additional categories.

GROUND FORCES

The bean counts of troops are difficult to correlate precisely, due to the different configuration of the Warsaw Pact forces and different counting rules. The Soviet figures break out staff and command troops, air defense troops, rear area support troops, and technical troops under central command, in addition to the troops of the Ground Forces (SV) and airborne forces (VDV). NATO lumps these forces together. However, a comparison is still elusive, since some of the Soviet support troops are used in roles that would be performed by uncounted air force or naval personnel in the NATO forces. The Soviets also include some US and Canadian forces stationed in North America in their grand total for NATO. (In the accompanying charts, these numbers have been excluded.) This matter aside, the personnel count is one of the few areas where the Warsaw Pact and NATO seem to be in the same ball park as far as numbers are concerned.

Some of the differences in the Warsaw Pact count focus attention on NATO advantages which NATO ignores in its own bean count; however, many of the differences seem to stem from the Soviet Union's reluctance to admit the substantial numerical advantages it enjoys in many categories of conventional arms, especially mechanized forces.

The Soviets could address this issue in another fashion by arguing that the raw numbers do not matter. NATO advantages in technology and training give their forces combat power that is not measurable by simple bean counts. The Soviets are reluctant to publicly discuss this matter since it would amount to an admission that many Soviet technologies and military policies are inferior, in some respects, to NATO's.

NATO VERSUS WARSAW PACT GROUND FORCES COUNTS

	NATO	WP
Belgium	68,000	72,300
Canada	5,000	6,500
Denmark	20,540	28,460
France	367,800	308,800
Germany	351,800	386,600
Greece	116,990	152,600
Italy	297,000	298,600
Netherlands	68,000	69,650
Norway	25,059	26,180
Portugal	849	48,000
Spain	210,000	211,400
Turkey	380,000	499,600
United Kingdom	140,560	165,300
United States	216,000	218,900
Total	2,312,898	2,485,890
Bulgaria	135,000	106,000
Czechoslovakia	145,000	173,600
East Germany	128,000	154,200
Hungary	88,000	105,200
Poland	238,000	277,800
Romania	188,000	158,200
USSR	2,200,000	1,801,700
Total	3,090,000	2,775,900

Warsaw Pact data for US and Canadian forces in North America not included. Warsaw Pact tally includes all personnel except civil defense, Air Force, and Navy.

ARMS CONTROL IMPLICATIONS

The basic problem with conventional arms negotiations is that they inherently presume an equivalence between Soviet and NATO equipment, even though there is no guaranteed link between numbers of weapons and combat power in a real war. The Soviets, though they are loath to admit it, do not feel that a T-72 with a typical Soviet crew is equal on the battlefield to an M-1 with a typical American crew or a Leopard II with a typical German crew.

This presents a real dilemma to the Soviets when attempting to come to agreement with NATO on reducing conventional arms. NATO analysts do not share the historical anxieties of the Soviets and feel quite simply that a tank is a tank. Bad memories of World War II have little relevance today in assessing modern combat power.

The Soviet release of data on the Warsaw Pact does not bring the two sides much closer to reaching an accord on conventional arms controls. After more than a decade of fruitless Mutual Balanced Force Reduction talks, NATO and the Warsaw Pact are still bogged down debating what to count and how to count it. But this could be a relatively minor arms control problem and could be quickly overcome if both sides would release more detailed and comprehensive information on the specific systems and forces they have counted. This is unlikely to happen soon, given Soviet reluctance to provide details about the organization and force structure of its armed forces. Once this stumbling block is overcome, the debate might

turn to the far more difficult and controversial problem of assessing the relative combat power of the various types of forces to be trimmed under an arms control treaty.

Mr. WIRTH. The confirmation this morning in the Senate Armed Services Committee of Secretary CHENEY and the rapid action on the floor of the Senate seems to me will add momentum to what must be done getting the administration behind this approach with the full support of those of us in the Congress. The promise is great. Let us join together to realize it.

I yield back the remainder of my time.

SENATOR GLADYS PYLE

Mr. PRESSLER. Mr. President, on Tuesday, South Dakotans lost a great leader. Former U.S. Senator Gladys Pyle died in her hometown of Huron, SD, at the age of 98.

Gladys Pyle was the only woman ever elected to represent our great State in this distinguished body. She also was the first Republican woman elected to the Senate. Gladys Pyle's lengthy record of unselfish public service to the people of South Dakota is well known and highly respected by South Dakotans.

Gladys Pyle was a fine citizen and a true leader. I knew her personally and admired the example she set for the men, women, and youth of our State.

Mr. President, I ask unanimous consent that the Gladys Pyle section of my book, "U.S. Senators from the Prairie," be printed in the RECORD, following by an obituary that appeared in the Sioux Falls Argus Leader this morning.

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

GLADYS PYLE

Date of Birth: October 4, 1890.
Place of Birth: Huron, South Dakota.
Parents: John L. Pyle, Mamie I. Shields.
College/Degrees: Huron College, (B.A.).
Date Entered Senate: November 9, 1938.
Age at Induction: 48.
Date Left Senate: January 3, 1939.

A teacher, business person, and politician, Gladys Pyle was a prominent figure on the South Dakota political scene long before there was an organized women's movement. Pyle was the first women member of the state house of representatives and the first and only woman to date elected to the U.S. Senate from South Dakota. She also ran for governor in 1930 and came within an ace of winning.

Gladys Pyle was born in Huron on October 4, 1890. She attended public schools and graduated from Huron College in 1911. For the next six years she was employed as a teacher in public high schools in Miller, Wessington, and Huron. Pyle serve in the state house of representatives from 1923 to 1927; throughout her tenure she fought for ratification of the proposed constitutional amendment to prohibit child labor. She was secretary of state of South Dakota from 1927 to 1931, and from 1931 to 1933 she was a member of South Dakota's Securities Commission. In 1933 she started a new career in the life insurance business.

A long-time Republican, Pyle made her bid to become South Dakota's first woman governor while she was secretary of state, basing her campaign on a call for reform of the state banking department. In a five-person primary contest, she received a plurality of votes—over twenty-eight percent of the total cast. South Dakota law, however, specifies that if a primary winner does not receive thirty-five percent of the vote, the nomination shall be decided by a state party convention. Pyle received the most votes on several early ballots at the subsequent convention, but ironically Warren Green, the contestant with the fewest votes in the primary, eventually received the GOP nomination and was elected governor in the general election.

In 1938 Republican party officials persuaded Pyle to enter an unusual special election for the remaining two months of the late Peter Norbeck's term, extending from the November general election to the January opening of the next Congress. Democrat Herbert Hitchcock, Norbeck's appointed successor, had left Washington when the Senate adjourned on November 8 to enter the regular senatorial race (and he lost out in the Democratic primary). Republicans, meanwhile, were afraid that President Roosevelt would call a special session of Congress; Pyle agreed that a Republican should represent South Dakota in such a session. She won the special election, while Chan Gurney won the regular general election for the six-year Senate term beginning in January 1939.

As it turned out, Congress did not convene during Pyle's special term and she was never installed in the Senate in a Washington ceremony. All the same, she had the honor of serving as South Dakota's U.S. senator in that brief interim.

Pyle remained active for many years in the insurance business, farm management, and politics. In 1940 she was a delegate to the Republican National Convention. From 1943 to 1957 she served on the South Dakota Board of Charities and Corrections, and she has long been active with the Red Cross and the Salvation Army. The former senator resides in her home town of Huron.

GLADYS PYLE, FIRST SOUTH DAKOTA WOMAN ELECTED TO SENATE, DIES AT 98

HURON.—Gladys Pyle, 98, the first South Dakota woman elected to the U.S. Senate, died Tuesday in Huron Nursing Home.

When Sen. Peter Norbeck died in the fall of 1938, Gladys Pyle ran for his unexpired term to keep a Republican in office in the event Congress was reconvened. She won the special election but Congress was not reconvened so she was not installed. Chan Gurney won the regular general election and took over the South Dakota office in January of 1939.

Gladys Pyle was born Oct. 4, 1890, in Huron. She graduated from Huron College in 1911 and attended the American Conservatory of Music in Chicago from 1911 to 1912. She then taught Latin in Huron, Miller and Wessington.

She was a lector for the League of Women Voters from 1921 to 1922 before becoming the first women to be elected to the state House of Representatives in 1922. She served in the House until 1926 while also serving as assistant secretary of state.

She was secretary of state from 1927 to 1930 and was a gubernatorial candidate in 1930. She started work as an insurance agent for Northwestern Mutual in 1931, but continued her political career.

From 1931 to 1933, she was executive of the state Securities Commission. She was elected to the U.S. Senate in 1938. She served as secretary of the state Board of Charities and Correction from 1943 to 1957 and was a delegate to the National Republican Convention in Philadelphia in 1940.

She retired from the insurance company in 1986.

She received several humanitarian and civic awards including the Beta Sigma Phi First Lady of the Year, 1952; Huron college Alumni Association Distinguished Service Award 1956; Huron College Honorary Degree, Doctor of Laws, 1958; Huron's Chamber of Commerce Citizen of the Year, 1964; Beta Sigma Phi Order of the Rose, 1970; AAUW National Fellowship established in her honor, 1972; South Dakota Press Association Distinguished Service Award; and the state BPW Bicentennial Award, 1976.

Survivors include nieces and nephews.

Memorial services will begin at 2 p.m. Wednesday in United Presbyterian Church in Huron. Her remains will be buried in Riverside Cemetery.

Memorials may be directed to Huron University, YWCA and First Presbyterian Church.

TRIBUTE TO RUSSELL CORP.

Mr. HEFLIN. Mr. President, I rise today to inform my colleagues that the Russell Corp. has been named the "Company of the Year" for Alabama by the Jenks Southeastern Business Letter.

Russell Corp. is a domestic apparel manufacturer headquartered in Alexander City, AL. They produce many different lines of clothes but are perhaps best known for their athletic uniforms.

The Russell Corp. has consistently been one of the premier companies in Alabama. By outfitting its plants with the most advanced equipment in the apparel industry, they have been able to compete effectively against the stiff competition from overseas producers. Russell's earnings and sales have increased in 17 of the last 18 years and that trend should continue with their increased production capacity.

I would like to congratulate the Russell Corp. on this award and on the many jobs they provide for Alabamians. I look forward to their continued success.

TRIBUTE TO DR. FREDERICK P. WHIDDON

Mr. HEFLIN. Mr. President, I rise today to pay tribute to Dr. Frederick P. Whiddon who was selected by the Mobile Civitan Club as the "41st Annual Mobilian of the Year." I can think of no individual more worthy of this award than Dr. Whiddon.

Dr. Whiddon's most obvious and most amazing contributions to Mobile revolve around his duties as the president of the University of South Ala-

bama. He was appointed as the university's first president in 1963 and has guided it through many trials and tribulations to the lofty status it enjoys today. As the university's only president, Dr. Whiddon has seen the University of South Alabama undergo numerous changes during the past 25 years.

In this silver anniversary year of the university of South Alabama, Dr. Whiddon can look back over the tremendous progress he has fostered. One important aspect of a university is the students it attracts. Under Dr. Whiddon's able guidance, the university's enrollment has grown from 234 students to over 10,000 students—an incredible accomplishment by any standards.

Dr. Whiddon has not just ensured the academic success of the university, he has protected its financial security for generations to come. He led the fight to protect and document the university's ownership in Grant's Pass. His leadership in this effort defend the school's property of the Alabama coast provided the university with a perpetual endowment.

Mr. President, you might expect a man like Dr. Whiddon to be only totally immersed in the operations of the university, but that is not the case. He also devotes himself to many worthy causes in the Mobile community, such as the Boy Scouts, the Allied Arts Council, the Mobile Area Chamber of Commerce, the American Red Cross, the Historic Mobile Preservation Society, and the Dauphin Way United Methodist Church.

Many of Dr. Whiddon's efforts to enhance the University of South Alabama have also directly improved the community as a whole. He was largely responsible for restoring the Saenger Theater as a center for the performing arts. He was also instrumental in obtaining Mobile General Hospital for the university and upgrading it into a modern medical facility.

Dr. Whiddon will be honored on April 7 at the awards banquet. Knowing Dr. Whiddon, I suspect he will offer credit to many others for his many accomplishments. Rest assured, Frederick Whiddon has been the driving force and the spirit which has propelled the University of South Alabama to such heights and contributed so much to Mobile. He is most deserving of this reward and I congratulate the Mobile Civitan Club on their most appropriate selection.

Thank you, Mr. President.

TRIBUTE TO DR. ERNEST STONE

Mr. HEFLIN. Mr. President, I rise today to pay tribute to Dr. Ernest Stone of Jacksonville, AL, who died on February 7. Dr. Stone devoted his entire life to the improvement of the educational system in Alabama. We remain indebted to him for his service and his many accomplishments in his various posts.

Dr. Ernest Stone distinguished himself in the classroom as well as in the work force. He earned a bachelor's degree in education from Jacksonville State University as well as bachelor's and master's degrees from the University of Alabama. He also studied at Michigan State University and Columbia University. His stature in the education field has been such that he was awarded honorary doctorates from Samford University, the University of Alabama, and Jacksonville State University.

Dr. Stone's career in education spanned 48 years and included many different areas of the field. Few would have guessed the heights he would scale when he began his career as the principal of Kilpatrick Junior High School in DeKalb County, AL, near where he grew up. He served in many administrative positions before being selected to be the Alabama State school superintendent.

Alabama was fortunate to have a man of Dr. Stone's ability and intelligence serve as our State superintendent of education from 1967 to 1971. He was widely known as an expert in his field and often lent his services to others wishing to improve their education systems.

Dr. Stone believed firmly in the value of a good education at all levels and was able to support this belief while president of his alma mater, Jacksonville State University, from 1971 until he retired in 1981. He led the university through many changes in his 10 years as president and has left a lasting impression. The university has honored him by naming the Ernest Stone Performing Arts Center in his honor.

Mr. President, Dr. Ernest Stone was a fine gentleman and a devoted leader in education. He gave his life to improving education in Alabama and we will miss him greatly.

I ask unanimous consent that two articles describing Dr. Ernest Stone's accomplishments be printed in the CONGRESSIONAL RECORD.

Thank you, Mr. President.

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

[From Birmingham Post-Herald, Feb. 9, 1989]

ERNEST STONE

Dr. Ernest Stone, who died Tuesday at age 79, spent his life working to improve education in Alabama.

In his 48-year career, he held a variety of administrative positions, most notably state superintendent of education from 1967 to 1971 and president of Jacksonville State University from 1971 until his retirement in 1981. Such was his reputation that on two occasions, in 1950 and again in 1969, he was asked to study or assess educational systems in other countries.

No individual serving in the positions that Stone held could avoid being involved in controversies not of his own making. But Stone preferred a low-key approach that kept the focus on his goal of providing the best possible education to Alabama's children and young adults. He believed strongly in the value of an education.

Even when serving as an elected state superintendent at a time when desegregation was being used for demagogic purposes by various politicians, he avoided the heated rhetoric and was able to serve as a link between the federal courts and local school systems, a role he took great pride in.

Dr. Ernest Stone served the people of this state well.

[Birmingham Post-Herald, Feb. 8, 1989]

DR. ERNEST STONE, EX-JSU HEAD, DIES

Dr. Ernest Stone, former state school superintendent and former president of Jacksonville State University, died yesterday after a long illness. He was 78.

The president of Jacksonville State from 1971 to 1981, Dr. Stone worked in education in Alabama for 48 years. The Ernest Stone Performing Arts Center on the JSU campus was named in his honor.

JSU's current president, Harold McGee, said Dr. Stone will be missed.

"Ernest Stone was my friend," he said. "I valued his support and continuing commitment to Jacksonville State University. His years at the university were a significant part of my heritage. We mourn the loss of that association."

Dr. Stone began his career in education as principal of Kilpatrick Junior High School in DeKalb County. After serving in various administrative posts, he became state school superintendent in 1967.

Dr. Stone grew up on Sand Mountain in DeKalb County.

Dr. Stone received a bachelor's degree in education at Jacksonville and went on to earn bachelor's and master's degrees from the University of Alabama. He studied at Michigan State University and Columbia University and received honorary doctorates from Samford University, University of Alabama and Jacksonville State University.

Funeral will be held at 3 p.m. at Jacksonville First Baptist Church, with burial at Greenlawn Memorial Gardens, K.L. Brown Funeral Chapel presiding.

Survivors include his wife, Mrs. Katherine Stone; son, Lt. Col. William E. Stone of Fort Jackson, S.C.; sister, Mrs. Addie Wester of Albertville; and brother, D.C. Stone of Dalton, Ga.

THE MAXWELLS

Mr. SPECTER. Mr. President, today I would like to recognize a notable gentleman and a noteworthy occasion.

On March 5, 1989, Mr. Ian Robert Maxwell and his wife, Elizabeth, were awarded honorary doctor of laws degrees by Temple University in Philadelphia, PA. Mr. Maxwell's degree acknowledges his distinguished accomplishments as publisher, global media entrepreneur, philanthropist, and statesman.

Mr. Maxwell was born in eastern Czechoslovakia. Most of his family died at Auschwitz. He escaped from Hungary in 1939, and fought in France and Britain and at Normandy in 1944.

Subsequently, with little formal education but with great energy, ambition, and singular determination, he became an entrepreneur of international repute. He is currently chairman and chief executive of Maxwell Communications Corp., plc, and of Macmillan, Inc. He is also chairman of Maxwell Communications, an international company enploying over 30,000 individuals in 16 countries. Maxwell Communications is the second largest printer in the United States.

In his acceptance speech, Mr. Maxwell emphasized that Jews worldwide must show solidarity with the people of Israel, and took the opportunity to speak of the international conference of Jewish leaders that will convene in Jerusalem from March 19 to March 23, 1989. Robert Maxwell is working with Prime Minister Shamir to plan this important "Conference of Solidarity."

Solidarity may have various gradations of meaning and certainly does not preclude differences of opinion or loyalty to the United States, but it does include the commitment to the preservation of the State of Israel.

Mr. President, I urge my colleagues to consider Mr. Maxwell's interesting and timely message, and accordingly, I ask unanimous consent that his remarks at Temple University and the citation for his degree as presented by Mr. Richard J. Fox, chairman of Temple University's Board of Trustees, be printed in the RECORD.

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

TEMPLE UNIVERSITY,
Philadelphia, PA, March 5, 1989.

CITATION FOR IAN ROBERT MAXWELL, DOCTOR OF LAWS HONORIS CAUSA

MR. PRESIDENT: I have the honor to present for recognition Ian Robert Maxwell—publisher, global media entrepreneur, philanthropist, statesman.

Born to a poor but proud family in Eastern Czechoslovakia, he lost most of his family in the Holocaust. As a teenager, he made his way from the cauldron of Hitler's Europe by various escape routes. Volunteering for the British Army, he was commissioned in the field during the battle of Normandy in 1944. A few months later, he received the Military Cross from Field Marshal Montgomery for outstanding leadership and bravery.

After the war, with an inexhaustible supply of energy and a remarkable vision, he fashioned a revolution in worldwide communications. He launched the scientific and communications enterprise associated with the name "Pergamon." He now publishes over four hundred scientific journals, including Holocaust and Genocide Studies.

Robert Maxwell has been active in public communication as well—purchasing the Mirror Group Newspapers, launching the China Daily worldwide, owning and operating British TV cable services, and acquiring the most important TV station in France. His holdings in the United States now include the MacMillan Company and the Offical Airlines Guide. As a member of the House of Commons, he fought successfully for clean air, and he advised Prime Minister Wilson's government to use science to achieve policy objectives. He has embraced such causes as famine relief for the starving people of Ethiopia, and brought hope for the victims of AIDS. His Maxwell Foundation will be a legacy to carry on the struggle for human dignity.

A survivor of the worst tragedy in human history, he has worked, in partnership with his wife, to advance understanding between Christians and Jews and all persons of conscience who dream of a better future than the past we have seen.

Mr. President, I have the singular honor to present Ian Robert Maxwell for the degree of Doctor of Laws, honoris causa.

RICHARD J. FOX,
Chairman, Board of Trustees.

TEXT OF REMARKS BY ROBERT MAXWELL, TEMPLE UNIVERSITY, PHILADELPHIA, PA, ON RECEIPT OF HONORARY DEGREE

I am deeply grateful to this distinguished university for the honors which it has bestowed upon my wife and me today.

Fifty years ago next week, I was in Bratislava when the German armies completed the occupation of Czechoslovakia, the country of my birth. Except for a brief period after the end of the war which the invasion of March 15 made inevitable, Czechoslovakia has never since been free.

The Jewish population of my homeland was almost entirely wiped out by the demented and evil Nazi schemes executed by Heydrich and Eichmann. I was one of the lucky ones. At the end of 1939, still only 16, I escaped from a death sentence in Hungary and joined the Czech army in France and then Britain before the Holocaust began. Six million other Jews, including my father, my mother, my grandfather, three sisters and a brother, were not so lucky. My family died in the gas chambers of Auschwitz. A large part of the Jewish people died in the concentration camps which were established throughout Nazi Europe, the most infamous monuments to man's inhumanity to man which ever existed.

The memories of those camps are still with us, and they shape our innermost feeling and fears. No one can understand the world today, and no one can understand the Jewish people today, unless they can appreciate how close Hitler came to wiping out the Jews and how little the free world recognized his intention until it was too late.

Remember, always remember, six million died; died, moreover, in the most brutal way, without sympathy, without concern; died without humanity, while an entire continent stood indifferently by; died in the execution of a mad racial theory; died, not because they were guilty of any misdeeds, but only because they were Jews.

The Prime Minister of Israel, Yitzhak Shamir, has authorized me today to announce he is convening in two weeks' time a conference of leading Jews throughout the world. I have the honor to be a member of the Steering Committee for the conference, whose purpose is to show the solidarity of the Jews who live and work outside Israel with the people of Israel and the initiative its Government is taking for peace and security in the Middle East. And, let me remind you, that is a coalition Government whose assumption of power and whose peace and security policies have been endorsed in the Knesset by almost 80 percent of its elected members, to be precise 95 out of 120. Nothing could be more important for the State of Israel than this demonstration of unity by world Jewry. Of all the demands on my time by all my many enterprises I can think of nothing more important than my attendance at this conference on Jewish solidarity.

The coincidence of your honoring Betty and me today gives me the opportunity to raise the curtain on this conference and to draw the world's attention to Israel's need and desire for that peace and security.

But the lessons of this century, of the Holocaust, of the history of the Jewish people, are that peace and security cannot be assured by promises, by United Nations resolutions or by professions of good intent, whether they emanate from Washington, London, Moscow or wherever Yasser Arafat's caravan has rested. Israel requires deeds, not words. It does not need paper assurances. It needs guarantees made of steel. Since the civilized world cannot produce such guarantees, Israel must look after its own defense. In the final event, the only people the Jews can trust for their survival are the Jews themselves.

It may be that without the Holocaust the State of Israel would not have existed. But had there been a State of Israel perhaps the Holocaust would not have happened.

We, the Jews of the disapora, must always remember this, for our own sake, and for the sake of our children and grandchildren.

Perhaps the Jews of my childhood were too trusting. Perhaps they believed that the Balfour Declaration would bear fruit much earlier than it did. They believed in the illusion. One thing the Holocaust did is that it ended all illusions. For me, the illusions were finally shattered when I learned in 1944 that the Allies would not bomb the railway lines to Auschwitz because such a raid rated low in the military priorities. Had those lines been destroyed my family and countless other Jewish families might not have died. The thought is almost too much to bear.

Those who are intolerant of the Jewish obsession about security must understand that it is impossible for Israel's leaders to compromise with this imperative. Compromise which threatens the existence of the Jewish State is not compromise but betrayal. In the early years of Hitler, there were Jewish leaders who thought that compromise was possible. They were wrong. There were Jewish leaders who thought that the democracies would protect them. They were wrong. It has taken nearly 2000 years to rebuild the State of Israel. It is the bounden duty of the Jewish people, within and without the borders of Israel, to ensure that never again will it be destroyed, to make certain that it will be maintained at almost all cost because the final cost is the very existence of the Jewish people.

That is the price we are not prepared to pay. We have been let down too often to trust blindly again. We cannot rely upon others for our salvation, however solemn the pledges, however sincere the intent. The road to the Holocaust was paved with good intentions on the part of those democrats who were not Jews.

In the famous words of that great German churchman, Pastor Niemoller who himself was thrown into the camp of Dachau:

"First they came for the Jews. I was silent. I was not a Jew. Then they came for the Communists. I was silent. I was not a Communist. Then they came for the trade unionists. I was silent. I was not a trade unionist. Then they came for me. There was no one left to speak for me."

Never again, if they come for the Jews, will they be silent and passive. They can

find no comfort or safety in the guilty consciences of people like Pastor Niemoller, washed in public after the fact. They must, this time, have peace with security within frontiers which they themselves can defend.

It may be said that I am talking of days long gone. That the conditions which led to the Holocaust will never arise again. Well, there is a new cloud on the horizon which says otherwise, and that is Islamic fundamentalism.

Look what has happened in recent days in the Salman Rushdie affair. And look not at those writers and politicians who have defended Mr. Rushdie, but at those booksellers and publishers, authors and politicians, organizations and nations, who have crossed to the other side of the road or who have argued for compromise.

Look at the Prime Minister of New Zealand, who asks why his sheep farmers' livelihoods should be imperilled by what he derisively describes as "a book-writer in London." Look, indeed, at the pusillanimous attitude of the British Government, which had to be goaded into taking a strong line by its partners in Europe. Look how the Muslims in Britain and Canada have threatened, brought pressure to bear and asked for blood.

Look how booksellers in the United States and France and in other nations within the European Community have withdrawn The Satanic Verses from their shelves. Look at all these straws in the wind and then think again about Pastor Niemoller. For a moment, change the words. Begin his famous apologia, instead, with the sentence:

"First they came for Mr. Rushdie. I was silent. I was not Mr. Rushdie . . ."

Israel wants peace and needs peace but peace with security. It cannot afford to lose, unlike other nations, even one single war, because that would mean instant annihilation. And 4 wars have been imposed on it since 1948. It cannot trust its whole existence to promises which may not be kept, which may not be intended to be kept and even if they were so intended may be incapable of being kept. While Israel is ready to negotiate a settlement with its neighbors directly and without preconditioning, it cannot accept an armed terrorist-dominated Palestinian state adjoining it, a State moreover of unremitting hostility only waiting for its revenge, not for the events of the past year or two, but revenge for the establishment of Israel itself.

It is impossible to divorce the events of today from what has gone before. The six million dead are part of today's living history. I am not advocating intransigence. What I am saying is that we cannot betray those who died by risking the lives of those who survived and descended from them. That is the overwhelming reality of Israel today. History only repeats itself when those in command of our nations forget the past.

Let us remember this crucial lesson—Jews and non-Jews alike, all those who believe in freedom and democracy, all those who are dedicated to the human values that are part of our precious heritage.

Israel needs peace just as its Arab neighbors need peace. Deep down, both peoples are impatient to return to the ageless aspirations of their forefathers, to be respected for the high ethical ideals, the intellectual excellence, the ability to invent and to create that which they have demonstrated so often and so brilliantly in the past. I believe that these aspirations are indeed within their grasp. But real peace, with real security, is the unalterable condition of this process, imposed on us by the blood-stained lessons of history, and the catastrophic experience of our own gencration.

THE WORKING FAMILY CHILD CARE ASSISTANCE ACT OF 1989 AND THE HEAD START AMENDMENTS OF 1989

Mr. COHEN. Mr. President, yesterday I was pleased to join with the distinguished Republican leader, Senator DOLE, and others as a cosponsor of President Bush's child care legislation. This initiative would put money back into the pockets of working families who need it most to meet child care expenses. It would also bolster an existing program, Head Start, which has demonstrated great potential for overcoming barriers to the early mental and social development of disadvantaged children.

Demographic and economic changes in our society have led to a greatly increased demand for child care services. Economic necessity is bringing more mothers into the work force. In 1950, only 18 percent of mothers were in the labor force. Today, over 60 percent of mothers work outside the home. The Census Bureau estimates that by 1995, the mothers of two-thirds of children under 6 in this country will be working outside the home. Although there are not comprehensive data on the need for child care services in the United States, it is an accepted fact of the public discourse and political debate that the demand for high quality and affordable child care is far from adequately met. The evidence of unmet need includes not only the tremendous increase in the number of working mothers and the relatively small number of regulated child care "slots," but also the need for so many working mothers to resort to whatever temporary, informal, patchwork child care arrangements they can scrape together.

For too many Americans, lack of affordable quality child care becomes an obstacle to education, employment, or training for employment. This scarcity of affordable quality child care services can trap individuals, preventing them from realizing their full potential as productive members of our society. And, of course, the cost of child care can take quite a bite out of the paycheck of a parent struggling to make ends meet.

THE HEAD START PROGRAM

Mr. President, the Head Start Program has been at the forefront of this Nation's efforts to meet the developmental needs of disadvantaged children. The program's timely intervention during the crucial early years of life stimulates and enriches the mental, social, and physical growth of participating children. It not only teaches children, it also teaches parents how to help their children to flourish. The program's demonstrated success also teaches us the possibility and benefits of helping disadvantaged children to reach their fullest potential.

Clearly, Head Start is an investment that pays off. Yet the program reaches too few of those who could benefit from it. The approximately 450,000 children who now participate in the program represent fewer than one-fifth of all eligible children. Over 1,000 counties in the United States still do not participate in Head Start. Accordingly, I feel that an increased investment in Head Start would be money well spent.

CURRENT FEDERAL INVOLVEMENT IN CHILD CARE

The Federal Government already has substantial involvement in the support of child care—more than $6 billion per year of involvement (a 1987 estimate). While there are some 31 Federal programs that contain some funding for child care services, there is no Federal program whose sole purpose is to provide financial assistance to help families pay for child care.

The largest Federal program assisting families with children is the Child and Dependent Care Tax Credit, about $3.9 billion per year. This credit, available to working families with dependent care expenses—including child care—allows these families to deduct between 20 and 30 percent of their dependent care expenses—up to $2,400 for one child and $4,800 for two or more children—from their tax liability. However, because this credit is not refundable, lower income families with little or no tax liability cannot benefit from the credit. Furthermore, the average credit is less than $350 per taxpayer, hardly sufficient to offset child care costs averaging $3,000 per year.

The second largest expenditure on child care is the title XX Social Services Block Grant [SSBG], which provides approximately $2.7 billion per year for a variety of social service activities, including child care. However, only 15 to 18 percent of the funds are used for child care.

The Head Start Program spends about $1 billion to provide social, educational, and nutritional services for disadvantaged children. Most Head Start programs operate on a part-day schedule, however, and therefore cannot meet the child care needs of mothers who work full time.

SUMMARY OF THE BUSH ADMINISTRATION'S CHILD CARE INITIATIVES

Low-income families in which a parent works would be eligible for a tax credit of up to $1,000 per child under age 4. The credit would equal 14 percent of earnings up to a maximum credit of $1,000 per child. Initially, the credit would phaseout over the range of $8,000 to $13,000 in annual family income. This phaseout range would in-

crease to between $15,000 and $20,000 by 1994.

Initially, 2.5 million families would be eligible for the credit. Once the credit was fully implemented, 3.5 million families would be eligible.

Two parent families in which one parent stays at home to care for the children, as well as single parent families and families in which both parents work, would benefit from the credit.

Families would be free to choose the kind of child care that best suits their needs—care through churches, relatives, neighbors, or child care centers.

The credit would be provided in addition to the earned income tax credit [EITC] and would be available, as the EITC is, in advance as a payment in the parents' paychecks.

REFUNDABLE CHILD CARE TAX CREDIT

The current child care tax credit would be made refundable so that low income working families with little or no Federal income tax liability could benefit fully from it.

An additional 1 million families would benefit from this proposal.

The primary beneficiaries would be low-income, single working parents who incur child care expenses in order to work. Such parents, unlike higher income parents whose tax liability enables them to claim the current nonrefundable credit, do not now receive assistance through the Tax Code for meeting child expenses.

HEAD START EXPANSION

The fiscal year 1990 authorization for Head Start would be increased to provide $250 million more than the current appropriations level.

This increase in funding would enable the Head Start Program to serve up to 95,000 more disadvantaged preschool children.

This Head Start expansion would expand the range of choice available to poor families in meeting their children's needs. It would provide the newly participating children with a better start in life, allowing them to carry the gains they have made in Head Start directly into kindergarten.

Mr. President, the Congress must consider carefully the fiscal consequences of any new Federal child care initiative. We must see to it that any new Federal child care program is fair and that its benefits are directed to those families most in need. We must also make every effort to ensure that any new Federal child care initiative promotes and complements—and does not supplant—private, corporate, State, and local child care resources.

The President's child care initiative directs resources to those families which most need them and gives families freedom of choice as to how best to use those resources. It would help families whether a parent chooses to stay home or not and it would benefit families whether their children were cared for by a friend, a relative, in a family day care center, in a church-based program, or in a child care center. To my mind, the focus and flexibility that this legislation offers are great advantages.

Of course, the President's proposal is not the only child care measure before the Congress. I look forward to considering the relative merits of contending child care bills and hope that a spirit of compromise will enable the Congress and the administration to enact comprehensive, fiscally responsible, and genuinely effective child care legislation in the very near future.

RETIREMENT OF LT. COL. ROBERT S. BLUDWORTH

Mr. EXON. Mr. President, when Lt. Col. Robert S. "Bo" Bludworth retires this week from the U.S. Army, the Army will lose one of its best liaison officers to the Senate. Bo is well known to all Senators. His serious "can do" effort is more than tempered by his sense of humor and geniality.

All Senators can surely agree that a few minutes of laughter with Bo on a busy day can lead to renewed strength and energy. His optimism, humor, and genuine warmth are highly contagious.

Bo enlisted in the U.S. Army in 1967, subsequently entered the officer candidate course, and was commissioned as a second lieutenant.

During his 20 years of military service, he served as a helicopter and ground platoon leader, in armored units, training, personnel, protocol, and ROTC training. He spent 8 years outside the Continental United States in Vietnam, Germany, and Hawaii. His awards and decorations included the Silver Star, Distinguished Flying Cross, (two awards), Bronze Star, Air Medal, Army Commendation Medal for Valor, Combat Infantryman's Badge, and numerous awards for service and achievement.

Upon his retirement, Bo will have completed a 5-year assignment as the Army Senate liaison officer. This duty, strenuous by any measurement, included the planning and escorting of more than 75 major congressional fact-finding trips, most of them overseas.

Bo is certainly entitled to a slower lifestyle but he will be sorely missed by me. I could always get a straight answer from him and have confidence in that answer. I will especially miss his sense of humor.

As he embarks upon this new phase in his life, I would like to thank him for his many efforts for my behalf and wish him well.

I would also like to express my deep gratitude to his wife Sheila and their three children for their special understanding and tolerance of his long times away from home. It takes family support to make a military career and this family is certainly reflective of the finest America has to offer.

While it is said that "old soldiers never die, they just fade away," anyone who knows Bo would certainly never apply that phase to him. He is still young, full of energy, and has much yet to offer. I wish him and his family the best in all their future endeavors.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time for morning business has concluded.

WHISTLEBLOWER PROTECTION ACT OF 1989

The ACTING PRESIDENT pro tempore. The Senate will now, under the previous order, proceed to the consideration of S. 20, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 20) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes.

The Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. The time is limited. Who now yields time?

Mr. LEVIN. How much time does the Senator from Illinois need?

Mr. DIXON. Mr. President, I do not need much time at all. I will just have printed two things in the RECORD. I was not aware of the fact we were going to my distinguished colleague's whistleblower bill. If he will grant me a couple minutes, I will print these in the RECORD.

Mr. LEVIN. I will be happy to grant the Senator from Illinois 3 minutes.

Mr. DIXON. Mr. President, I ask unanimous consent to proceed as in morning business for a brief period.

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

A TENANT MANAGEMENT SUCCESS STORY

Mr. DIXON. Mr. President, in view of the limited time, I will not read the entire article. I have an article from the Chicago Sun Times of Sunday, March 12, 1989 which says, "CHA Tenants Realize Dream—Own Laundry."

Mr. President, I had the great pleasure of being the sponsor of the tenant management legislation, I think title 7 of the last housing bill we passed in the Congress, which gave tenants occupying housing projects around the country the opportunity to run their own affairs. The LeClaire Courts, which operates under the Chicago

housing authority in Chicago, have now opened up a laundry in their own project which has been paid for by the tenants. They are getting ready to operate a catering business, put out a newsletter and use a bus to transport unemployed tenants out into job-rich Du Page County for employment.

I am deeply pleased, Mr. President, to see that this legislation is working. I ask unanimous consent that the full text of this article from the Sun Times be printed in the RECORD.

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

CHA TENANTS REALIZE DREAM—OWN LAUNDRY

"I hope you succeed in your wildest dreams."—Mayor Harold Washington at LeClaire Courts

(By Michael Gills)

Admittedly, it looks like a small start. Ten washers, seven dryers, stuck in the basement of a nondescript Chicago Housing Authority building at LeClaire Courts.

While it's not quite the realization of the tenants' wildest dreams, it's a start.

"This might not look significant to you," said Stanley Horn, director of the Clarence Darrow Community Center in the complex at 44th and Cicero. "But you have to remember, the residents did this themselves. They went out, they got the money, and they did it."

The LeClaire Courts Resident Management Corp., an organization of tenants that shares landlord duties with the CHA, will open the complex's first automatic laundry in more than 10 years this Wednesday.

The facility is the first of many projects planned by the tenant corporation, which will take over full responsibility for the 3,000 resident row house development on May 1.

Talk to anyone involved in the laundry or the tenant corporation and you'll find them bubbling with enthusiasm proud of their newfound abilities and hopeful for the future. It's not what most people expect from CHA tenants.

"People have a bad image of CHA residents," said Horn, "but [this project] is showing what they can do when they have the opportunity and adequate training."

"Five or six years ago we never would have thought we could manage this project," said Lovonzella Van Dyke, a member of the tenant corporation's board. "We're surprised at how far we've come."

The LeClaire Courts tenant management team, which will be the first in the CHA to be granted full control over their homes, has gone through numerous training sessions since they were first given the green light nearly three years ago.

Funded by a $15,000 grant from Continental Bank, the facility will feature coin-operated machines, a new water heater, a television lounge and a bathroom. Organizers hope the machines will make enough money to pay for three tenants to work as attendants.

No one can remember the last time a laundry operated at LeClaire, but it was at least a decade ago. Residents have been using one at 47th and Cicero since then.

"That's a four-block walk for some people, which can be tough when you're carrying loads of laundry, especially in the winter months," Horn said.

In addition to the laundry—the first such tenant-operated facility in the CHA—tenants are working on several projects, including a catering business, a newsletter and a plan to bus unemployed tenants to job-rich Du Page County.

If the laundry succeeds—both in terms of at least breaking even and in instilling pride in residents—the management corporation hopes to use basements of other buildings for such things as barbershops, beauty parlors and convenience stores—every one of them employing residents.

"Our self-esteem is back," said Van Dyke, "and we're ready to go."

WHISTLEBLOWER PROTECTION ACT OF 1989

The Senate continued with the consideration of the bill.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate is now considering S. 20. Who yields time?

Mr. LEVIN. Mr. President, I yield myself 10 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized for 10 minutes.

Mr. LEVIN. Mr. President, Government employees who "blow the whistle" on waste, fraud and abuse are front line soldiers in the battle to save the taxpayers' money. Giving real protection to these whistleblowers is a simple and effective way to cut cost overruns, wasteful spending, and the bottom line save taxpayers' dollars.

Mr. President, all too often, Federal employees are faced with extraordinary pressures not to expose waste and mismanagement by their agencies. Those who do "blow the whistle" may be threatened with on-the-job harassment, negative job ratings, unfavorable transfers, denial of promotions, and even dismissal. As a result, recent surveys indicate that 70 percent of Federal employees with knowledge of waste and inefficiency do not report the waste and inefficiency. Seventy percent do not report it because of the fear of retaliation.

Last fall, S. 508, the Whistleblower Protection Act of 1988, was unanimously approved by both Houses of Congress with a clear understanding from the Office of Management and Budget that the bill had the Reagan administration's support. Despite that understanding, the bill was vetoed by President Reagan and a bipartisan storm resulted.

A month ago, I reintroduced the bill as S. 20, the Whistleblower Protection Act of 1989, with Senators GRASSLEY, PRYOR, GLENN, COHEN, ROTH, and 22 other cosponsors. At that time, we vowed to continue the fight for strong new whistleblower protections and expressed the hope that the new administration would see the merits of our legislation.

Mr. President, I am pleased to state that, after extensive discussions with the Justice Department, including a number of discussions with Attorney General Thornburgh, the administration is prepared to accept and support this important bill, as modified by an amendment that I soon will propose with Senators GRASSLEY, PRYOR, COHEN, GLENN, ROTH and HELMS.

I have received a letter from the Attorney General stating that the administration supports this bill. The letter states in part:

This letter will confirm our agreement regarding revisions in S. 20, the Whistleblower Protection Act of 1989. We are persuaded that the bill, as revised by your proposed amendment, will enhance the protections for individuals who report waste, fraud and abuse, while maintaining important safeguards in the federal personnel system. * * * On behalf of the Administration, I pledge our cooperation to discourage any amendments, in either body of Congress, that might in any way interfere with this agreement.

Mr. President, I ask unanimous consent that the full text of this letter be printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. LEVIN. The battle to change our laws and provide adequate protections to Federal employees who come forward with disclosures of waste and mismanagement has been a long one. I am gratified by the Bush administration's willingness to join in this fight.

This bill is necessary because the Office of Special Counsel—the Federal office charged with protecting whistleblowers—has proven ineffectual in providing such protection. In fact, former Special Counsel William O'Connor was quoted in 1984 as advising whistleblowers, "I'd say that unless you're in a position to retire or are independently wealthy, don't do it. Don't put your head up, because it will get blown off." Mr. President, Federal employee whistleblowers deserve better and the taxpayers of this country deserve better advice than that.

The bill before us is fundamentally unchanged from the bill which passed the last Congress in the new protections that it will afford whistleblowers. Like its predecessor, this bill will make a number of improvements over current law.

First, the bill establishes a simpler and fairer standard for whistleblowers in proving their case of retaliation by their agencies;

Second, the bill gives whistleblowers the right, for the first time, to appeal their own cases to the Merit Systems Protection Board if the Special Counsel fails or refuses to do so.

Third, the bill enhances the independence of the Office of Special Counsel and requires that office to work in the interest of whistleblowers.

Fourth, the bill gives whistleblowers increased procedural protections and important guarantees of confidentiality.

The enactment of this bill will be a victory for all of us who want to protect the taxpayers' pocketbook from being picked by wasteful Government spending.

The agreement that we have reached with the administration would not have been possible without the commitment and support of Senators GRASSLEY and PRYOR. I commend them for their efforts and leadership they have shown in support of this legislation and in support of Federal employee whistleblowers generally. Representatives SCHROEDER and HORTON have been equally committed to whistleblower protection on the House side, and I thank them for their efforts as well. I also thank the majority leader for his support and for his important contribution to this bill.

Finally, President Bush and his administration is owed our thanks for their efforts on this bill. The administration has demonstrated an ability to compromise on issues that we all recognize are important to them. My staff and I have discussed this bill extensively with Attorney General Thornburgh and his staff and have found them willing to work with us in good faith on this matter and to understand our concerns and point of view, as we have sought to understand their concerns and their point of view.

In our discussions with the administration, we have agreed upon several changes from the version of the bill that passed the last Congress. Some of these modifications were suggested by the administration and some by us. We have not agreed to any changes which would in any way weaken the protections afforded to whistleblowers. In fact, the amendment that we will be proposing today makes this a stronger and better bill than the bill which passed the last Congress and vetoed by President Reagan.

There has been a lot of give and take on both sides, and I am pleased that we have been able to agree upon an amendment that meets a number of the Attorney General's concerns without sacrificing important protections for whistleblowers. This amendment is a fair and balanced one.

The amendment would: first, clarify the standard that whistleblowers must meet to prove that they have been retaliated against; second, preclude the Special Counsel from appealing adverse decisions and enforcing subpoenas in court; third, prohibit the Special Counsel from intervening against whistleblowers in cases before the Merit Systems Protection Board; and fourth, prohibit the Special Counsel from disclosing the names of whistleblowers, except in extreme circumstances; and finally, make several minor changes to the bill.

First, our amendment would clarify that in order to prove retaliation a whistleblower must show that the protected disclosure was a contributing factor in the personnel action against him or her. This is not meant to change or heighten in any way the standard in S. 20, which is that the disclosure must be a factor in the action. The word "contributing" is only intended to clarify that the factor must contribute in some way to the action against the whistleblower.

I believe this was clear in the original statutory language. To me, there was no doubt that a factor in an action is something that contributes to that action. Indeed, my dictionary defines a "factor" as "one of the elements contributing to a particular result or situation."

The bottom line is that the words "a contributing factor," like the words "a factor," means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision. This test is specifically intended to overrule existing case law, which requires a whistleblower to prove that his protected conduct was a "significant," "motivating," "substantial," or "predominant" factor in a personnel action in order to overturn that action.

The Attorney General, in his letter to me agrees to that interpretation when he said:

> We have agreed to clarify the word "factor" by adding the word "contributing" in the two places in which the Mt Healthy test appears in the bill. A "contributing factor" need not be "substantial." The individual's burden is to prove that the whistleblowing contributed in some way to the agency's decision to take the personnel action.

Mr. President, I believe that the contributing factor test is the right one. By reducing the excessively heavy burden imposed on the employee under current case law, we will send a strong, clear signal to whistleblowers that we intend to protect them from any retaliation related to their whistleblowing and an equally clear message to those who would discourage whistleblowers from coming forward that reprisals of any kind will not be tolerated. Whistleblowing should never be a factor that contributes in any way to an adverse personnel action; the new test will make this the rule of law.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. LEVIN. Mr. President, I yield myself 5 minutes off the amendment.

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

Mr. LEVIN. Mr. President, at the same time, however, this new test will not shield employees who engage in wrongful conduct merely because they have at some point blown the whistle on some kind of purported misconduct. In such cases, the agency will, of course, be provided with an opportunity to demonstrate that the employee's whistleblowing was not a contributing factor in the personnel action.

If an employee shows by a preponderance of the evidence that whistleblowing was a contributing factor in a personnel action, the agency action may be upheld only if the agency can demonstrate, by clear and convincing evidence, that it would have taken the same action even in the absence of the whistleblowing. This is the standard in our bill, S. 20, and it is unchanged by our amendment.

"Clear and convincing evidence" is a high standard of proof for the Government to carry. It is intended as such for two reasons. First, this standard of proof comes into play only if the employee has proven by a preponderance of the evidence that whistleblowing was a contributing factor in the action against him or her—in other words, that the agency action was tainted. Second, this heightened burden of proof on the agency also recognizes that when it comes to proving the basis for an agency's decision, the agency controls most of the cards—the drafting of the documents supporting the decision, the testimony of witnesses who participated in the decision, and the records that could document whether similar personnel actions have been taken in other cases. In these circumstances, it is entirely appropriate that the agency bears a heavy burden to justify its actions.

Mr. President, our amendment would also delete provisions of the bill that would give the Special Counsel the authority to go to court to appeal MSPB decisions and enforce subpoenas. These are provisions that the Attorney General felt would unconstitutionally permit the executive branch to "litigate against itself."

I happen to disagree with the assertion that these provisions are in any way unconstitutional. At least four Federal agencies—the Interstate Commerce Commission, the Federal Maritime Commission, the Federal Energy Regulatory Commission, and the Federal Labor Relations Authority—have litigated against the other Federal agencies on a routine basis. There is a long history of cases in which the courts have found no constitutional infirmity in such litigation.

The Attorney General felt strongly about this issue. It is a substantive issue. Although I find the administration's arguments on this point unconvincing, I do not believe that the provisions they have questioned are central to the bill or to the protection of whistleblowers. Accordingly, we have agreed to:

First, drop the provision in the bill that would authorize the Special Counsel to go to court to enforce its subpoenas. In place of this provision, our amendment would authorize the Merit Systems Protection Board to go to court at the request of the Special Counsel, if necessary to enforce subpoenas issued by the Special Counsel. This is consistent with the MSPB's existing authority to enforce its own subpoenas in Federal court.

Second, drop the provision in the bill that would authorize the Special Counsel to appeal MSPB decisions to the Federal circuit court. In place of this provision, our amendment would make it easier for individuals to appeal their own cases to that court by expanding the attorneys' fees provision of the bill.

Mr. President, our amendment also makes two changes to S. 20 that we sought, and to which the Bush administration has agreed.

First, our amendment would delete a provision, put into the bill at the insistence of the last administration, that would have permitted the Office of Special Counsel to intervene against whistleblowers in certain cases before the Merit Systems Protection Board [MSPB]. While the Special Counsel has argued that it needs this authority in order to defend the "merit systems principles," in practice, this could mean supporting the interests of the agency against those of the whistleblower.

We had agreed to this provision only as part of our compromise with the last administration. When that compromise bill was vetoed, we sought and achieved this change to the bill as a part of the new compromise.

It is simply inappropriate and contrary to the spirit and intent of the bill for the Special Counsel to act against the interests of whistleblowers. Until whistleblowers are confident that the Office of Special Counsel is on their side, that office simply cannot be an effective advocate for their cause. Under our amendment, the Special Counsel would be permitted to intervene in a case brought by a Federal employee to the MSPB only with the approval of that employee.

Second, our amendment would delete a provision that would have permitted the Office of Special Counsel, in a number of cases, to disclose the names of Federal employees who come to it with disclosures of waste, fraud, or mismanagement in their agencies. This provision, if it remained in the bill, could seriously undermine our effort to encourage whistleblowers to come forward with disclosures. We cannot expect whistleblowers to help us in the struggle against waste if we threaten to expose their names and thereby expose them to retaliation.

Again, this provision was accepted by us last year only as a part of a compromise with the last administration. We are pleased that the Bush administration has agreed to delete it in this new compromise.

Under our amendment the Special Counsel would be permitted to disclose the name of a whistleblower only where necessary to prevent an imminent danger to the public health or safety or an imminent violation of law. This amendment will help assure whistleblowers that the Special Counsel will be on their side in the future and that information they give to the Special Counsel in confidence will not later be used against them.

Mr. President, in the course of our discussions, the administration expressed the belief that the removal provisions for the Special Counsel and parallel provisions regarding members of the Merit Systems Protection Board are unconstitutional. Again, I disagree with these conclusions. The removal provisions, in particular, are clearly constitutional in light of the decision of the Supreme Court last year in the Independent Counsel case—*Morrison v. Olson*, 108 S. Ct. 2597 (1988).

In fact, Representative PAT SCHROEDER and I recently sought and obtained objective opinions on these constitutional issues from two independent authorities—the American Bar Association [ABA] and the American Law Divison of the Congressional Research Service [CRS]. The ABA and CRS both concluded that the Whistleblower Protection Act was constitutional in the form that it passed the last Congress.

Mr. President, I ask unanimous consent that the ABA letter and the introductory and concluding sections of the CRS memorandum be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. LEVIN. In any case, the provisions that the administration finds objectionable are current law, unaffected by our bill. For this reason, the administration has agreed to drop its objections to the bill without any substantive change. The only change that will be made to the bill on these issues is to incorporate these provisions by reference from current law, rather than restating them in their entirety in the bill.

Finally, our amendment would make several minor changes to the bill. These include:

Requiring the Special Counsel to consult with the Attorney General before deciding whether to continue an investigation into a matter that the Justice Department is also investigating. This duty to consult makes explicit what was otherwise understood and practiced. It is not intended to restrict the Special Counsel's discretion, but it recognizes that such discretion should be exercised after consideration of all the relevant factors.

Requiring the Special Counsel to report disclosures involving foreign intelligence information to the National Security Adviser as well as the House and Senate Intelligence Committees. This amendment is not intended to limit the Special Counsel's duty to report such disclosures directly to Congress. It simply requires the Special Counsel to share the same information at the same time with the National Security Adviser.

Requiring that any information or views the Special Counsel may submit to Congress regarding its functions and responsibilities must be transmitted concurrently to the President and appropriate executive branch agencies. The bill, as introduced, permits the Special Counsel to submit his or her views and recommendations directly to the Congress without going through the normal executive branch clearance process. This amendment would leave the substance of that requirement unchanged, but clarifies that the Special Counsel is required to submit such information to the President or other appropriate executive branch agencies at the same time it is submitted to Congress. This provision is not intended to override other provisions of the bill limiting the types of information the Special Counsel may disclose about particular cases.

Extending the authorization of funds for the Special Counsel and the Merit Systems Protection Board for an additional year and deleting the specific funding limitations.

As to other provisions of the bill, there is an extensive legislative history in the deliberations of the last Congress. This legislative history includes Senate Report 100-413 and House Report 100-274, the floor consideration of S. 508 when it first passed the Senate on August 2, 1988, when it passed the House on October 3, 1988, and when it passed the Senate again on October 7, 1988. In addition, an October 5, 1988, letter from Representative PATRICIA SCHROEDER to myself clarifying the statute's confidentiality requirements was published in the CONGRESSIONAL RECORD for October 19, 1988.

Except as to language in the bill that is specifically changed by the amendment we will offer today, this legislative history is controlling as to the intent of Congress in the interpretation of S. 20.

Of particular importance is the joint explanatory statement issued upon final passage of S. 508 in the last Congress. This joint explanatory statement expresses the mutual understanding the Senate and House floor managers of the bill as to the intent of its provisions.

Mr. President, I ask unanimous consent that the joint explanatory statement be printed in the RECORD following my remarks.

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

(See exhibit 3.)

Mr. LEVIN. Mr. President, the Whistleblower Protection Act of 1989, as amended, should send a very strong message to Federal employees and managers that waste and mismanagement will not go undetected, and cannot be tolerated, in our Government.

This is an important bill and I am gratified by the broad bipartisan support it has achieved. I greatly appreciate the support of the bill's 28 cosponsors, Senators GRASSLEY, PRYOR, GLENN, COHEN, NUNN, ROTH, SASSER, BINGAMAN, KOHL, LIEBERMAN, METZENBAUM, DURENBERGER, RIEGLE, SARBANES, ADAMS, BURDICK, MOYNIHAN, BOREN, MATSUNAGA, WIRTH, DECONCINI, KENNEDY, MITCHELL, GORE, ROCKEFELLER, SIMON, CONRAD, and KERRY.

I also appreciate the broad support of the public for the bill, as evidenced in a list of 200 public interest organizations that have signed a petition urging that it be promptly enacted into law.

Mr. President, I ask unanimous consent that this petition, and the list of organizations supporting S. 20, be printed in the RECORD following my remarks.

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

(See exhibit 4.)

Mr. LEVINE. Mr. President, there is no more effective way for us to fight waste and mismanagement in the Federal Government than to encourage employees with knowledge of such problems to come forward with it. S. 20 is an important step toward this important goal.

Finally, let me give special thanks to two of my staff, Linda Gustitus and Peter Levine, and a former staffer, Allie Giles. They have been the truest stalwarts of all.

EXHIBIT 1

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, Mar. 3, 1989.

Hon. CARL LEVIN,
U.S. Senate, Washington, DC.

DEAR SENATOR LEVIN: This letter will confirm our agreement regarding revisions in S. 20, the Whistleblower Protection Act of 1989. We are persuaded that the bill as revised by your proposed amendment will enhance the protections for individuals who report waste, fraud, and abuse while maintaining important safegaurds in the federal personnel system. Moreover, I want to thank you for your efforts in working with us to forge a mutually acceptable resolution of our serious constitutional concerns as well as our objections to the Mt. Healthy test, as originally drafted.

We have agreed to clarify the word "factor" by adding the word "contributing" in the two places in which the Mt. Healthy test appears in the bill. A "contributing factor" need not be "substantial." The individual's burden is to prove that the whistleblowing contributed in some way to the agency's decision to take the personnel action.

Again, we appreciate your willingness to work with us to craft a product representing the good faith efforts of both sides. On behalf of the Administration, I pledge our cooperation to discourage any amendments in either body of Congress, that might in any way interfere with this agreement. None of the changes to which we have agreed detracts in any way from Congress' intent to strengthen whistleblower protections.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DICK THORNBURGH,
Attorney General.

EXHIBIT 2

AMERICAN BAR ASSOCIATION,
Washington, DC, February 21, 1989.

Hon. CARL LEVIN,
U.S. Senate, and
Hon. PAT SCHROEDER,
U.S. House of Representatives, Washington, DC.

DEAR SENATOR LEVIN AND REPRESENTATIVE SCHROEDER: On behalf of the 350,000 member American Bar Association I write to commend you for so promptly reintroducing the proposed Whistleblower Protection Act, S. 20 and H.R. 25. I earnestly urge the Congress to pass this legislation—as was done last year without dissent—so as to establish a mechanism to more effectively fight government fraud, waste and abuse.

It is also my earnest hope that President Bush will work closely and expeditiously with Congress in bringing this needed law into effect, particularly given his forthright commitment to a more fair and ethical government. This commitment could not be more important in light of President Reagan's unwarranted pocket veto of this legislation last year. Suggestions at that time that this legislation "raised serious constitutional concerns" are without merit. Indeed, the recent holdings of the Supreme Court in the special counsel case of *Morrison* v. *Olson*, 108 S.Ct. 2597 (1988), and the Sentencing Commission case of *Mistretta* v. *United States*, 57 U.S.L.W. 4102 (1989), signal clear validity of the insulation against executive abuse built into the Whistleblower Protection Act.

The purpose of this legislation is simple—to provide a mechanism and standards to protect dedicated public servants who blow the whistle on government fraud and abuse. Such employees should never be subject to adverse personnel actions because of their whistleblowing. To the contrary, we should heartily encourage it. Unfortunately, under current law, the office Congress created to protect these whistleblowers—the Office of Special Counsel (OSC)—has not worked. For instance, during the first six years of the OSC, of the 1,500 requests for OSC assistance, only 16 cases resulted in corrective action.

This legislation corrects this situation by creating an independent OSC, by authorizing wronged employee actions directly to the Merit Systems Protection Board if the OSC proves unsatisfactory, and by establishing a more realistic burden of proof.

The need for this new law, and the wisdom and constitutionality of the construction of your legislation, are not more clearly demonstrated than by the bi-partisan vote of both the House and the Senate last year—without dissent—for good government and protection of taxpayer resources are not partisan matters. We look forward to providing more detailed explanation of our enthusiasm for this legislation at any hearings you might convene, and to otherwise assisting you in bringing this added protector of clean government to reality.

Sincerely,

ROBERT D. RAVEN.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, Jan. 26, 1989.

To: Senate Subcommittee on Oversight of Governmental Management, Committee on Government Affairs. Attn: Linda Gustitus. House Subcommittee on Civil Service, Committee on Post Office and Civil Service. Attn: Andrew A. Feinstein.

From: American Law Division.

Subject: Analysis of Constitutional Objections Raised To The Special Counsel Provisions Of S. 508, The Whistleblower Protection Act of 1988.

On October 26, 1988, President Reagan pocket vetoed S. 508, the Whistleblower Protection Act of 1988.[1] Among other objections to the legislation, the President asserted that certain provisions establishing an independent Office of Special Counsel "raised serious constitutional concerns." In particular, he questioned the constitutionality of insulating the Special Counsel from presidential removal except "for inefficiency, neglect of duty, or malfeasance in office"; of prohibiting prior executive review of reports or testimony by the Special Counsel or his employees when requested by a congressional committee; and authorizing the Special Counsel to seek judicial review of decisions of the Merit Systems Protection Board in which he is a party. You have jointly requested that we assess the substantiality of these constitutional objections.

In response, we have reviewed and assessed the legislative history and design of S. 508 in the light of judicial and historical precedents which appear to pertinently bear upon the three questioned provisions. We conclude that those precedents, and in particular the Supreme Court's recent decisions in *Morrison* v. *Olson*,[2] upholding the validity of the independent counsel provisions of the Ethics in Government Act, and *Mistretta* v. *United States*,[3] sustaining the constitutionality of the United States Sentencing Commission, indicate that it is likely that a court reviewing the provisions in question would find them constitutional. In support of that conclusion we submit the following analysis.

VI. CONCLUSION

Congress' prerogative over the administrative bureaucracy, while not unlimited, is broad and far-reaching, encompassing the power to create, abolish, and locate agencies and to define the powers, duties, tenure,

[1] 24 Weekly Comp. Pres. Docs. 1377 (October 31, 1988). S. 508 has been reintroduced in the 101st Congress as H.R. 25, 135 Cong. Rec. H 37 (daily ed. Jan. 3, 1989) and S. 20, 135 Cong. Rec. S 177 (daily ed. Jan. 25, 1989).

[2] 108 S. Ct. 2597 (1988).

[3] 57 U.S.L.W. 4102 (U.S. S. Ct., No. 87-7028, January 18, 1989).

compensation and other incidents of the offices within them. The Supreme Court's most recent pronouncements have indicated that in separation of powers cases where, as here, aggrandizement is not in issue, it will weigh the justifications for the congressional scheme in question, including the necessity to maintain "Congress' ability to take needed and innovative action pursuant to its Article I powers," against the degree of intrusion on the ability of the President to perform his assigned functions. "'De minimis'" disruptions are insufficient to block and otherwise legitimate congressional objective.[179] In *Morrison* v. *Olson* the Court broadly confirmed Congress' ability to insulate officers appointed by the President who perform "purely executive" functions from at will removal and dealt a severe blow to the notion of a unitary executive. In *Mistretta* v. *United States*, the Court underlined the breadth of its rulings in *Schor* and *Morrison* by upholding the location in the judicial branch of an independent agency composed of judges and nonjudges whose sole function was the promulgation of binding policy with respect to sentences that may be imposed by judges. The emphatic nature of these decisions, as well as the long history of consistent congressional practice of controlling the ordering and arrangements of administrative agencies make it likely that the constitutional objections of the President to the provisions of S. 508 respecting the independence of the Special Counsel, his litigating authority, and his ability to avoid prior executive review of his reports and testimony to Congress would not be sustained by a reviewing court.

MORTON ROSENBERG,
Specialist in American Public Law.

EXHIBIT 3

JOINT EXPLANATORY STATEMENT

INTRODUCTION

The Senate, on August 8, 1988, passed S. 508, the Whistleblower Protection Act (See S. Rpt. 100-413). One year earlier, on August 5, 1987, the House Committee on Post Office and Civil Service favorably reported H.R. 25 (See H. Rpt. 100-274).

From the time that the House Committee reported the legislation in August 1987 to the present, there have been extensive negotiations to develop a version of H.R. 25 which would be acceptable to the Administration and address the serious problems with the current federal employee whistleblower protection scheme. The negotiations culminated in a draft dated September 22, 1988. Due to the imminent end of the 100th Congress, Rep. Pat Schroeder and Rep. Frank Horton, the House sponsors of the legislation, decided that it would expedite consideration if differences between S. 508, as passed, and the September 22 draft of H.R. 25 could be resolved prior to House consideration.

The amendment brought to the House today, October 3, is the result of those negotiations with the Senate. If the House passes the Senate bill with the amendment, the same language will be presented to the Senate. Senate passage will clear the legislation for the President.

This joint explanatory statement explains new provisions of the version being considered. Some provisions in the amendment were contained in both H.R. 25, as reported, and S. 508, as passed. Those provisions are not discussed in this document but are fully discussed in the Senate report, the House report, or both.

Code sections cited are in title 5, United States Code, as amended by the House amendment.

1. PURPOSE

Section 2(b) of the bill lays out the purpose of the bill. Simply stated, the bill seeks to eliminate two types of impediments which have made it unduly difficult for whistleblowers and other victims of prohibited personnel practices to win redress. One category of impediments is a string of restrictive Merit Systems Protection Board and federal court decisions. Specific provisions of the bill modify or overturn inappropriate administrative or judicial determinations and make it more likely that whistleblowers and other victims of prohibited personnel practices will win their cases.

The second category of impediments are due to the policies of the Office of Special Counsel and stem from the Special Counsel's view of its role. The clear intent of the Civil Service Reform Act of 1978 (P.L. 94-454) was that the Special Counsel should protect and defend the rights of employees who were the victims of prohibited personnel practices. Nevertheless, the Office of Special Counsel determined that its role was to protect the merit system. And, as the General Accounting Office pointed out in its 1985 report on the operations of the Office of Special Counsel (GAO/GGD-85-53), the law could be read to support the Special Counsel's view.

The two divergent views of the role of the Office of Special Counsel—protection of the victims of prohibited personnel practices and protection of the merit system—do not conflict in most cases. However, the Special Counsel's view of the role of the Office—protecting the merit system—can and has led to instances in which the Special Counsel has acted to the actual detriment of employees seeking help from that Office. Such instances are at odds with our view of the very purpose of this Office. The purpose set out in section 2, as well as a number of operative provisions contained in the bill, is intended to foreclose the possibility that the Special Counsel will act to the detriment of an employee who comes to the Special Counsel for help.

There should be no doubt about legislative intent in passing this bill. Individuals should be able to go to the Special Counsel to make a disclosure under section 1213 of title 5, United States Code, to complain about a prohibited personnel practice under section 1214, or to allege a violation of another law within the jurisdiction of the Special Counsel under section 1216, without any fear that the information they provide or the investigation their disclosure triggers is used against them. Simply put, the Special Counsel must never act to the detriment of employees who legitimately seek the help of the Special Counsel. Unless employees have confidence that they will not be hurt by going to the Special Counsel—that the Special Counsel is a safe haven—the Office can never be as effective as Congress intends in protecting victims of prohibited personnel practices.

Language in the Senate-passed bill saying that the Special Counsel may not act contrary to the interests of employees was deleted as unnecessary.

2. ANTI-HARASSMENT AUTHORITY OF BOARD

Section 1204(e)(1)(B) authorizes the Merit Systems Protection Board to grant protective orders to protect a witness or other individual from harassment either during a proceeding before the Board or during a Special Counsel investigation. Such an order may be granted upon a request from the Special Counsel or any other person, whether or not a party to the case, or on the Board's own motion except that an agency may not request a protective order concerning an investigation by the Office of Special Counsel during the course of such investigation.

This provision is intended to protect witnesses in order to aid the fact-finding process. Without the candid and honest testimony of those involved in the underlying relevant facts, unimpeded by threats or intimidation, prohibited personnel practice cases could easily be undermined by the defendant agency. The authority granted to the Board under this provision is intended to protect employees who are cooperating with such investigation from harassment by other employees.

3. SPECIAL COUNSEL INTERVENTION IN ADVERSE ACTION AND INDEPENDENT RIGHT OF ACTION CASES

Section 1212(d) establishes the rules under which the Special Counsel may intervene in proceedings before the Merit Systems Protection Board. Where the proceeding is an appeal from an adverse action under section 7701 of title 5, United States Code, or an individual right of action, created by newly added section 1221 of title 5, United States Code, the general rule is that the Special Counsel may not intervene without the consent of the individual bringing the action.

Two exceptions are provided. One exception, contained in section 1212(d)(2)(B)(i) provides that the Special Counsel may intervene where the individual has been charged by the agency with conduct constituting a prohibited personnel practice and the Special Counsel has reasonable grounds to believe that such a prohibited personnel practice has occurred, exists, or is to be taken. The Special Counsel could only have such reasonable grounds where through its independent investigation, the Special Counsel has uncovered probative evidence concerning the employee's alleged prohibited personnel practice. Under no other circumstances is intervention, without the consent of the individual bringing the action, permitted.

It should be noted that the Special Counsel can intervene to argue that the conduct alleged by the agency constitutes a prohibited personnel practice other than the one alleged by the agency. It is not permissible, however, for the Special Counsel to intervene and assert a prohibited personnel practice based on different conduct from the conduct which serves as the basis of the agency's action.

The other exception, spelled out in section 1212(d)(2)(B)(ii) concerns cases in which the Special Counsel has granted a waiver to an agency to proceed with disciplinary action notwithstanding the pendency of a Special Counsel investigation.

In addition, this provision authorizes the Special Counsel to "otherwise participate" in proceedings before the Board. This language is intended to authorize the Special Counsel to file amicus briefs on points of law. It is not intended to permit the Special Counsel to examine witnesses, introduce evidence, or otherwise participate in the development of the facts of the case, without the

[179] *Commodity Futures Trading Commission* v. *Schor*, 478 U.S. 833, 851, 852 (1986).

consent of the individual bringing the action.

Under no circumstances may the Special Counsel engage in ex parte contacts with the agency or supply information to agency management which would serve as the basis for agency action against an employee. Once again, the Special Counsel should not act to the detriment of employees who legitimately seek the Office's help.

4. SPECIAL COUNSEL RELEASE OF INFORMATION ABOUT INVESTIGATIONS

Section 1212(h) governs the Special Counsel's response to inquiries and provision of information concerning individuals who come to the Special Counsel for help. Again, the policy behind this provision is that employees should be able to go to the Special Counsel without fear of information being used against them. Section 1212(h)(1) provides that disclosures can only be made in accordance with the provisions of the Privacy Act. The language "as required by any other applicable Federal law" is intended to apply only in cases in which a statute specifically requires the Special Counsel to provide information otherwise protected by this section. It does not authorize the Special Counsel to disclose such information simply because the Special Counsel believes that such disclosure would facilitate the operation of another statute.

Section 1212(h)(2) states that, regardless of what the Privacy Act or some future enactment may provide, the Special Counsel can only release information concerning an employee's work performance, ability, aptitude, general qualifications, character, loyalty, or suitability under one of two circumstances. First, the information can be released with the advance written consent of the individual to whom the information pertains. Second, the information can be released to a federal agency when that agency is conducting a background check to clear an employee for access to Top Secret information, Sensitive Compartmented Information (SCI), or Q restricted data relating to atomic energy. The statutory language "information the unauthorized disclosure of which could be expected to cause exceptionally grave danger to the national security" comes directly from Executive Order No. 12356 and constitutes the definition of Top Secret information. The Special Counsel may not provide any information for a suitability check, a preemployment screening, whether by a private or governmental employer, or a background investigation for a clearance to Secret, Confidential or Restricted data.

It is assumed that agencies conducting security clearance background checks will not establish procedures under which the Special Counsel is queried for any and all information it possesses on any individual who is being investigated for a high level clearance. Rather, inquiries will only be made when the investigators are following a lead otherwise uncovered which takes them to the Office of Special Counsel.

The restrictions on the disclosure of information cover both the period during which the investigation is occurring and the period after the investigation is complete.

5. PROTECTION OF IDENTITY OF INDIVIDUALS MAKING WHISTLEBLOWING DISCLOSURES TO SPECIAL COUNSEL

Section 1213(h)(2) provides that the Special Counsel may disclose the identity of an individual who discloses information to the Special Counsel only (1) with the individual's consent; (2) where necessary to carry out the functions of the Special Counsel; and (3) where "necessary because of an imminent danger to public health or safety or imminent violation of any criminal law." Again, the overriding purpose of the bill is to protect individuals who seek the assistance of the Special Counsel; they should not be subject to harm because they sought help. These exceptions are to be defined narrowly.

The exception concerning the carrying out of the functions of the Special Counsel means that a specific statutory function of the Special Counsel necessitates the disclosure of the individual's name. For example, a decision by the Special Counsel to initiate an action before the MSPB may necessitate the disclosure of the identity of the individual on whose behalf the action is initiated. This provision is not intended to permit the Special Counsel to disclose an individual's identity, without that individual's consent, merely because such disclosure could be helpful in an investigation.

The imminent danger exception recognizes the countervailing public interest in protecting health and safety. The exception is quite narrow: it might be used, for example, where the Special Counsel learns that the individual making the disclosure plans to take violent action against a supervisor.

6. EXHAUSTION REQUIREMENT PRIOR TO FILING INDIVIDUAL RIGHT OF ACTION

Section 1214(a)(3) provides that employees, former employees, and applicants for employment must first seek the assistance of the Office of Special Counsel before bringing an individual right of action under section 1221. If the Special Counsel notifies the individual that the investigation has been terminated, the individual has 60 days in which to file an independent right of action. If the individual receives no notice of termination of the investigation within 120 days of filing the complaint, he or she may file an individual right of action at any time after the 120 day period has elapsed.

7. BURDEN OF PROOF

The bill makes it easier for an individual (or the Special Counsel on the individual's behalf) to prove that a whistleblower reprisal has taken place. To establish a prima facie case, an individual must prove that the whistleblowing was a factor in the personnel action. This supersedes the existing requirement that the whistleblowing was a substantial, motivating or predominant factor in the personnel action.

One of many possible ways to show that the whistleblowing was a factor in the personnel action is to show that the official taking the action knew (or had constructive knowledge) of the disclosure and acted within such a period of time that a reasonable person could conclude that the disclosure was a factor in the personnel action.

The bill establishes an affirmative defense for an agency. Once the prima facie case has been established, corrective action would not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of the disclosure. Clear and convincing evidence is a higher standard of proof than the preponderance of the evidence standard now used.

With respect to the agency's affirmative defense, it is our intention to codify the test set out by the Supreme Court in the case of *Mt. Healthy City School District* v. *Doyle*, 429 U.S. 274, 287 (1977). The only change made by this bill as to that defense is to increase the level of proof which an agency must offer from "preponderance of the evidence" to "clear and convincing evidence".

8. OTHER RESPONSIBILITIES OF SPECIAL COUNSEL

Section 1216 clarifies the existing ancillary responsibilities of the Special Counsel. The authority of the Special Counsel to investigate allegations under section 1216(a)(4) is meant to cover major abuses of the civil service processes, such as political intrusion in personnel decisionmaking. The Special Counsel would be expected to investigate allegations of the type of wholesale politicization of civil service appointment procedures as occurrred in the early 1970's under this authority. In such cases, the Special Counsel is authorized to seek corrective action, but not disciplinary action.

9. SPECIAL COUNSEL PUBLIC INFORMATION

The bill establishes a new section of law (section 1219 of title 5, United States Code) which sets out the requirements on the Office of Special Counsel to maintain and make available to the public certain information. The public files of the Special Counsel should include the comments of the individual who discloses the information under section 1213 which leads to the agency report unless the individual does not consent to the public availability of such comments.

10. STANDARDS FOR STAYS IN INDIVIDUAL RIGHT OF ACTION CASES

Section 1221(c) establishes the standards for stays and their dissolution in individual right of action cases. The bill provides that the Board shall determine whether the stay is appropriate, shall set the duration of the stay, as appropriate, and shall dissolve or modify the stay if appropriate. In making these determinations of appropriateness, the Board shall primarily consider whether there is a substantial likelihood that the individual will prevail on the merits and whether the stay would result in extreme hardship to the agency subject to the stay.

11. TIME LIMITS FOR MSPB DECISIONS IN INDIVIDUAL RIGHT OF ACTION CASES

Section 1221(f)(1) provides that the Board shall issue a decision on an individual right of action as soon as practicable after it is filed. While prompt decisions are strongly encouraged, and, it should be noted, the Board has done a commendable job in meeting time limits in adverse action cases, such prompt decisions should not come at the expense of full discovery. No litigant, whether in an individual right of action or in an appeal from an adverse action, should be deprived of the right to find the information needed to prove his or her case because to permit such discovery would result in the case not being decided within the regulatory time limits.

12. ATTORNEYS FEES

Section 1221(g) provides for the payment of reasonable attorneys fees in all types of proceedings before the MSPB or the courts where the employee, former employee, or applicant for employment prevails and the decision is based on the finding of a prohibited personnel practice. This provision is not limited to independent right of action cases.

MSPB and the courts have established substantial case law on what constitutes reasonable attorneys fees. The additional phrase "and any other reasonable costs incurred" is meant to include costs directly related to the litigation, such as photocopying, long distance telephone calls, and production of evidence, but is not meant to in-

clude other extraneous costs resulting from the prohibited personnel practice but not directly related to the litigation such as job counseling and retraining.

13. ELECTION OF REMEDIES

The House version of the legislation contained a provision requiring an election of remedies between an appeal from an adverse action and an individual right of action. This provision was deleted because of concern that a jurisdictional loss in an adverse action appeal could bar an individual pursuing an individual right of action. Nevertheless, it is not intended that the MSPB hear the same case twice. If an individual has pursued the matter before MSPB on the merits under one right of action, the Board is expected to dismiss a case brought under another authority concerning the same matter under the doctrine of *stare decisis*.

14. RETIREMENT DOES NOT CUT OFF ADVERSE ACTION RIGHT

Section 1221(j) provides that the decision of an employee to retire when faced with a proposed adverse action does not cut off that employee's right to appeal to MSPB to challenge the adverse action. This section is not limited to individual right of action cases. If an individual who has retired or received a lump sum refund is subsequently reinstated pursuant to a MSPB or court decision with back pay, the Back Pay Act (5 U.S.C. 5596) provides that adjustments shall be made to provide that the individual is treated as if the unjustified personnel action had never occurred. Under this theory, the individual receives back pay. If that happens, the money received from the retirement fund should be treated as if it were erroneously paid and the Office of Personnel Management should recover the erroneous payment. The waiver provisions under sections 8346(b) and 8470(b) of title 5 should not be applicable.

15. AVAILABILITY OF OTHER REMEDIES

The bill contains a new section 1222 of title 5, United States Code, which provides that the network of rights and remedies created under chapter 12 and chapter 23 of title 5 is not meant to limit any right or remedy which might be available under any other statute. Other statutes which might provide relief for whistleblowers include the Privacy Act, a large number of environmental and labor statutes which provide specific protections to employees who cooperate with federal agencies, and civil rights statutes under title 42, United States Code. Section 1222 is not intended to create a cause of action where none otherwise exists or to reverse any court decision. Rather, section 1222 says it is not the intent of Congress that the procedures under chapters 12 and 23 of title 5, United States Code, are meant to provide exclusive remedies.

16. CHANGES IN WHISTLEBLOWING PROHIBITED PERSONNEL PRACTICE

The bill makes certain changes in the definition of reprisal for whistleblowing (5 U.S.C. 2302(b)(8)). Among the changes are the inclusion of threats as a prohibited personnel practice, both with relation to whistleblowing and in relation to prohibited personnel practices defined in section 2302(b)(9). Mere harassment and threats, without any formally proposed personnel action, can constitute a prohibited personnel practice under this language.

It is obvious, but worth noting, that no Executive order, regulation, or contract can extinguish the rights provided under section 2302 of title 5. Employees have been required to sign security agreements as a condition for gaining access to classified information which seem to suggest that the signers of such agreements could be punished for disclosures protected by 5 U.S.C. 2302(b)(8). Insofar as these agreements seem to limit the ability of whistleblowers to exercise rights provided under chapters 12 and 23 of title 5, the security agreements are not valid.

Nevertheless, nothing in this bill permits the disclosure of classified information to any uncleared individual. Sections 2302 and 1213 set out clear channels for disclosure of wrongdoing in classified form. Such information can be properly and legally disclosed to the Special Counsel, to the Inspector General of an agency, or to a member of Congress.

17. CHANGES IN APPEAL RIGHT PROHIBITED PERSONNEL PRACTICE

The bill establishes a new prohibited personnel practice which protects employees in their right to refuse to obey an order that would require the individual to violate a law. This is a narrower form of a provision that was in H.R. 25, as reported. The establishment of this protection is meant to achieve a balance between the right of American citizens to a law-abiding government and the desire of management to prevent insubordination.

EXHIBIT 4

PETITION

Whereas Congress has recognized that it is sound public policy to protect from reprisal whistleblowers, who challenge Executive branch misconduct through disclosures of illegality, mismanagement, abuse of authority, gross waste, and substantial and specific dangers to public health or safety; and

Whereas Federal employee whistleblowers who seek protection through their legislatively-designated champion, the Office of the Special Counsel (OSC), have no due process rights before the OSC, which conducts its proceedings in secrecy and recognizes no obligation to contact relevant witnesses or explain its legal decisions to employees who seek help against reprisals; and

Whereas decisions of the Merit Systems Protection Board, the administrative court created along with the OSC by the Civil Service Reform Act of 1978, have created a body of legal precedents making it nearly impossible to successfully exercise the whistleblower defense, which only has succeeded four times in the nine years of the Board's existence; and

Whereas under current law judicial review of MSPB decisions is monopolized by the Federal Circuit Court of Appeals, which only has supported the whistleblower defense once in the six years since the court's 1982 creation; and

Whereas the Whistleblower Protection Act of 1988, S. 508, was a modest proposal that fell far short of the requests by labor and free speech advocates but gave whistleblowers a minimum chance to defend themselves through creating enforceable rights, eliminating the discretion of the Special Counsel to undercut the rights of those seeking assistance, and creating realistic burdens of proof; and

Whereas S. 508 was the product of three years of research and five congressional hearings; and

Whereas the House Post Office and Civil Service Committee has passed the bill unanimously twice, in 1986 the House passed analogous legislation by voice vote and unanimously without dissent, in 1988 the House passed S. 508 by a 418-0 vote, in 1988 the Senate Government Affairs Committee passed the legislation unanimously and the Senate passed the legislation by unanimous consent; and

Whereas the Whistleblower Protection Act of 1988 was endorsed by the American Bar Association House of Delegates, the Federal Bar Association, federal employee unions, the Federal Managers Association, the Senior Executive Association, and some 175 grass roots organizations; and

Whereas an Executive branch that commended and promised to support the legislation waited until Congress had adjourned and then broke its commitment by pocket-vetoing the bill; and

Whereas S. 508 already was the product of so many compromises that if diluted any further it would be impossible to defend as providing even minimal free speech protections and would become an anti-whistleblower bill;

Therefore the undersigned organizations petition Congress to promptly vote on an identical or stronger bill to that which passed unanimously in October 1988, without further compromise, and for the President to demonstrate his commitment to fighting fraud, waste, and abuse by signing the legislation Congress passes.

Yes, we agree the provisions in the Whistleblower Protection Act of 1988, as listed in the enclosed petition are necessary to produce an effective statute. The bill, which has been reintroduced as S. 30 and H.R. 25, should be voted on without further compromise or dilution as the first order of business when Congress reconvenes in January 1989.

Signature:
Organization:

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200 SUPPORTERS OF THE WHISTLEBLOWER PROTECTION ACT FEBRUARY 16, 1989

AFL/CIO Public Employee Department.
American Federation of Government Employees.
American Center for the Quality of Work Life.
American Federation of State, County, and Municipal Employees.
Association for Federal Safety and Health Professionals.
Blacks in Government.
Employees First.
Federal Aviation Science and Technology Association.
Federally Employed Women.
IEEE, Society on Social Implications on Technology.
National Association of Government Employees.
National Association for Human Rights Workers.
National Association for Retired Federal Employees.
National Association of Civil Service Employees.
National Federation of Federal Employees.
National Treasury Employees Union.
Access Reports.
Americans for Democratic Action.
American Library Association.
Aviation Consumer Action Project.
Better Government Association.
Congresswatch.
Constitutional Rights Foundation.
Consumer Federation of America.
Fund for Constitutional Government.

National Committee Against Repressive Legislation.
National Security Archives.
People for the American Way Action Fund.
OMB Watch.
Project on Military Procurement.
Public Law Education Institute.
Scholars & Citizens for Freedom of Information.
Society of Professional Journalists.
South Pasadena Democratic Club.
Texas Center for Policy Studies.
Unitarian Universalists Association of Congregations of North America.
Vietnam Veterans of America, Inc.
Whistleblower Coalition.
Women USA Fund.
Women's Law Project.
Agrarian Action Network.
American Agricultural Movement.
Animal Rights International.
Annie Kay's Whole Foods.
Baltimore Vegetarians.
California Institute for Rural Studies.
Candida Environmental Allergy Support Effort.
Center for Rural Affairs.
Center for Science in the Public Interest.
Center for Women Policy Studies.
Center of Concern.
Coalition for Alternatives in Nutrition and Healthcare.
Colorado Alliance to Protect Our Food.
Nuclear Information and Resource Service.
Ohio Environmental Council.
Ohio Public Interest Campaign.
Powder River Basin Resource Council.
Three Mile Island Alert.
US Public Interest Research Group.
Western Organization of Resource Councils.
Western Coalition Against Toxics.
Toxic Substance Committee.
South Dakota Department of Health.
Sinnissippi Alliance for the Environment.
Siskiyou Citizens for Alternatives to Toxics.
Sierra Club.
Redwood Alliance.
Organizing Media Project.
New Jersey Sane.
League of Conservative Voters.
Harrisburg Center for Peace and Justice.
Environmental Health Association of New Jersey.
Dakota Resource Council.
Council for a Livable World.
Coast Action Group.
Clean Water Action Project.
Citizens for Better Forestry.
Church of World Peace.
Californians for Alternatives to Toxics.
Center for Women's Economic Alternatives.
Rural Advancement Fund.
Nutrition Center.
National Coalition to Stop Food Irradiation.
Community Nutrition Institute.
Vietnam Era Veterans in Congress.
Veterans of Foreign Wars of the USA—post #4257.
United Church of Christ, Office of Church in Society.
Unitarian Universalist Association of Congregations.
People's Coalition of Missouria.
Peace Education Center.
National Committee for an Effective Congress.
National Mobilization for Survival, Inc.
Business Executives for National Security.
Children's Foundation.
Citizen's Alert.
National Coalition for Nursing Home Reform.
U.S. Student Association.
National Office of Jesuit Social Ministries.
Physician's Comm. for Responsible Medicine.
Concerned Consumers League.
Consumer Affairs Association.
Consumers Education and Protection Association.
Cooperative Market.
Durham Food Coop.
Essene Macrobiotic Food Market.
Farm Animal Reform Movement.
Farmers Wholesale Coop.
Flatbush Food Coop.
Food Animal Concerns Trust.
Fran Lee Foundation.
Friends of the Earth.
Grand Forks Food Coop.
Healthy Harvest Natural Foods.
Hoboken Farmboy.
Illinois American Agriculture Movement.
Institute for Alternative Agriculture.
Institute for Local Self-Reliance.
Palo Alto Coop Markets.
International Alliance for Sustainable Agriculture.
Kansas Rural Center.
League of Rural Voters.
National Association Community Health Centers.
National Consumer League.
National Institute for Science, Law and Public Policy.
New Alchemy Institute.
Oregon Coalition to Stop Food Irradiation.
Citizens Clearinghouse for Hazardous Waste.
Pesticide Education and Action Project.
Patrick's Good Food Store.
Public Voice for Food and Health Policy
Rural Cumberland Resources.
Touch the Earth.
Tucson Coop Warehouse.
Women for Economic Alternatives.
Alliance for Survival.
Alternative Energy Resources Organization.
California Coalition for Alternatives to Pesticides.
Citizens Against Rocky Flats.
Citizens Energy Council.
Citizens for a Better Environment.
Coalition Against Toxics.
Cuyahoga County Concerned Citizen.
Environmental Action.
Environmental Defense Fund.
Environmental Task Force.
Environmental Policy Institute.
Erie County Concerned Citizen.
Legal Environmental Assistance Foundation.
Illinois South Project.
Native Americans for a Clean Environment.
National Toxics Campaign.
Natural Rights Center.
Nuclear Control Institute.
National Organization for Legal Services.
Illinois Public Action Counsel.
National Association of Concerned Veterans.
Independent Americans.
Gray Panthers.
Foundation for Advancements in Science and Education.
Fund for Open Information and Accountability.
Eco-Justice.
Democracy Project.
Clifton and Schwartz.
Church of the Brethren, General Board.
American Bar Association.
Alliance for Justice.
United Food and Commercial Workers International Union.
North Carolina Occupational Safety & Health Project.
Employees Legal Project.
Institute for Southern Studies.
California Action Network.
North Coast Environmental Center.
Center for Non-profit Legal Services.
Greenpeace, USA.
Saginaw Human Relations Commission.
Center for Business Ethics.
International Association of Machinists.
National Lawyers Guild.
United Auto Workers.
American Association of School Administrators.
American Protestants for Truth About Ireland.
National Community Action Foundation.
Ohio PIRG.
Quality Technology.
Committee for Children.
Ecology Center of Southern California.
Snake River Alliance.
Institute for Policy Studies.
National Alliance Against Racist and Political Repression.
Potomac Valley Green Network.
People for the Ethical Treatment of Animals.
Government Accountability Project.
Hanford Education Action League.
Program Against Militarism: Interfaith Center on Corporate Responsibility.
Radio Active Waste Campaign.
Vermont PIRG.
National Assoc. of Working Women.
Rural Coalition.

Mr. LEVIN. Mr. President, I thank the Chair and I yield the floor.

Mr. COHEN. Mr. President, I yield myself 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized for 5 minutes.

Mr. COHEN. Mr. President, before I begin, let me indicate that Senator ROTH, who is the ranking member of the Governmental Affairs Committee, could not be here this morning. He is out of town attending the funeral of a friend. He would like, if I may have the attention of my colleague, to have the opportunity to vote at 3 if at all possible so that he could be here to cast a vote on this particular measure. He certainly is a very strong supporter of the legislation, and if that does not complicate matters perhaps we can arrange it.

Mr. LEVIN. I am wondering if we could seek to clear that with our leadership because of the impeachment proceedings that are ongoing this afternoon. But we will seek to clear it on our side, and I am sure they will on the other side.

The ACTING PRESIDENT pro tempore. The Senators are advised that there is an order now before the Senate that, if a rollcall vote occurs on this matter, it will occur at 2 o'clock.

Mr. COHEN. Mr. President, perhaps we can accommodate Senator ROTH by

allowing the vote to occur following the vote on the motions involving impeachment proceedings. I am sure we can work that out.

Also, Senator WARNER would like to be a cosponsor of Senator LEVIN's amendment, and at the conclusion of the statements of myself and perhaps the Senator from Iowa, I ask unanimous consent to include a statement by Senator WARNER.

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

The PRESIDING OFFICER (Mr. KERREY). Does the Senator from Maine also request that he be added as a cosponsor?

Mr. COHEN. Indeed.

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

Mr. COHEN. I am pleased that an agreement has been reached on this important legislation to give Federal workers the protections they need when they disclose mismanagement, waste, abuse, illegality, or threats to public health through good faith whistleblowing.

The need for this legislation has been clear for a long time. This is the third Congress in which I have cosponsored versions of this measure and I am glad that the dedication of Senator LEVIN and several of my colleagues who have worked on this bill for so long will finally result in meaningful protections for Federal employee whistleblowers.

Last fall, President Reagan pocket vetoed S. 508 which had been passed unanimously by the Congress. Given the extensive record that was developed during years of hearings on the need to strengthen the current law and the widespread support in the Congress for additional whistleblower protections, the President's veto was most troubling. The veto sent exactly the wrong message to Federal employees who witness fraud, mismanagement, and corruption in Government agencies. It told them not to bother to report these abuses, and that they will not be given meaningful protection if they do come forth.

Thankfully, in the months since the veto, the sponsors of this bill have been able to work with Attorney General Thornburgh to remove the executive branch's misgivings about this legislation.

The result of that effort is the amended version of S. 20 that we consider today. Senator LEVIN's amendment removes those elements that most concerned the administration. The amendment deletes the provision granting the special counsel independent litigating authority. This removes the administration's major constitutional concern and ensures that one executive branch officer, the special counsel, will not be litigating against another in reprisal cases. The amendment also contains a compromise on the standard that will be used in determining whether a Federal employee's blowing-of-the-whistle has been improperly used against him or her in any adverse personnel action.

The current test that governs this standard—the so-called mount healthy standard—provides that in order to prove retaliation for whistleblowing, an employee must show that the whistleblowing was a significant factor in a personnel action. The agency must prove, in an affirmative defense, that, by a preponderance of the evidence, whistleblowing was not a material factor in the personnel action.

S. 20, as introduced, eased this standard in two ways. It lowered the burden of proof the special counsel and employees would have to meet, while, at the same time, increasing management's burden of proof. In short, it provided that an employee would have to prove only that whistleblowing was a factor in the personnel action and that the agency would have to prove by clear and convincing evidence that whistleblowing was not a material factor.

Last fall in his veto message, President Reagan stated that the "substantially reduced factual showing required of the employee and the substantially increased burden on agencies essentially rigs the—merit system protection—board's process against agency personnel managers in favor of employees."

While I believe that a strong case still exists for the change to the Mount Healthy test that was included in the bill passed by the Congress last year, there was a need for a compromise to accommodate some of the administration's concerns. The amendment that I hope we will pass today accomplishes this by clarifying the standards that whistleblowers must meet to prove that their agencies have threatened retaliation.

As a whole, the compromise amendment preserves the major protections that were passed by the Congress last year and constitutes a major improvement over current law. I am hopeful that the agreement we have now reached will eliminate the threat of court challenges to the law on constitutional grounds, and will eliminate confusion on how to interpret the standards that apply in whistleblowing cases.

For too many years now, Federal employee whistleblowers have been treated shabbily. Too many have paid a personal price for the millions of dollars they have saved the Government. They have lost their jobs, had promising careers derailed or forfeited promotions as the price for exposing wasteful Government spending, illegal activity, or hazardous conditions. Too often, instead of being rewarded for their efforts, whistleblowers appear to have been punished. They have suffered retaliation simply for upholding the public trust. Such treatment must not be tolerated.

One of the goals of the Civil Service Reform Act of 1978 was to strengthen protection for whistleblowers. The law established the Office of Special Counsel to investigate employees' allegations of retaliation and to litigate on their behalf before the Merit Systems Protection Board.

However, since its creation, the Office of Special Counsel has turned down 99 percent of the whistleblower cases brought to it without attempting disciplinary or corrective action. In short, the existing process has not protected legitimate whistleblowers at all.

Indeed, rather than strengthening protection for legitimate whistleblowers, the 1978 Reform Act did little to encourage Federal employees' confidence in their ability to reveal problems in their agencies. Merit Systems Protection Board surveys reveal that there has been a significant increase in fear of reprisal by whistleblowers in the past decade.

This bill contains crucial protections for whistleblowers. It simplifies the process significantly, grants increased confidentiality for employees who disclose fraud and mismanagement, and grants employees the right, for the first time, to appeal their own whistleblowing cases.

The bill ensures the independence of the Office of Special Counsel and clarifies that the roll of the Special Counsel is to act in the interest of whistleblowers.

Mr. President, the words "fraud, waste, and abuse" have this talismanic quality to them. They are invoked almost daily, particularly around election time, unfortunately, when everyone suddenly turns to budgets and says, "We have to clear out fraud, waste, and abuse."

The difficulty, of course, is the people who are in the best position to advise us about fraud, waste, and abuse are those who are at the workplace. These are the individuals who work in the agencies on a day-to-day basis. They see how budgets are, in fact, administered. They see how various practices are employed, and they are the ones who can best tell us that there is fraud, waste, mismanagement, abuse, or illegality. And yet, they are the least protected of all Federal employees, those who wish to call the attention to their superiors that there is something wrong with what is going on.

We recall that our departed friend, from this Chamber at least, Senator Proxmire, used to give the Golden Fleece Award. That received a great deal of notoriety, and frankly, a good deal of attention. We have not had a golden whistleblower award. That is

something that perhaps we ought to institutionalize in order to reward those individuals who point the finger and blow the whistle upon cases of real abuse of the public trust.

Mr. President, this is the third Congress that has taken up this legislation. Let me commend my colleague from Michigan. He and I came to this body at the same time. We have served on the Governmental Affairs Committee for the same time. We have been involved in this issue I think almost from the very beginning. Yet, we thought we had it taken care of in the last session of Congress, and President Reagan vetoed S. 508.

I think it sent precisely the wrong message. What it said to the Federal employees is do not bother. Do not bother blowing the whistle because you are not going to have any protection that is meaningful at all.

President Reagan believed that there were several deficiencies in that legislation. No. 1, we had the prospect of the executive branch litigating against itself. I think that was a legitimate concern. Senator LEVIN's amendment would correct that.

President Reagan thought we had shifted the burden of proof too heavily, that we had rigged it in favor of the employee. Indeed, we did shift the burden. There was a reason for that. But perhaps we shifted it too much. Again, in the spirit of compromise, Senator LEVIN has proposed an amendment that strikes a balance.

Now, the employee must show only that whistleblowing is a contributing factor in personnel actions taken against him or her, not a significant factor, and the agency must show by clear and convincing evidence that it was not a material factor as opposed to simply showing by a preponderance of the evidence. Those are important changes. They mark significant changes in existing law. And they are very important ones that will protect whistleblowers in general.

I want to take this opportunity to commend my colleague from Iowa, Mr. GRASSLEY, who has been one of the real outstanding leaders in this field. He certainly has inherited the mantle of H.R. Gross, a man that I served with in the U.S. Congress for three terms, a solitary figure at the gates trying to stop fraud, waste, and mismanagement. And I think Senator GRASSLEY has certainly inherited justifiably that mantle.

So I believe to sum up, if I could, this legislation represents a significant improvement over current law. If we are going to ask Federal employees to step forward and report abuses and corruption, we have an obligation to ensure that those who do are supported and treated fairly. In many cases, serious problems in Government agencies would never come to light without whistleblowers, as only the insiders know what is going on in the depths of the bureaucracy. I am hopeful this bill is going to encourage good faith whistleblowers. I want to stress the importance of good faith whistleblowers.

We do not want to see a situation where individuals who are either mischievous, maladjusted, or have personal agendas try to hide behind this legislation. That is why I think this represents an appropriate balance of having good faith whistleblowers coming forward making clear that their efforts are going to be protected just as their courage and integrity should be applauded for the millions of taxpayers' dollars that they could save through their courageous exposure of fraud, waste, and abuse.

Again, I want to commend my colleagues from Michigan, and Iowa for their efforts in making this legislation a reality.

I reserve the remainder of my time.

Mr. WARNER. Mr. President, I am pleased to join as a cosponsor today of S. 20, the Whistleblower Protection Act of 1989. I am also pleased to note that this legislation, as amended, reflects the joint commitment of the Congress and the administration to achieve workable, constitutional protection for whistleblowers.

As many of my colleagues are aware, in the last session of Congress on October 7, 1988, this body approved a similar measure which was itself the product of intense negotiations between the White House and the Congress.

By the time the measure reached the desk of President Reagan, however, the new Attorney General, Richard Thornburgh, had assumed his duties, and in what can only be regarded as an appropriate exercise of his office, he indicated to President Reagan reservations he had with this legislation.

President Reagan shared Attorney General Thornburgh's concerns to the extent that he pocket-vetoed the former bill, in an action which took many in both the Congress and the executive branch by surprise.

Since that time, and most intensely in the last few weeks, Attorney General Thornburgh and the Senate leadership have worked to resolve their differences, and we are now ready to adopt an amended version of S. 20 reflecting that joint agreement.

The intent of the Whistleblower Protection Act is to expand legal protections for Federal employees who take upon themselves the initiative of disclosing evidence of waste, fraud, and abuse in the operations of the Federal Government. Protection for these public servants from retaliatory actions has to this point been sorely lacking.

This legislation will create what I believe will become a "safe harbor" for whistleblowers in a newly independent Office of Special Counsel [OSC], no longer a separate function of the Merit Systems Protection Board. OSC can now become what it should have been all along—a true advocacy agency within the executive branch for those civil servants who are moved to place the mission of Government above their own personal considerations.

Mr. President, I would be remiss if I did not acknowledge the leadership of Senators LEVIN, GRASSLEY, PRYOR, ROTH, and COHEN in their efforts to negotiate the whistleblower agreement. The Attorney General and our governmental affairs leadership have both made concessions, and both can claim victory. I encourage all of my colleagues to accept this agreement without further substantive amendment.

The ultimate winners, of course, will be those conscientious Federal employees, many of whom I number among my constituents, who will now have the tools and protections they need to "blow the whistle" on governmental mismanagement in an environment of confidentiality, and with every assurance that their due process rights will be protected.

Mr. President, I urge the expeditious consideration and approval of this important and long-needed legislation.

Mr. BYRD. Mr. President, will the distinguished Senator from Michigan yield for 4 minutes of his time?

Mr. LEVIN. I am happy to yield 5 minutes to my friend from West Virginia, the President pro tempore.

Mr. BYRD. Mr. President, I thank my friend.

Mr. President, I rise in support of the legislation currently before the Senate, the Whistleblower Protection Act of 1989.

Again and again over the years, our Nation has been embarrassed by revelations of waste, fraud, and abuse by some within various agencies and departments of our Federal Government who have betrayed the public's trust. Again and again, we have pledged to end this corruption, which not only drains valuable national resources but also undermines the public's confidence in their Government.

Those courageous Government employees who blow the whistle on waste in our Government programs are playing an important role in ending this scourge. By nature of their positions within agencies, they are able to identify potential problems at an early stage.

The record indicates, however, that too often Federal employee whistleblowers have been punished, rather than rewarded, for their attempts to save the taxpayer's money.

In 1978, as a part of the Civil Service Reform Act of 1978, provisions were included to protect Federal whistleblowers.

The need to strengthen these provisions was clearly demonstrated, however, by surveys conducted in 1980 and 1983 by the Merit Systems Protection Board which showed that as many as 70 percent of Federal employees have knowledge of fraud within their agency, but do not report it, and that those who did not report Government wrongdoing because of fear of reprisal increased from 20 percent in 1980 to 37 percent in 1983.

Reform is essential to the integrity of the Federal bureaucracy, and whistleblowers are a valuable asset in the battle. We need to send a signal, however, that they will be treated fairly.

The bill before the Senate today will afford these men and women the protection they need by establishing fairer standards for whistleblowers in proving retaliation and by giving whistleblowers enhanced procedural protections, including the right to take cases directly to the Merit Systems Protection Board, as well as guarantees of confidentiality.

During the closing days of the 100th Congress, the Senate and the House approved legislation similar to the bill before us today, but it was pocket vetoed by President Reagan. I am glad that a compromise has now been reached with the Bush administration so that the protections embodied in this measure can be implemented.

I thank Senator LEVIN and Senator COHEN for the excellent leadership that they have again demonstrated. I congratulate Mr. LEVIN on the amendment that he has provided. I think it will be certainly an improvement to the legislation. I commend them both, and on behalf of the Senate and the American people, I thank them.

I urge passage of the bill.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. COHEN. I yield to the Senator from Iowa 5 minutes.

The PRESIDING OFFICER. Senator GRASSLEY is recognized for 5 minutes.

Mr. GRASSLEY. Mr. President, first of all, I want to thank Senator COHEN for his kind remarks about me and about our former colleague of the House of Representatives, H.R. Gross. I thank Senator COHEN. I also thank Senator COHEN for his leadership in this area.

I am really pleased that the Senate is considering this bill so early in the 101st Congress. It is long overdue. This bill should have been signed by the last President. I am sorry it was not. I know there were honest reasons it was not signed. I am glad those things are worked out now. I thank Senator LEVIN for his diligent work, not only on the bill but also the effort expended to work out an agreement with the Justice Department so that this bill will be signed by this administration.

Agreement is what we have achieved in this bill. After a number of meetings and substantial give and take on both sides, we made some important changes in this bill, and I am confident that these compromises will prevent surprise veto, such as we experienced last fall. Rather, we want a solid and strong message sent to Federal employees, and this bill sends that message, that discrimination and retaliation against those employees who disclose waste, fraud and abuse, will no longer be tolerated. The Whistleblower Protection Act of 1989 is intended to change current realities.

Now 70 percent of those who see wrongdoing as Federal employees are afraid to disclose that wrongdoing. First, they feel so because they honestly believe nothing will be done to right the wrongs that they might disclose. Second, they do not want to put their careers and reputations at risk, in light of reprisals they suffer.

Our bureaucracy has a very peculiar way of rewarding whistleblowers. They are harassed, they are demoted, and they are even fired for doing what they think is right, exposing wrong.

The Office of Special Counsel, the agency set up more than 10 years ago to investigate whistleblower complaints, has been little more than a rubber-stamp for these reprisals against Federal employees. These courageous employees, in fact, deserve our thanks, and they deserve our praise for their honesty and their integrity. At a very minimum, they should be able to keep their jobs and their careers on track after they blow the whistle on bad government.

So this bill makes some important changes in the Office of Special Counsel, the Merit Systems Protection Board, and the procedures that take place before these agencies. If the Office of Special Counsel does not find merit in the employee's claims, the employee will be able to take his case to the Merit Systems Board for their consideration. Once at the Board, the employee will be able to prove unlawful discrimination by showing that his disclosure was a contributing factor in the adverse action that he suffered.

There was considerable discussion about the burden of proof that the employee would have to meet in order to prove his case. So I want to take a moment to set forth what we intend this burden of proof to be, and I think Senator LEVIN has done a very good job of this. But I think we cannot spend too much time in making this case crystal clear, and that we are very clear in this legislation.

If an employee demonstrates that his disclosure was a contributing factor in the discipline or discharge, then he has made his case. It is just that simple. That means any factor which, alone or in conjunction with other factors, tends to affect or influence, in any manner, the personal decision against.

Once the employee establishes his case, then at that point the burden of proof shifts to the employer. That agency can defend its actions and avoid liability if it proves, by clear and convincing evidence, that it would have imposed the discipline, even if there was no whistleblower.

For more than 10 years, our bureaucracy has not at all been receptive to whistleblowers. This bill should change that attitude. It is about time we recognized the contribution that whistleblowers make to the management of an efficient government. I think it is a great contribution. This is long-awaited and well-deserved legislation. So I urge what I think is going to be a fact, the Senate's speedy passage; and I hope that the House can move quickly, so that President Bush can sign this legislation into law at the earliest possible date and give this protection.

I yield back the remainder of my 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, let me thank my friend from Iowa. I reiterate, he has been a steadfast supporter of whistleblowers. Without his support, this bill could not be on this floor today.

I join in the commendation that my friend from Maine made relative to the Senator from Iowa. I also add a good word for Senator COHEN, because he has been on the whistleblower protection effort right from the beginning, and, indeed, this is our third effort, I think. This time it is three strikes and we are in, rather than three strikes and we are out.

Mr. President, I yield 5 minutes to our friend from Connecticut.

Mr. LIEBERMAN. Mr. President, I am very proud to rise in support of S. 20, the Whistleblower Protection Act of 1989. I am proud to be listed as a cosponsor of this measure. Later today, I will be particularly proud to vote for it.

This is the first substantive legislation that will be passed by the Senate in this 101st Congress, and in that sense, it is also the first substantive legislation that I have had the honor to be associated with in my career as a Senator.

I cannot think of a better way to begin. I say that because when this bill becomes law, it will help restore the confidence of the American people in their Government. Their support has, after all, been shaken by stories of waste, mismanagement, and corruption in the corridors of power here in Washington.

Though most of Government clearly is honestly and efficiently run, the people demand, quite correctly, that a higher standard be met. It is their dollars, after all, that make Government a reality. They have a right to expect the very best.

S. 20, this measure, demonstrates our commitment to rooting out fraud, waste, and incompetency, by giving more protection and, thus, more power to those committed public servants willing to blow the whistle on misuse of money or power in government.

Besides helping those who blow the whistle, S. 20 helps us achieve a more streamlined, efficient government. Though much of the debate over the Federal deficit has centered on spending levels and taxation, an important part of the solution lies with cutting fat and eliminating misuse of tax dollars in Federal agencies. Congressional oversight alone cannot identify all wasteful spending. We need whistleblowers, with their special insight and their dedication to good government, if we are to make real headway toward a balanced budget.

Mr. President, I bring some personal experience to this discussion of whistleblowing. During my time as attorney general of the State of Connecticut, I was privileged to have within my office the whistleblowing function, the protection of whistleblowers in the State of Connecticut, and I can report to you one case just a little over a year ago where one brave public servant picked up the phone and reported a problem at the University of Connecticut Medical Center. Under our law, the auditors of our State and the attorney general's office had the power to investigate, and we did. We uncovered widespread misuse of medical research dollars. As a result of that one whistleblower complaint, major changes are underway today at the University of Connecticut that will mean better government for the people of my State.

If there had not been people in government charged with the responsibility of investigating whistleblower complaints and, more important, if we did not have substantial protection for whistleblowers written into law, that employee may not have picked up the phone, and the abuse of public trust would likely be continuing right now.

The people do not know to this day who that Connecticut whistleblower is, but we owe him or her a lot. Thanks to S. 20, there will likely be more people in the Federal Government willing to pick up their phone and make the call that can save us all money and improve our Government and our lives.

Mr. President, I have been here only a little more than 2 months and I formed early impressions. Perhaps I do not have much of a standard of reference, but I have watched the distinguished Senator from Michigan and the distinguished Senator from Maine work painstakingly in this measure and have the patience that is often required in the legislative process to bring about change that really matters. I congratulate both of them.

I thank them and I am proud to urge passage of this very substantial product of their labor.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I yield myself 1 minute to thank my friend from Connecticut both for his remarks and for his contribution already to this body. We are deeply appreciative of both.

Mr. LIEBERMAN. I thank the Senator.

Mr. METZENBAUM. Mr. President, I rise in strong support of the Whistleblower Protection Act. I am proud to be an original cosponsor of the legislation.

Passage of this bill is long overdue. The fact that this is the first major legislation considered by the 101st Congress is a tribute to the tenacity and dedication of Senators LEVIN and GRASSLEY, the main sponsors of the bill. Both Houses of Congress had unanimously passed this legislation last term. President Reagan, despite representations to the contrary from administration officials, ignored the needs of Federal workers by pocket vetoing the bill.

This last minute defeat did not deter Senators LEVIN or GRASSLEY. If anything, they redoubled their efforts to do the right thing for America's Civil Servants. To his credit, President Bush worked with Congress to craft a compromise that addresses the administration's constitutional concerns while strengthening protection for Federal workers.

Under the current law, Federal employees increasingly are afraid to come forward with information about Government fraud, waste and abuse. Those who do come forward do not get relief from the Office of Special Counsel. Coming forward merely marks them as whistleblowers and targets them for reprisal.

The Whistleblower Protection Act corrects the problem. The bill gives real teeth to the promise of the Civil Service Reform Act by ordering the Office of Special Counsel to act for Federal Whistleblowers instead of against them. The special counsel will no longer be allowed to intervene against whistleblowers before the Merit Systems Protection Board, without the consent of the whistleblower. The compromise proposal would ensure that the Office of Special Counsel is an independent administrative entity, which nonetheless would act through the Merit Systems Protection Board for certain limited procedures. In addition, the compromise strengthens the confidentiality provisions of the bill and clarifies the burden of proof standard for whistleblowers.

I ask unanimous consent that an editorial from the Cleveland Plain Dealer supporting this legislation be placed in the RECORD at the conclusion of my Statement. As that editorial notes, this bill is a "sensible compromise" that will allow Federal employees to "expose abuses without risking retribution from self-serving superiors."

The editorial writer adds that we need similar Federal protection for private sector whistleblowers. That's why I have coauthored with Senator GRASSLEY, the Employee Health and Safety Whistleblower Protection Act. Federal employees are well-served by the Levin-Grassley bill. I would hope that the Metzenbaum-Grassley bill could do the same thing for courageous workers who blow the whistle on health and safety violations.

Whistleblowers make our Government better and our society safer. They deserve our gratitude, but more importantly, they need our protection. I urge my colleagues to support the Whistleblower Protection Act and other efforts to ensure that workers get necessary protection from retaliation.

[From The Cleveland Plain Dealer, Mar. 11, 1989]

HEEDING THE WHISTLE ON WASTE

If waste and fraud within the government are to be reduced, federal employees must be given a way to expose abuses without risking retribution from self-serving superiors. Recognizing the need to police government waste, Congress and the White House have crafted a sensible compromise to strengthen protection for federal "whistleblowers."

The bill, promoted by Sen. Carl Levin of Michigan, would guarantee confidentiality to federal employees who expose wrongdoing; give them the right to appeal any punishment that seems retaliatory; and bolster the independence of the Office of Special Counsel that defends their rights. The bill may become the first measure President Bush signs into law.

Early action on the whistleblower measure is doubly welcome. Not only does it break the legislative logjam backed up behind the John Tower debate but it repairs some of the damage wrought during Ronald Reagan's petulant final days in office. Reagan contrived to kill last year's Whistleblower Protection Act—which had been approved 418–0 in the House and by a unanimous voice vote in the Senate—with a "pocket veto" after Congress had adjourned, thus avoiding any override attempt.

Promoting the whistleblower bill confirmed George Bush's oft-stated willingness to bargain with Congress' Democratic majority. It also tested the agility of a Bush administration holdover from the Reagan era: Attorney General Richard Thornburgh. During Reagan's ploy last autumn, Thornburgh served as the president's heat shield.

defending Reagan's assertion that the proposal was unconstitutional. But after Thornburgh came under pressure from Bush's less dogmatic White House, the Justice Department joined Levin in crafting some minor changes—thus assuring Thornburgh a chance to say that his autumn qualms had been dispelled.

Beyond encouraging public employees to expose waste, legislators should consider the efforts of Ohio's Sen. Howard Metzenbaum to extend whistleblower protection to employees of private firms that perform work for the government. The fact that many private-sector watchdogs were reluctant to attend this week's labor subcommittee hearings on the idea, apparently for fear of their bosses' retribution, suggests that the federal shield should protect such quasi-government workers, too.

Mr. LEVIN. Mr. President, I do not know of anyone else who wishes to address the body.

AMENDMENT NO. 9

(Purpose: To amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes)

Mr. LEVIN. I send an amendment to the desk at this point and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk read as follows:

The Senator from Michigan Mr. LEVIN, (for himself, Mr. GRASSLEY, Mr. PRYOR, Mr. COHEN, Mr. GLENN, Mr. ROTH, and Mr. HELMS) proposes an amendment numbered 9.

Mr. LEVIN. Mr. President, I ask unanimous consent that further reading of the amendment that I have described to the body be dispensed with.

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

The amendment is as follows:

On page 3, line 12, strike out all through line 23 on page 14 and insert in lieu thereof:

(a) MERIT SYSTEMS PROTECTION BOARD.—Chapter 12 of title 5, United States Code is amended—

(1) in section 1201 in the second sentence by striking out "Chairman and";

(2) in the heading for section 1202 by striking out the comma and inserting in lieu thereof a semicolon;

(3) in section 1202(b)—

(A) in the first sentence by striking out "his" and inserting in lieu thereof "the member's"; and

(B) in the second sentence by striking out "of this title";

(4) in section 1203(a) in the first sentence by striking out the comma after "time";

(5) in section 1203(c) by striking out "the Chairman and Vice Chairman" and inserting in lieu thereof "the Chairman and the Vice Chairman";

(6) by redesignating section 1204 as section 1211(b) and inserting such subsection after section 1211(a) (as added in paragraph (11) of this subsection);

(7) by redesignating section 1205 as section 1204, and amending such redesignated section—

(A) by striking out "and Special Counsel", "the Special Counsel," and "of this section" each place such terms appear;

(B) by striking out "subpena" and "subpenaed" each place such terms appear and inserting in lieu thereof "subpoena" and "subpoenaed", respectively;

(C) in subsection (a)(4) by striking out "(e)" and inserting in lieu thereof "(f)";

(D) by amending subsection (b)(2) to read as follows:

"(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

"(A) issue subpoenas requiring the attendance and presentation of testimony of any such individual, and the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

"(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.";

(E) in subsection (c) in the first sentence—

(i) by striking out "(b)(2) of this section," and inserting in lieu thereof "(b)(2)(A) or section 1214(b), upon application by the Board,"; and

(ii) by striking out "judicial";

(F) by redesignating subsections (d) through (k) as subsections (e) through (l), respectively, and inserting after subsection (c) the following new subsection:

"(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.";

(G) in subsection (e) (as redesignated by subparagraph (F) of this paragraph)—

(i) in paragraph (1)—

(I) by redesignating such paragraph as subparagraph (A) of paragraph (1); and

(II) by inserting at the end thereof the following new subparagraph:

"(B)(i) The Merit Systems Protection Board may, during an investigation by the Office of Special Counsel or during the pendency of any proceeding before the Board, issue any order which may be necessary to protect a witness or other individual from harassment, except that an agency (other than the Office of Special Counsel) may not request any such order with regard to an investigation by the Office of Special Counsel from the Board during such investigation.

"(ii) An order issued under this subparagraph may be enforced in the same manner as provided for under paragraph (2) with respect to any order under subsection (a)(2).";

(ii) in paragraph (2)—

(I) by redesignating such paragraph as subparagraph (A) of paragraph (2) and striking out "of this section" in the first sentence therein; and

(II) by inserting at the end thereof the following new subparagraph (B):

"(B) The Board shall prescribe regulations under which any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board to exercise its authority under subparagraph (A).''; and

(iii) in paragraph (3) by inserting "of Personnel Management" after "Office";

(H) in subsection (f) (as redesignated by subparagraph (F) of this paragraph)—

(i) in paragraph (1) in the first sentence by inserting "of the Office of Personnel Management" after "Director", and by striking out "of this title";

(ii) in paragraph (2)—

(I) in the first sentence by inserting a comma after "subsection";

(II) in subparagraph (A) by striking out "of this title"; and

(III) in subparagraph (B) by striking out "of this title"; and

(iii) in paragraph (3)—

(I) in subparagraph (A) by striking out "(A)";

(II) by striking out subparagraph (B); and

(III) by redesignating subparagraph (C) and clauses (i) and (ii) therein as paragraph (4) and subparagraphs (A) and (B), respectively; and

(I) in subsection (j) (as redesignated by subparagraph (F) of this paragraph) in the second sentence by striking out "of this title" after "chapter 33";

(8) by striking out sections 1206 through 1208;

(9) by redesignating section 1209(a) as section 1205, and inserting before such section the following section heading:

"§ 1205. Transmittal of information to Congress";

(10) by redesignating section 1209(b) as section 1206, and inserting before such section the following section heading:

"§ 1206. Annual report";

(11) by inserting after section 1206 (as redesignated in paragraph (10) of this subsection) the following:

"SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

"§ 1211. Establishment

"(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.";

(12) by amending section 1211(b) (as redesignated and inserted by paragraph (6) of this subsection)—

(A) in the first sentence by striking out "of the Merit Systems Protection Board" and "from attorneys";

(B) by striking the second sentence and inserting in lieu thereof "The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term."; and

(C) by adding at the end thereof "The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President."; and

(13) inserting after section 1211 the following:

On page 16, line 15, strike out all after the comma through line 22 and insert in lieu thereof "the Special Counsel may apply to the Merit Systems Protection Board to enforce the subpoena in court pursuant to section 1204(c).".

On page 17, strike out lines 9 through 15.

On page 17, strike out "(d)" and insert in lieu thereof "(c)".

On page 17, line 21, strike out "(A)".

On page 17, line 24, beginning with the comma, strike out all through line 25 and insert in lieu thereof a period.

On page 18, strike out lines 1 through 20.

On page 26, beginning with line 20, strike out all through line 2 on page 27 and insert in lieu thereof the following:

"Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.".

On page 27, line 16, insert "the National Security Advisor," before "the Permanent".

On page 27, line 18, insert a comma before "and the Select".

On page 34, line 6, insert "contributing" before "factor".

On page 34, line 13, beginning with "obtained" strike out all through line 17, and insert in lieu thereof "obtained by any employee, former employee, or applicant for employment adversely affected by such order or decision.".

On page 35, line 12, insert after "Special Counsel" a comma and "after consultation with the Attorney General,".

On page 40, strike out all beginning with line 18 through line 2 on page 41 and insert in lieu thereof:

"§ 1217. Transmittal of information to Congress

"The Special Counsel or any employee of the Special Counsel designated by the Special Counsel, shall transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and the Special Counsel's views on functions, responsibilities, or other matters relating to the Office. Such information shall be transmitted concurrently to the President and any other appropriate agency in the executive branch.

On page 44, line 14, insert "contributing" before "factor".

On page 45, strike out lines 4 through 9 and insert in lieu thereof:

"(g)(1) If an employee, former employee, or applicant for employment is the prevailing party before the Merit Systems Protection Board, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred.

"(2) If an employee, former employee, or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred, regardless of the basis of the decision.

On page 46, beginning with line 8, strike out all before line 11 and insert in lieu thereof:

(b) CONFORMING AMENDMENTS.—(1) The table of chapters for part II of title 5, United States Code, is amended by striking the item relating to chapter 12 and inserting in lieu thereof the following:

"12. Merit Systems Protection Board, Office of Special Counsel, and Individual Right of Action ..... 1201".

(2) The heading for chapter 12 of title 5, United States Code, is amended to read as follows:

"CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION".

(3) The table of sections for chapter 12 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD

"Sec. 1201. Appointment of members of the Merit Systems Protection Board.
"Sec. 1202. Term of office; filling vacancies; removal.
"Sec. 1203. Chairman; Vice Chairman.
"Sec. 1204. Powers and functions of the Merit Systems Protection Board.
"Sec. 1205. Transmittal of information to Congress.
"Sec. 1206. Annual report.

"SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

"Sec. 1211. Establishment.
"Sec. 1212. Powers and functions of the Office of Special Counsel.
"Sec. 1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters.
"Sec. 1214. Investigation of prohibited personnel practices; corrective action.
"Sec. 1215. Disciplinary action.
"Sec. 1216. Other matters within the jurisdiction of the Office of Special Counsel.
"Sec. 1217. Transmittal of information to Congress.
"Sec. 1218. Annual report.
"Sec. 1219. Public information.

"SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES

"Sec. 1221. Individual right of action in certain reprisal cases.
"Sec. 1222. Availability of other remedies.".

(4) Chapter 12 of title 5, United States Code, is further amended by inserting before section 1201 the following subchapter heading:

"SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD".

On page 52, line 21, strike out "and 1993, $20,000,000" and insert in lieu thereof "1993, and 1994, such sums as necessary".

On page 53, lines 1 and 2, strike out "and 1991, $5,000,000" and insert in lieu thereof "1991 and 1992, such sums as necessary".

The PRESIDING OFFICER. Under the unanimous consent agreement, the Senator from Michigan currently has 3 minutes on the amendment and the Senator from Maine has 15 minutes.

Mr. LEVIN. I yield back the remainder of my time on the amendment.

Mr. ROTH. Mr. President, I rise today to express my strong support for the Whistleblower Protection Act of 1989. This legislation will strengthen protection for Federal employees who expose mismanagement, fraud, or wrongdoing in their agencies—protection that is necessary to continue our efforts to substantially reduce waste and fraud in the Federal Government.

Mr. President, the previous attempt to pass a whistleblower protection bill was pocket vetoed by President Reagan in November of last year. At that time, the President expressed a number of concerns with the legislation, including constitutional questions pertaining to the Special Counsel's litigating authority.

It was clear from the beginning of the new administration that all sides sought greater protection for government whistleblowers. And it was clear when President Bush appointed Attorney General Richard Thornburgh the chief negotiator on this legislation, that the administration would negotiate in good faith. The Attorney General held some very serious concerns. Both the Attorney General and Senator LEVIN negotiated hard and honestly to work out their differences in an effort, Mr. President, to achieve a bill which would protect whistleblowers while addressing the administration's concerns. We are considering this legislation today because that mission was accomplished with the successful efforts of both the Justice Department and Senator LEVIN.

This legislation will strengthen the protections available to Federal employees who blow the whistle on waste and fraud in Federal programs. During my service in the Congress, I have learned first hand that fraud and abuse at the Federal level is widespread and pervasive. The Whistleblower Protection Act is needed to reduce unnecessary and wasteful government spending by encouraging and protecting Federal employees who report such wrongdoing.

As the Governmental Affairs Committee discovered during last session, many Federal employees are reluctant to report wrongdoing for fear of reprisal. I believe that in order to have an effective whistleblower law we must encourage and protect Federal employees who decide to blow the whistle. I believe this legislation strives to accomplish this goal.

Mr. President, this legislation will enhance the role of the Office of Special Counsel [OSC] in protecting the employee by making this office an independent agency, separate from the Merit Systems Protection Board [MSPB]. The legislation also clarifies that the Special Counsel's primary role is the protection of employees, especially whistleblowers. The bill adds an important right for an employee to pursue a claim independent of the OSC. The legislation would also prohibit the Special Counsel from disclosing the names of employees who disclose fraud and abuse.

During the negotiations, the administration raised two central concerns. First, the administration questioned provisions authorizing the Special Counsel to litigate against executive branch agencies. Second, the administration questioned provisions revising the so-called Mount Healthy test which has been applied by the Merit

Systems Protection Board to reprisal cases in recent years.

On both of these points, the administration and Senator LEVIN were able to reach agreement. With regard to the constitutional concern, Senator LEVIN agreed to eliminate the Special Counsel's right to go to court, while making it easier for whistleblowers to appeal their own cases. With regard to the second concern, the Attorney General and Senator LEVIN agreed to clarify the standard that whistleblowers must meet to prove that agencies have threatened retaliation for whistleblowing.

Mr. President, this bill is needed to restore the faith of conscientious Federal employees in the fairness and integrity of our Federal service. It will contribute substantially to our efforts to eliminate the perplexing problem of Government waste and fraud. I am pleased that Attorney General Thornburgh and Senator LEVIN reached a compromise which satisfied the administration's concerns while strengthening what all sides wanted—increased protection afforded whistleblowers.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment (No. 9) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I believe that our friend from Arkansas, Mr. PRYOR, who has been so instrumental in getting this bill to the position that we are now at, may wish to speak on this bill, and I see him entering the Chamber as I speak.

How much time do I have remaining on the bill?

The PRESIDING OFFICER. The Senator has all of 2 minutes and 17 seconds.

Mr. LEVIN. We had time we yielded back on the amendment. We may have to ask unanimous consent for some of that back.

I ask unanimous consent then that the Senator from Arkansas have 3 minutes from my time and the Senator from Maine has offered some of his time to make that possible.

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

The Senator from Arkansas.

Mr. PRYOR. Mr. President, first I thank my distinguished colleague, Senator LEVIN, of Michigan, and Senator COHEN, of Maine, for yielding me this time. I will try not to take all this time.

Mr. President, I am pleased to join with Senators LEVIN and GRASSLEY in support of the Whistleblower Protection Act of 1989. We are offering an amendment to the bill which contains the substance of a agreement between the Congress and the administration. This bill has been a long time coming and I want to commend Senator LEVIN and his staff for their perseverance and efforts in this area. I have enjoyed working closely with Senator LEVIN on this issue since holding hearings on his whistleblower legislation in July 1987.

Last year, Congress approved a Whistleblower Protection Act which was then pocket vetoed by President Reagan. That same bill was reintroduced this year as S. 20. Since this bill's introduction in January, there have been serious negotiations between the Congress and the Justice Department to try to resolve the disputed issues. After much discussion, we have reached a compromise that addresses the Justice Department's concerns while not diminishing in any way the bill's improvements on current law. In fact, the compromise package contains provisions that had been dropped in negotiations and were not contained in last year's legislation. Our amendment to S. 20 contains the details of this agreement. I believe that the bill is an even better package for whistleblowers than the one we passed last Congress.

The amendment deletes last year's provision giving the Office of Special Counsel [OSC] independent litigating authority. This issue was a main focus of the President's veto message. The Justice Department felt that the provision was unconstitutional by allowing the courts to resolve a dispute between two Federal agencies. While I do not agree with the Justice Department's opinion, the provision was not central to enhancing protections for whistleblowers.

The compromise agreement increases the confidentiality of an employee's disclosure to the OSC by deleting a provision that allowed the special counsel to reveal the employee's identity if necessary to carry out the functions of the office. In addition, the amendment limits the OSC's ability to intervene in an employee's action before the Merit Systems Protection Board [MSPB]. These two changes to S. 20 are real improvements in the way the system works for whistleblowers.

The amendment also makes a change to the bill's so-called Mount Healthy provision. S. 20 provides that an employee would prevail if he could prove that his whistleblowing was a factor in the personnel action taken against him if the agency could not demonstrate by clear and convincing evidence that it would have taken the personnel action without any disclosure by the employees. As a point of clarification, this amendment will insert "contributing" before the word "factor." A contributing factor is any factor which alone, or in connection with other factors, tends to affect in any way the outcome of the agency's decision. I would like to emphasize that this addition is simply a clarification. Congress intends that the standard of "contributing factor" be far lower than the current "significant factor."

This test will provide whistleblowers with real protection from retaliatory or unsubstantiated personnel actions. I am hopeful that this legislation, when implemented by a special counsel committed to protecting Federal employees, will mean whistleblowers will have to fear less for their jobs when they disclose instances of fraud, waste, or abuse.

I urge my colleagues to join me in supporting this amendment and this legislation.

Mr. President, this has been a piece of legislation that has been subject to a great deal of debate, to long hours of hearing, after hearing.

I compliment Senator LEVIN and Senator COHEN for working out the intricate details of not only making this Whistleblower Protection Act a possibility but also a probability of now becoming the law of this land.

This has become a volatile confusing issue for literally decades within our system of government. The compromise that has been structured that has been worked out with all the parties including the Department of Justice and the White House I think is one of the best legislative compromises that I have seen in a very long time.

Once again, Mr. President, let me thank my distinguished colleagues for their years of service in the vineyard, in the trenches, and even in the foxholes on this issue. We are very proud to be able to bring this measure to the floor at this time.

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

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, let me thank our friend from Arkansas for his comments. He has been really in the middle of the forefront of this battle and he also is chairman of the Subcommittee on Governmental Affairs in the last Congress that reported this bill out and really got the ball rolling on it, and we are all grateful to him.

Mr. PRYOR. I thank the Senator.

Mr. LEVIN. Mr. President, I do not know of anyone else who wishes to speak on the amendment.

I do believe that the unanimous-consent agreement had provision for an amendment of the Senator from Kansas, Senator DOLE. I would ask unanimous consent that the clerk call the roll and a quorum call—I was going to put in a quorum call.

Mr. COHEN. Mr. President, will the Senator withhold a moment?

Mr. LEVIN. Yes.

Mr. COHEN. Mr. President, several individuals have not been mentioned. One we should pay tribute to is Attorney General Thornburgh, who has really worked in a very thoughtful way to make this legislation possible.

Also we have two members sitting beside the Senator, Linda Gustitus and Peter Levine, and Mary Gerwin on my staff, who worked over the years to try to make this a reality. We owe them a great deal, as well.

Mr. LEVIN. I thank my friend from Maine for saying that. It is so true what he said about the staffers. As a matter of fact, I was writing out nice words about them to put in the statement. I am glad he said it orally. They are well-deserved words, indeed.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against each side.

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

The clerk will call the roll.

The 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. DOLE. Mr. President, I was prepared to submit an amendment at this time. I think I will just speak generally about what could either be an amendment or a freestanding piece of legislation. I do not want to interfere with the efforts of the Senator from Michigan, the Senator from Maine, the Senator from Iowa, and other Senators who have worked on this whistleblower bill for some time.

Mr. President, I ask unanimous consent to be added as a cosponsor to the bill.

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

Mr. DOLE. Mr. President, I think it is certainly a significant effort and one that is supported by the administration and one to which the administration, frankly, would prefer there be no amendments offered.

As the Republican leader, I do not want to do what I have asked other Members not to do unless there is some agreement and there is no objection to the amendment, so I would just speak generally to what the purpose of my amendment would be.

Many have seen on television or read about or seen pictures of a U.S. flag and how it is being displayed in Chicago in the art institute. It is placed on the floor in the art institute. Then above the flag there is a register, but to get to the register to sign your name on how the flag should be displayed you have to step on the flag. This has caused an uproar, an uproar by veterans' groups—and I happened to catch I guess seven or eight different TV news accounts of the demonstrations there—Vietnam veterans, World War II veterans, families of veterans, and families of deceased veterans who really do not believe this is the way our flag should be treated.

There have been demonstrations and condemnations. In fact, the city council has threatened to withhold money from another jurisdiction that controls the museum.

But I believe this disgraceful display needs much more than symbolic action. I can recall reading stories and news accounts of how American fighting men have been killed trying to keep the flag from touching the ground. So it seems to me it might be a good opportunity—again, I do not want to mess up the bill before us, but if there is not any objection—and I doubt there would be any on the House side, we have been trying to check that—I would hope that we could leave the amendment in the bill when offered or, if not, as I said, I will be glad to accommodate Senator LEVIN and Senator COHEN.

But, in any event, at the School of the Arts Institute our flag is pinned on the floor directly in front of a ledger in which visitors are invited to write comments. As I said, of course, if you sign the ledger, your feet are squarely placed on Old Glory.

Now I do not know much about art, but I do know desecration when I see it. Title 18 of the United States Code is clear on this point. Trampling the U.S. flag is desecration subject to criminal penalties, and it should be enforced.

In this instance, however, the existing statute might be interpreted to apply to the public and not to the so-called artist who invited this trampling on the flag of the United States.

The amendment I am offering is identical to a bill introduced in the House by Congressman SONNY MONTGOMERY, who is chairman of the Veterans' Committee on the House side. It would simply extend the current statute on desecration of the flag of the United States to include "knowingly displayed on the floor or ground."

Mr. President, the United States Code also currently contains provisions regarding respect for the flag. This section stipulates: "The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise."

The amendment does not, does not, make a criminal violation of simply having allowed a flag to touch the ground. However any calculated act or scheme to put our flag on the ground should be a strict violation of the law.

The display at the School of Arts Institute in Chicago is not an appropriate use of this Nation's symbol of freedom, our flag. Quite frankly, it shows disrespect and contempt for our flag and should be expressly prohibited by law.

I think it is important that this amendment is supported by the American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars. We are checking with other veterans' groups. I would guess about every veteran's group that we can contact will support this amendment.

Is it important? Well, it is to veterans. It is to a lot of Americans who have had their sons or grandsons in the armed services, wherever this might be, or in the National Guard or in the Reserves or in some program that has been important to our defense. I think it is important to people who come to this country as immigrants and who are taught respect for the flag.

I guess you could figure out some weird sort of an argument where this ought to be a freedom that we should not deprive someone of to walk on the flag and display the flag on the ground. But that was never the intent, as I understand it.

The amendment is supported, or the bill will be supported, by a number of my colleagues, Republicans and Democrats, as follows:

Mr. DOLE (for himself and Mr. MURKOWSKI, Mr. BURNS, Mr. HELMS, Mr. BOND, Mr. HEFLIN, Mr. DIXON, Mr. COHEN, Mr. BYRD, Mr. KASTEN, Mr. SYMMS, Mr. PRESSLER, Mr. MCCAIN, Mr. COATS, Mr. WARNER, Mr. GRASSLEY, Mr. SHELBY, Mr. MATSUNAGA, Mr. BOREN, Mr. COCHRAN, Mr. D'AMATO, Mr. DOMENICI, Mr. GRAMM, Mr. HEINZ, Mrs. KASSEBAUM, Mr. LOTT, Mr. MACK, Mr. MCCLURE, Mr. MCCONNELL, Mr. NICKLES, Mr. ROBB, Mr. RUDMAN, Mr. SIMPSON, Mr. STEVENS, Mr. THURMOND, Mr. WALLOP, and Mr. WILSON).

I do not have any further comment. It is a simple amendment. It is about two lines. Just adds that one additional provision to prevent the flagrant and malicious desecration of the U.S. flag.

Mr. COHEN. Will the Senator yield?

Mr. DOLE. I am hapy to yield to the Senator from Maine.

Mr. COHEN. I wish to take this opportunity to commend the Senator for offering this as an amendment either to this bill or to a freestanding bill.

The Senator made the point a moment ago that perhaps this is an exercise of free speech; that maybe the artist is trying to make a statement. But I would agree with the Senator from Kansas, this is not art. This is an epithet.

We all know that freedom of speech is not without its limitations. Justice Holmes reminded us years ago that you cannot shout fire in a crowded theater. This is an incendiary act of sorts because it is shouting fire, I think, in a crowded theater—it is shouting fire in the hearts of millions of men and women in this country who have either sacrificed themselves

or, as the Senator from Kansas has indicated, lost their loved ones who have tried to defend the integrity and the spirit and the symbolism of that flag.

So I commend the Senator for his amendment and hope it will be adopted.

Mr. DOLE. I thank the Senator from Maine. I would like to include in the RECORD the provision in the United States Code that contains provisions regarding respect for the flag, and also the provision in the United States Code dealing with violations of display of the flag. Some have carried penalties. Some do not.

I ask unanimous consent that both those sections be included in the RECORD so we have a complete record.

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

§700. Desecration of the flag of the United States: penalties

(a) Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§176. Respect for flag

No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, State flags, and organization or institutional flags are to be dipped as a mark of honor.

(a) The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property.

(b) The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise.

(c) The flag should never be carried flat or horizontally, but always aloft and free.

(d) The flag should never be used as wearing apparel, bedding, or drapery. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of the platform, and for decoration in general.

(e) The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.

(f) The flag should never be used as a covering for a ceiling.

(g) The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

(h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

(j) No part of the flag should ever be used as a costume or athletic uniform. However, a flag patch may be affixed to the uniform of military personnel, firemen, policemen and members of patriotic organizations. The flag represents a living country and is itself considered a living thing. Therefore, the lapel flag pin being a replica, should be worn on the left lapel near the heart.

(k) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

Mr. BYRD. Mr. President, I rise in support of the legislation that the distinguished minority leader is offering today to strengthen our laws regarding the desecration of the U.S. flag.

The so-called art exhibit at the School of the Art Institute of Chicago, in which a young student has placed the U.S. flag on the floor in a way that encourages people to walk on it, is an abomination.

The U.S. flag is a symbol of all that our Nation stands for: Liberty, justice, religious freedom, and opportunity for all. The flag serves as a manifestation of these goals, which all Americans should recognize and revere.

Henry Ward Beecher once said:

A thoughtful mind when it sees a nation's flag, sees not the flag, but the nation itself. And whatever may be its symbols, its insignia, he reads chiefly in the flag, the government, the principles, the truths, and the history that belong to the nation that sets it forth. The American flag has been a symbol of Liberty and men rejoice in it.

Those words are as true today as they were when Dr. Beecher uttered them more than a century ago. Indeed, as the Queen is to Britain and the Emperor is to Japan, Old Glory is to America!

Unfortunately, some will defend the desecration in Chicago as an act of free speech. On the contrary, the American flag is so displayed on the floor there in an effort to provoke citizens into unlawfully defiling our national symbol. Ostensibly to obtain a response to the flag's manner of display, visitors to the art exhibition are invited to write their comments registering their reaction to the flag's being displayed on the floor in two ledgers, which can only be reached by walking on the flag itself!

Under current Federal law, a number of activities with respect to the flag are already clearly defined as illegal, such as trampling, mutilating, defacing, or defiling the flag. The bill before us today would add "displaying the flag of the United States on the floor or ground" to the list.

It is a sad commentary that we should need such laws to protect our flag, or that we should need to prevent our citizens from defiling their own heritage. But the situation in Chicago demands a response. I support the legislation before us today and urge its passage.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be allowed to proceed for 1 minute.

The PRESIDING OFFICER. Without objection.

Mr. LEVIN. Mr. President, first let me join my friend from Maine in what he said about the Senator from Kansas and his amendment. Nobody in this Senate has more standing than our friend from Kansas to stand on this floor and to point out that desecration. I do not know of any objection to the amendment and I am grateful for your willingness to either have it voted upon freestanding or as part of this bill. We are trying to clear a freestanding bill so that it could be voted on this way.

At the moment, at least, I know of no objection to the amendment. If there are objectors, perhaps they could so indicate to our cloakrooms in one way or another so we would know how to proceed since the Republican leader has indicated a willingness to have this come up under a unanimous consent agreement as a feestanding bill with a time limit on it.

Mr. DOLE. Mr. President, I would indicate the present sponsors are myself, Mr. DIXON, Mr. MURKOWSKI, Mr. BURNS, Mr. HELMS, Mr. BOND, Mr. HEFLIN, and Mr. COHEN.

If anybody else wishes to join us as cosponsors, they are welcome.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. 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. BOND. I ask unanimous consent to proceed as in morning business for 5 minutes.

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

(The remarks of Mr. BOND pertaining to the introduction of legislation are located later in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator is recognized for whatever time as in morning business.

PUERTO RICO'S STATUS

Mr. JOHNSTON. Mr. President, it has been over two decades since the people of Puerto Rico were consulted as to their preference on political status. Much has changed since that time. Many current voters, for example, were not eligible to vote 22 years ago and have thus not had an opportunity to express their choice.

The three principal political parties in Puerto Rico which represent the three alternative status options (commonwealth, independence, and statehood) all included statements supporting the need to resolve the status issue in the platforms they put before the electorate in the November 1988 local elections. In January, the presidents of these three parties communicated to the President of the United States and the leadership of the Congress their desire that the people of Puerto Rico be consulted as to their preferences. Although one of these presidents has since resigned and a new one has assumed office, the new party president has since communicated to me his position in favor of a referendum "which would give the people of Puerto Rico an opportunity to vote on their preference of status and to put an end to our political status dilemma."

I ask unanimous consent that copies of the correspondence I received from the three party presidents in January and the subsequent letter I received in March from the new president of the New Progressive Party be printed at the end of my remarks.

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

(See exhibit 1.)

Mr. JOHNSTON. Mr. President, this desire for the people of Puerto Rico to be consulted on the status issue was transmitted to me in my capacity as chairman of the Committee on Energy and Natural Resources. Under the Standing Rules of the Senate, this committee has principal jurisdiction over insular status matters although other committees will undoubtedly be both interested and involved in the process.

I consider Puerto Rico's political future to be an issue of utmost importance. There is no principle more cherished by the American people, and no principle more closely held by the Founding Fathers, than self-determination. I am therefore committed to serious and expeditious action on this matter.

Mr. President, I know many of my colleagues share my deep interest in this matter. I therefore would like to tell my colleagues what actions we are taking and why we are taking them.

Knowing of the interest of the three principal parties in Puerto Rico in a referendum on political status, I drafted a bill which would provide simply for the people of Puerto Rico to make a choice between the three statuses described in one word or a phrase as, for example, "statehood" or "independence" or "commonwealth." The bill would require a runoff if necessary to obtain a majority for one option, to be followed by a period of negotiation. The objective of that negotiation would be enactment of legislation by Congress. Finally, this bill would provide that the legislation enacted by the Congress would be put before the people of Puerto Rico for approval or disapproval in a second referendum.

In this bill, it was to be understood, of course, that there would not be a guarantee of acceptance by Congress of any particular version of status chosen by the people of Puerto Rico because the terms and definitions of each status can vary widely.

In February, I went to Puerto Rico and had separate meetings with each of the principal party leaders, followed by a joint meeting with all three. It was a repeated theme in these meetings that the status options should be more fully described so that the first referendum would be more meaningful.

While I emphasized the difficulty of fully defining three statuses, the three party leaders believed it could be done. And they thought we ought to try. I then hit upon the idea of having two additional bills.

The second bill would be similar to the first but, when introduced, would instead of saying, for example, "statehood" would state "statehood defined as follows": leaving a blank in the bill, as introduced, to be filled in during the congressional process. This bill would attempt to define the three statuses in general terms and therefore would require the same negotiation with the Congress as described in the first bill. A second congressional bill would be the result of this negotiation followed by a final referendum of the people of Puerto Rico approving it or disapproving it.

The third bill would also have blanks to be filled in for the definitions of the three statuses. However, it is contemplated that in this bill the full legal relationship to be negotiated would be filled in so that upon approval either in the first referendum, or a runoff if necessary to obtain a majority, the status selected would be self-executing. In other words, if the people of Puerto Rico chose a particular status in the referendum, that status would be achieved upon certification of the referendum returns.

We do not know at this point what success we will have in defining these three statuses. If we could fully define the status as provided in the third bill, that would be the most desirable because the people of Puerto Rico would know precisely every detail of their relationship. But we all know what a formidable task this would be. The second bill would be easier but it also presents a formidable task. Although the first bill would lack the definitional clarity of both the second and third bills, and from that standpoint would be less desirable, it would nevertheless present a real choice to the people of Puerto Rico and would certainly be a giant step forward in the self-determination process.

I emphasized to all three parties that it was my intention as chairman of the committee to be evenhanded in this process and not to favor any status during the legislative process. At the same time, I emphasized to the three party leaders that their request to us, which was so urgently and ardently made by all three party leaders, will be treated with the utmost seriousness and that once the process begins it will be my intention to push it to a conclusion, so far as the first legislative round is concerned, in this Congress.

I want to make clear, Mr. President, that these three bills are my product, not those of a particular party. That is, no particular version has been drafted by any of the principal parties. Instead, the three bills will represent attempts by me to respond to the main concern raised by all three parties—the need for precision in definitions of each status option. It is my own view that such precision will be exceedingly difficult to achieve as the complexities of making changes in the current status or changing the current status to another relationship altogether become clear. However, I believe we should make a good faith effort to do so, and I am certainly willing to try. The best forum for defining the status options is the Congress, for ultimately legislation must be passed to implement whatever status option the people choose.

I also outlined an ambitious schedule for the Energy Committee in these meetings with the three party leaders which I would like to share with my colleagues. This schedule is as follows:

Tuesday, April 4: I will introduce three bills (leaving blanks for the required definitions for the second and third bills as described above)

Tuesday, May 9: Deadline for submission to me by each party of paradigm definitions for their respective status options required to complete the second and third bills.

I will introduce these definitions in new bills, or as amendments to the original bills, as soon as possible after receiving the recommendations of the three parties.

Thursday, June 1; Friday, June 2; and Monday, June 5: Target dates for the first hearings by the Senate Committee on Energy and Natural Resources to be held in Washington, DC.

Friday, June 16 and Monday, June 19: Target dates for the second round

of hearings by the Senate Committee on Energy and Natural Resources to be held in San Juan, PR. These dates will be finalized when the Senate's June schedule is announced.

It is very important that we adhere to this schedule because I believe it is important for the first referendum to occur in 1991, and before the next gubernatorial election in Puerto Rico in 1992. It is my view, and a view which I believe all three principal parties share, that the status issue should be considered separate and apart from a general election so that there can be a more meaningful debate on status.

In my discussions with the three party leaders, the need for funding for the three parties for staff, travel, and similar expenses was also discussed. I agreed to seek $500,000 for each party for this purpose to be used during this Congress. I have since spoken to President Bush and with White House representatives whose response has given me confidence that this funding goal will be achieved early in this Congress.

Given the importance of this issue, Mr. President, I wanted to outline the schedule I have developed for the consideration of this matter. I have briefly discussed this approach with President Bush, who in his first State of the Union Message stated his belief that "the people of Puerto Rico should have the right to determine their own political future" and who I believe shares my view that we should move ahead in this Congress to develop a fair process in which the views of the people can be expressed.

At every stage of these proceedings I have kept my esteemed ranking minority member, the distinguished senior Senator from Idaho, advised. He will in due course make his own comments upon this matter. I strongly believe that the matter of Puerto Rico's status should be handled on a nonpartisan basis, and with very close cooperation between the two parties and the excellent staffs of the majority and the minority as we do with so much of our legislation in the Committee on Energy and Natural Resources.

I look forward to working with my many colleagues in the Senate who share my keen interest in this matter over the next 2 years and I hope we will be able to develop legislation by the end of the 101st Congress to which all parties can agree.

In summary, Mr. President, I recently made a trip to Puerto Rico to speak to the leaders of the three parties there—the Statehood Party, the Commonwealth Party, and the Independence Party—to discuss the future status of Puerto Rico. As my colleagues will recall, the President, in his State of the Union Message, mentioned the status of Puerto Rico and its importance. It is a very live and important and enthusiastic issue in terms of the people of Puerto Rico.

After consultation with the leaders of the three parties, it was determined, Mr. President, that in this Congress we should deal with the issue of status and that we should convert legislation leading to a referendum or set of referendums to determine the status of Puerto Rico.

We hit upon a plan to do so, Mr. President, and we planned in the Committee on Energy and Natural Resources, which is the committee of primary jurisdiction over Puerto Rican matters, to introduce legislation to that effect.

I will introduce three bills, Mr. President. The first will call for a referendum in Puerto Rico on the three statuses—that is statehood, commonwealth, and independence—described in a word or two to give them a choice of one of the three statuses with a runoff in case no status gets 50 percent of the vote.

Upon choosing one of these statuses, we would then enter a period of negotiation with Puerto Rico to define that status. For example, if the people in their referendum chose commonwealth, we would enter into a period of negotiations to define how to enhance and improve that commonwealth status. Likewise, if statehood was chosen, we would in the negotiations define the terms of statehood under which Puerto Rico would come into the Union.

That legislation, when adopted by Congress, would envision that we would have another referendum by the people of Puerto Rico to approve that so that, in effect, you have the first referendum and perhaps a runoff to secure a 50-percent choice on one of the three statuses, leading to a choice of one of the three within a period of negotiation leading to a second piece of legislation to define fully that status and leading to a final referendum for the people of Puerto Rico so that they would have in this first bill two choices. First, a choice of which status to negotiate and, second, a choice of approval of the fruits of that negotiation.

Mr. President, I went to Puerto Rico armed with a draft of that bill. I discussed it with the leaders of the three parties who want very much to have the referendum, but who suggested it would be a better referendum if the terms of the three statuses were more fully defined to the people so that if they voted for commonwealth, they would know more precisely what the terms of that status were, and likewise with the other two statuses.

Pursuant to that suggestion, Mr. President, we hit upon the idea of introducing two other bills. The second bill would be similar to that first discussed, except that instead of saying, for example, statehood period, it would say statehood defined as follows, leaving a blank with the congressional process to fill in that blank. Similarly with the other two statuses. You would have the same referendum and runoff leading to a period of negotiation with a second congressional bill and a final referendum. In the second bill, the description would be in general terms and would not attempt fully to define the status.

The third bill, Mr. President, would leave a blank after the one-word description of the status with the blank to be filled in similarly to the second bill. However, it would be the purpose of the third bill to fully and completely define that status so that upon the referendum by the people of Puerto Rico, that status would be self-executing and ipso facto the choice of the people of Puerto Rico would come into being. For example, if it were the independence chosen, then the kind of independence as defined fully would automatically upon certification of the election results be effective.

Mr. President, it is of course a daunting task to define fully and completely the terms of what is a very complicated legal relationship between Puerto Rico and the United States, and we recognize the difficulty of doing that in the second bill, or even of doing it in general terms. Nevertheless, Mr. President, it is clear that we should try to do this, and so accordingly we will introduce those bills.

EXHIBIT 1

JANUARY 17, 1989.

HON. J. BENNETT JOHNSTON,
Chairman, Energy and National Resources Committee, Washington, DC.

DEAR MR. CHAIRMAN: In the past election held on November 8, 1988, all three political parties, which represent the three alternatives for the ultimate political status of the People of Puerto Rico, included the need for the resolution of the status issue in the platforms they presented to the electorate.

In accordance with the platform of the Popular Democratic Party, the Governor of Puerto Rico announced in his Inauguration the intention of the Government of Puerto Rico to pursue the resolution of the status question with the Government of the United States of America and convened a meeting of the leadership of the three political parties that represent the three formulas.

As a result of this meeting we, the President—of the Popular Democratic Party, representing Commonwealth, the New Progressive Party, representing Statehood, and the Independence Party, representing Independence—have agreed to express to the President and to the Congress of the United States of America, that the People of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status and the consultation should have the guarantee that the will of the People once expressed shall be implemented through an act of Congress which would establish the appropriate mechanisms and procedures to that effect.

Towards the formulation of such an act of Congress and related policies, we request to meet with you at your earliest convenience.

Conscious that since Puerto Rico came under the sovereignty of the United States of America through the Treaty of Paris in 1898, the People of Puerto Rico have not been formally consulted by the United States of America as to their choice of their ultimate political status, and in the Puerto Rican history and confident of the commitment of the United States of America and of the People of Puerto Rico to the principles of self-determination and government by the consent of the governed, we remain,

Cordially yours,

BALTASAR CORRADA DEL RIO,
President,
New Progressive Party.

RAFAEL HERNANDEZ COLON,
President,
Popular Democratic Party.

RUBEN BERRIOS MARTINEZ,
President,
Puerto Rican Independence Party.

CHARLES ROMERO BARCELO,
FORMER GOVERNOR OF PUERTO RICO,
San Juan, PR, March 13, 1989.

HON. BENNETT JOHNSTON,
Senator, U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: On February 27, 1989 I told you that I would have completed my consultation with the leadership of the New Progressive Party by March 13. I have completed the initial consultation process as I promised.

The local press has reported that you will be giving a report to the Senate on our conversations and discussions regarding the referendum on the status of Puerto Rico. We would like you to have the benefits of the results of my consultation before you make the report to the Senate.

In my discussion with the leadership of the party, it was determined and decided to make it clearly known that we are strongly in favor of a referendum which would give the people of Puerto Rico an opportunity to vote on their preference of status and to put an end to our political status dilemma. We want a consultation that provides for a definite solution. A solution compatible with the democratic principles of our Nation and a solution which provides the people of Puerto Rico with full sovereignty as a State of the Union or as an independent nation. Any alternative which provides for US citizenship, but fails to provide for equal participation in the political process of the Nation that we are citizens of, would be unacceptable.

During the discussion with the leadership of our Party, the letter of January 17, 1989 signed by Baltasar Corrada del rio, Rafael Hernández-Colón and Rubén Berrios-Martinez and the Joint Declaration were considered to be unacceptable to the New Progressive Party. A proposed Executive Order to be signed by the Governor, referred to in the Joint Declaration, may be considered acceptable and a proper way to channel all our efforts locally, but only after the proposed Executive Order is reviewed and its complete text unanimously accepted by Rafael Hernández-Colón, Rubén Berrios-Martinez and myself.

We also consider unacceptable that part of the letter which states that the beginning of the process leading to the holding of a referendum is the result of an initiative by the Governor of Puerto Rico. We do not accept that the conversations and the process now underway are the result of the Governor's initiative. It is, on the contrary, the result of the desire and the constant demands of all those persons who oppose the colonial or territorial status of Puerto Rico. It is also the result of President Bush's commitment and continued remarks during the last campaign in Puerto Rico when he indicated his desire to submit the question of the political status to a vote in Puerto Rico, and that he personally favored statehood. It was the result of all of these pressures upon the Governor that bore upon him to call for a meeting with the Presidents of the other two registered political parties.

We further want to make clear for the record that we cannot accept the last part of the third paragraph of the letter, which states or implies that Congress must honor the result of the referendum, no matter which status formula wins. We cannot and we will never condone, endorse or accept as a definite or permanent solution to our status dilemma, a relationship with the rest of the Nation where we would remain as US citizens, but would be permanently denied our right to vote for President and we would also be denied our right to have two Senators and the corresponding number of Representatives in the House.

The Governor and his Popular Party advocate the "culmination" of the colonial status of Puerto Rico, which under the US Constitution and according to the US Supreme Court is nothing else than an "unincorporated territory". The name Commonwealth does not define a status. It is merely a word used to embellish the negative implication of the word "territory".

Any "improvement" or "enhancement" of Commonwealth which would leave unaltered the basic relationship existing between the 3.4 million US citizens and the rest of the Nation, based on a relationship of permanent union, would constitute a "permanent disenfranchisement". Such a relationship would not only be undemocratic, but should never be condoned, supported or encouraged by Congress.

In 1991, we will be celebrating the 500th anniversary of the Discovery of America. At that time, we should have at least begun to take the first steps to decolonize Puerto Rico. It would be a shame to the Nation if Congress were to sponsor or support any relationship with 3.4 million US citizens which was to include a condition of permanent disenfranchisement.

Although we do not subscribe to the letter and to the Joint Declaration of January 17, 1989 for the above stated reasons, we nevertheless feel that the process has already started pursuant to the conversations held in Puerto Rico on February 27, 1989 at the Condado Plaza under your auspices as Chairman of the Committee on Energy and Natural Resources. For that reason we do not believe that it is necessary at this time to sign any other letter or Joint Agreement. As far as we are concerned, the basis for the process now before us is the initial conversation held by and between Governor Rafael Hernández-Colón, as President of the Popular Democratic Party, Rubén Berrios-Martinez as President of the Independent Party, and myself, as President of the New Progressive Party together with you as Chairman of the Committee on Energy and Natural Resources of the US Senate.

We are encouraged, by what has transpired since then, and as you know, we have been keeping in touch with your staff and moving rapidly to keep-up with your proposed time table.

We will cooperate in every way possible to get legislation through Congress before the end of the year 1990. We want it to be understood, however, that the plebiscite should not be held until the year 1991, preferably during the summer.

We have discussed the reasons why the plebiscite should be held in 1991 and not sooner. Among the many reasons, one is the need for time to reorganize the Party, another is the need to raise the funds and organize the campaign of education necessary for the people to be properly advised as to what they are voting for.

You can count on our support in facilitating the process for the approval of the necessary legislation to guarantee a meaningful and fair vote by the people of Puerto Rico on the status preference. We appreciate your commitment to finding a permanent solution to our political status dilemma.

In 1993, Puerto Rico will have been a colony for 500 years. Let us hope that this process, which is now beginning, will lead us to our dream of equality in political rights and economic and social opportunities with all of the US citizens in the rest of the Nation.

Sincerely yours,

CARLOS ROMERO-BARCELÓ.

Mr. McCLURE. Mr. President, I would like to join my colleague from Louisiana in his remarks. While I do not have the background which he does with respect to Puerto Rico since he served on the ad hoc advisory group in the early 1970's, I do appreciate how difficult it has been to achieve a consensus among the different political aspirations which exist in Puerto Rico. What he has accomplished so far is remarkable, and he is to be commended for his efforts. I share his hope that we will be able to consider and enact legislation early enough so that the three parties will have ample time to present their respective preferences to the people of Puerto Rico at a time when the issue is not clouded by the general elections.

Mr. President, it has been barely 30 years since the last two States were admitted to the Union. We have among our colleagues, Members who were intimately involved in that process and who remember the days of territorial government. They also can remember the debates and the concerns which made the process for Hawaii and Alaska so protracted and at times acrimonious. I have no delusions about the course on which we are about to embark. I am also under no illusions that as we develop legislation, we will be asked by representatives of the various status options to tilt the process in one direction or another. The temptation to acceed to that tilt which individual Members may personally support will have to be resisted.

I remember a few years ago when the Senate and the House considered and enacted a resolution dealing with an effort by Cuba to bring Puerto Rico before the United Nations. We had an interesting debate at that time with respect to the concept of self determi-

nation. Senator JOHNSTON stated at one point during the debate: "I do not know whether the Congress would approve Statehood or not. I do not know whether the Congress would approve the new thesis or not. I do not know whether the Congress would approve independence or not. I honestly do not know what Statehood, new thesis, and Independence mean in all their details. Without that knowledge, it would be dishonest on my part to vote for a resolution indicating I would approve a proposal I haven't seen. I'm not willing to do that with administration proposals sight unseen and I am certainly not going to do it with the future of 3½ million people."

I agree fully with Senator JOHNSTON that we need to provide some parameters so that there is no misconception as to what our fellow citizens in Puerto Rico will have before them. Certainly, I expect that each of the three parties will make claims, both with respect to their preferred status and against the other two options, which will not be accurate. That is the nature of political debate. I concur with Senator JOHNSTON that we need to minimize, if we can not eliminate, any misconceptions. We have an obligation to be fair and even-handed, so will be held. I support the effort being undertaken by Senator JOHNSTON and I plan to work closely with him.

The Committee on Energy and Natural Resources, through its predecessor, the Committee on Interior and Insular Affairs, has institutionally the history of implementation of status options ranging from the Northwest ordinance to Philippine independence to statehood from the Northwest ordinance to Philippine independence to statehood for 37 States. We are responsible for the present Federal relations arrangement with Puerto Rico and have considered and reported other measures for other areas such as Guam, the Virgin Islands, American Samoa, The Northern Mariana Islands, and the freely associated states of the Republic of the Marshall Islands, and the Federated States of Micronesia. We currently have pending before the committee a proposal from Guam to alter certain aspects of their Federal relations. Senator JOHNSTON and I worked closely together on many of those issues and I look forward to working with him, our Senate colleagues, the administration, and the interested parties and individuals in Puerto Rico and elsewhere who will be involved in this process.

WHISTLEBLOWER PROTECTION ACT OF 1989

The Senate continued with the consideration of the bill.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Maine wish to be recognized.

Mr. COHEN. Mr. President, I believe that Senator MCCAIN wanted to address the amendment now pending.

Mr. DIXON. Mr. President, will the managers yield for a question?

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. I wonder if the managers would yield to me. I am anxious to support the amendment by my distinguished friend, the minority leader, which I suspect is what my friend, the Senator from Arizona, wants to talk about. I wonder what kind of timeframe and procedural situation we are in here.

The PRESIDING OFFICER. The Chair would inform Senators that there is no time remaining at all on the bill or any pending amendments. Any other statements would have to be presented under unanimous consent.

Mr. LEVIN. I would ask the Senators from Arizona and Illinois how many minutes they need.

Mr. DIXON. I only need a minute or two to express my support for what I understand is the Dole-Dixon amendment. It concerns a matter of desecration of the flag in Chicago, and I certainly want to be on record supporting it but I do not want to take much time.

Mr. LEVIN. I ask unanimous consent that 4 minutes be allocated to the Senator from Arizona and 2 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Chair also informs Senators that at this time a recess is scheduled for 12 noon.

Mr. LEVIN. I understand the majority leader is on his way to the floor.

I ask unanimous consent that the recess begin following disposition of these remarks and that 10 minutes be allocated to the Senator from Colorado prior to that recess.

The PRESIDING OFFICER. Is there an objection? Hearing none, it is so ordered. Under the unanimous-consent agreement, the Senator from Arizona is recognized.

Mr. MCCAIN. I thank the chair. I thank my friend from Michigan for his unanimous-consent request in order to allow me to say a few words about the proposed amendment of the distinguished Republican leader.

Mr. President, I first of all, I should like to thank Senator DOLE for his sponsorship of this amendment and my colleague from Illinois for his sponsorship. I do not know what in the world is going on in Chicago. I have visited that airport on many occasions, sometimes spending the night there. Mr. President, every American who has served their country should understand the issue involved, and what is going on in the name of art—an American flag is placed on the floor in front and directly below a guest book. This guest book is a register that has to be signed in order to enter into this particular establishment, and it forces American citizens to stand on the American flag.

Mr. President, this is not art. This is an insult. This is an insult to the American flag and the men and women of this country who serve it and who have made sacrifices to our country.

Mr. President, I hope we adopt the amendment of the distinguished minority leader and Senator from Illinois as rapidly as possible. Veterans throughout America are calling my office; men and women who have served this country are, understandably, angered by this kind of activity. We do not need it. It is totally unnecessary and it is a needless affront to people who cherish this flag of ours. I hope we get a unanimous vote on passage of this amendment so that we can express the sense of this body that this kind of behavior is not only uncalled for but an affront to all Americans who cherish and revere the symbol of this great Nation. A beacon of freedom simply does not deserve such treatment.

Mr. COHEN. If the Senator will yield, I might point out that the Senator from Arizona made a very powerful speech before the Republican National Convention about the meaning of the flag to one of his colleagues who spent a considerable amount of very difficult time in a North Vietnamese prison camp, and the kind of hope and inspiration it provided for the other men who were confined to that camp. I think that stands in dramatic contrast to what is taking place in Chicago as far as laying out that flag, forcing American people to walk on it to register at that art museum.

The PRESIDING OFFICER. Under the order, the Senator from Illinois is now recognized.

Mr. DIXON. Mr. President, I thank my distinguished friend from Arizona and my friend from Maine for their remarks.

Chicago is a great city, Mr. President, my State is a great State, and the people of my State object just as strenuously to a desecration of the American flag as anybody anywhere in America. I am delighted to be a principal cosponsor with my friend, the distinguished minority leader, of this amendment.

As I understand, the statute now says you may not burn a flag, the statute says you may not trample upon the American flag, and by this amendment we will say that you cannot place the American flag on the ground and treat it with contempt. I support that amendment, Mr. President.

I am shocked at what has occurred in a great city and a great State, and I feel I speak for all 11½ million Illinoisans who are like minded when I say we should pass this amendment at once and express our horror at the desecration of the American flag, which is the institutional, significant banner of our great Nation.

I thank the chair. I thank my colleagues for yielding me this time.

The PRESIDING OFFICER The Senator from Wisconsin.

Mr. LEVIN. Mr. President, will the Senator from Wisconsin yield for a unanimous-consent request?

Mr. KASTEN. I am pleased to yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. LEVIN. Mr. President, I ask unanimous consent that Senator DOLE's amendment be voted on as a separate bill immediately following the final passage vote on S. 20, the whistleblower bill; I further ask unanimous consent that no amendments or motions be in order with respect to Senator DOLE's bill and that the debate thus far on the amendment appear in the RECORD as debate on the bill; I further ask unanimous consent that the votes ordered to occur at 2 o'clock this afternoon occur later today immediately following the impeachment proceedings; and, I further ask unanimous consent that there be a live quorum today at 2 p.m., after which the Senate will go into closed session to deliberate on Judge Hastings' motions.

I also ask unanimous consent it be in order to seek the yeas and nays on Senator DOLE's separate freestanding bill at this time.

The PRESIDING OFFICER. The Senator has that right. Does he seek the yeas and nays at this time?

Mr. LEVIN. At this time.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. Without objection, the proposal as propounded by the Senator from Michigan is so ordered.

Mr. LEVIN. I ask unanimous consent that the yeas and nays be ordered on S. 20 at this time.

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

The yeas and nays were ordered.

Mr. LEVIN. My understanding is that the vote on S. 20 would come first, and then the vote on Senator DOLE's bill. Is that correct?

The PRESIDING OFFICER. Without objection, that will be the order.

Mr. LEVIN. I thank my friend from Wisconsin for accommodating us on this.

Mr. DOLE. I thank my friend.

PRIVILEGE OF THE FLOOR DURING CLOSED IMPEACHMENT PROCEEDINGS OF JUDGE ALCEE L. HASTINGS

Mr. LEVIN. I just have one other unanimous-consent request, if the Senator from Wisconsin will yield.

Mr. President, I ask unanimous consent that floor privileges during today's closed impeachment proceeding of Judge Hastings be granted to:

Michael Davidson, Senate Legal Counsel.

Morgan Frankel, Office of Senate Legal Counsel.

Charles Kinney, Democratic Policy Committee.

George Carrenbauer, Democratic Policy Committee.

Anita Jensen, Senator MITCHELL's staff.

Rebecca Roberts, Office of President Pro Tempore.

Roy Greenaway, administrative assistant to Senator CRANSTON.

Sheila Burke, chief of staff for Republican leader.

Robert Dove, Republican leader's staff.

Dennis Shea, Republican leader's staff.

Jim Whittinghill, Republican leader's staff.

Richard Quinn, Republican leader's staff.

Mike Tongour, Assistant Republican leader's staff.

Jeff Peck, Judiciary Committee majority.

Thad Strom, Judiciary Committee minority.

Terry Wooten, Judiciary Committee minority.

Jack Sousa, Rules Committee majority.

Ron Welch, Judiciary Committee minority.

Kevin Kayes, Assistant Parliamentarian.

Jim Weber, Second Assistant Parliamentarian.

Jennifer Smith, Third Assistant Parliamentarian.

David Tinsley, Assistant Journal Clerk.

Scott Bates, Assistant Legislative Clerk.

William Mohr, Official Reporter.

Frank A. Smonskey, Official Reporter.

Ronald Kavulick, Official Reporter.

Jerald D. Linnell, Official Reporter.

Raleigh Milton, Official Reporter.

Joel Breitner, Official Reporter.

Mary Jane McCarthy, Official Reporter.

Paul A. Nelson, Official Reporter.

Kathy Drummond, staff assistant, Official Reporters.

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

The Chair informs the Senators that time for the unanimous-consent agreements propounded by the Senator from Michigan has now expired. Any additional requests would have to be under unanimous consent.

Mr. LEVIN. I ask unanimous consent that the Senator from Wisconsin be allowed to proceed as in morning business for 3 minutes, that Senator HOLLINGS be allowed to proceed for 5 minutes, and that then the Senate stand in recess.

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

The Senator from Wisconsin.

NATIONAL AFFORDABLE HOUSING ACT

Mr. KASTEN. Mr. President, home ownership has been part of the American idea for as long as we've been a nation. Owning your own home gives you a special stake in your community, a special responsibility to your neighbors and fellow citizens.

Today, too many young Americans see the possibility of home ownership only as a distant dream—an option foreclosed by high interest rates, sky-high prices and prohibitive down payments.

With all these obstacles placed in their path, even young families with two incomes find it difficult to become homeowners.

This is an important problem for the next generation. And we can't solve it overnight. But we can make a beginning.

A new bill just introduced by Senators D'AMATO, CRANSTON, myself, and many others would start to give these young people the help they need.

The bill is called the National Affordable Housing Act, and it would allow first-time home buyers to reinvest their savings from individual retirement accounts or employer sponsored 401(k) plans into housing down payments.

The bill decreases Federal Housing Administration down payments. It brings them down from 5 to 3 percent on the first $50,000 of the mortgage, and on the whole mortgage—even above $50,000—for first-time home buyers who have completed a financial counseling program.

This bill helps make the housing market more fair—by setting the FHA mortgage ceiling at 95 percent of the median sales price for the region. It gives State and local governments more flexibility in meeting housing needs, and creates a new project independence to give residents of public housing greater access to employment and other services.

The bill will expand the supply of housing for low- and middle-income Americans by providing $3 billion to State and local governments through the new Housing Opportunity Partnership Program.

The chief goal of any national housing policy ought to be access—the

more men and women have access to the housing market, the better off a community will be.

That is what this bill does. Thanks to this proposal, some 500,000 more Americans will be given an opportunity to own their own homes.

We need to make homeownership as much a part of the lives of the younger generation as it was to my generation when we were that age. By just about any measure, America is a richer county today than when I was growing up. There is no excuse for a country as wealthy and economically healthy as ours to close off this important avenue to young men and women.

HUD Secretary Jack Kemp is in our corner on this proposal, and with his help and the support of would-be home owners all over America, we can make it a reality. We can help create a new generation of home owning Americans—and this bill gives us some speed in the right direction.

FBI SPECIAL INQUIRY (SPIN) INVESTIGATIONS

Mr. HOLLINGS. Mr. President, at this morning's hearing of the Commerce-Justice-State Subcommittee attended by the Senator from New Hampshire [Mr. RUDMAN], the Senator from Texas [Mr. GRAMM], and myself, we received from the FBI a report entitled: "Issue: FBI Special Inquiry [SPIN] Investigations." It was not, of course, classified. It was entered into the record this morning at the hearing.

Mr. President, I ask unanimous consent to have the entire report printed in the RECORD.

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

ISSUE: FBI SPECIAL INQUIRY (SPIN) INVESTIGATIONS

SCOPE AND NATURE OF SPIN INVESTIGATIONS

Special Inquiry (SPIN) is a term used by the FBI to characterize background investigations conducted by the FBI for the White House, the National Security Council and several select Congressional committees.

PURPOSE OF SPIN INVESTIGATIONS

The goal of SPIN investigations conducted for the White House is to provide White House officials with accurate and complete information concerning the character, loyalty, reputation and associates of a potential appointee, a White House staff member, or other individuals requiring frequent access to the White House. The scope of the SPIN process and the manner in which it is reported are intended to meet the needs of the President and his staff in nomination, employment and access decisions, as well as to assist in security clearance determinations.

SPIN investigations do not, with the exception of some cases involving the judiciary, focus upon an individual's substantive ability in the area of the prospective appointment. While the FBI does check credit records to ascertain an appointee's financial responsibility, the FBI has not been tasked with conducting inquiries into financial matters (e.g., a nominee's investments or other sources of income, or sources of loans). The FBI merely asks knowledgeable persons whether an appointee lives beyond his/her financial means.

Financial statements of appointees are reviewed by White House personnel and are not provided to the FBI. In addition, IRS records are provided directly to the White House and are not furnished to the FBI. If allegations of improprieties relating to financial matters are developed through other inquiries conducted during the SPIN process, or are brought to the FBI's attention by the White House, the FBI undertakes the investigation necessary to resolve them.

It is important to note that the FBI's investigation is not the only basis upon which the White House makes decisions regarding nominations or filling staff vacancies. Other information is used by the White House in making these decisions including personal interviews, questionnaires concerning personal and financial data, Internal Revenue Service record checks, and name checks.

INVESTIGATIVE PROCESS

Requests for SPIN investigations are handcarried from the White House to the FBI, along with Standard Form 86, Questionnaire for Sensitive Position, a supplementary list of 10 "issue" type questions, the individuals fingerprints and the release necessary for access to educational, occupational, credit and other records. This data is carefully reviewed in the SPIN Unit of the Special Inquiry and Civil Rights Section in the Criminal Investigative Division. The SPIN Unit is responsible for the overall field-wide coordination and administration of these investigations. Checks of FBI records systems, and indices including fingerprint files, at headquarters and in field offices are routinely performed. If no previous background investigation has been conducted concerning the appointee, a full-field investigation is initiated which covers the full extent of the appointee's adult life from high school to the present. Assignments are sent by teletype and facsimile to the FBI field offices covering the appointee's place of birth, places of residence, education and employment, and to offices such as Saint Louis where military personnel records are checked if the appointee served in the military.

Because of their sensitivity, SPIN cases conducted for the White House require the most comprehensive investigation to assure that if derogatory information exists, it is developed fully and resolved whenever possible. This standard of complete thoroughness in SPIN matters is absolutely essential to best serve the President in the nomination process and to assure that the nominee's character is not impugned by spurious information, rumor or innuendo.

As a general rule, a minimum of 35 persons, who can knowledgeably comment on a Presidential appointee's background, are interviewed. About 20 persons are usually interviewed in White House staff cases. These interviews typically include references, associates, colleagues, neighbors, business competitors, and others who can comment on the appointee's loyalty, character and reputation. When allegations or any derogatory information are developed, all logical additional investigation is conducted to resolve the issue and may require locating numerous additional persons who can provide more information regarding the specifics of the particular allegation.

Among the issues explored in SPIN investigations are the following: (a) personal and business credit issues; (b) civil suits as a plaintiff or defendant, including divorces; (c) any removals/dismissals of employment; (d) any contact with representatives of foreign countries; (e) any details of applicant's personal life that could be used to coerce the applicant; (f) any professional grievances; (g) business/investment circumstances involving a possible conflict of interest; (h) details of any psychological counseling; (i) prescription drug, alcohol abuse, or illegal drug use; (j) membership in organizations whose policies restrict membership on the basis of sex, race, creed, color, religion, or national origin; (k) criminal history; and (l) "lifestyle" issues i.e. homosexuality, wife abuse, etc.

Results of SPIN investigations are reported to FBIHQ by teletypes and reports which are then summarized in memorandum form in the SPIN Unit. This summary memoranda is provided to the White House. Derogatory information, if developed, is included in the summary and is attributed to the person or persons who provided the information. If these persons request confidentiality, their identities are concealed but the White House is provided information concerning the individual's association with the appointee and the basis of the individual's knowledge of the derogatory information so that the White House can properly assess the significance and pertinence of the information. Complete texts of such interviews, with the identities concealed where appropriate, are also provided to the White House along with the summary or are incorporated into the text of the summary.

INVESTIGATIVE DEADLINES VS TIMELINESS

By mutual agreement between the White House and the FBI, flexible time frames for the completion of the background investigation by the FBI have been established, dependent on the nature and priority of the particular position.

Presidential Appointment with Senate Confirmation (PAS) or Presidential Appointment, 25 calendar days.

White House staff or access, 35 calendar days.

On board staff or access (5 year update), 75 calendar days.

Limited inquiry or Expanded Name Check, 10 calendar days.

These deadlines are flexible, depending on circumstances and can be shortened by White House upon request. For example, full-field investigations on Cabinet-level appointees have been conducted in as short as 5 working days but have averaged approximately 20-22 days, for completion during the Bush Administration to date.

While timeliness is a major concern, it cannot be allowed to foreshadow the primary importance of thoroughness. Failure to conduct a comprehensive investigation can compromise the integrity of the entire appointment process and erode both political and public trust in the FBI and the President.

Short deadlines often have an adverse impact upon the quality of investigations, although the distinctions in quality may be subtle. For example, interviews that are normally conducted in person may be done by telephone under exceptional circumstances. However, a person so interviewed is less likely to be candid. Leads which will probably be unproductive, but may possibly open new avenues of investigation, are less likely to be pursued.

ROLE OF THE FBI IN THE APPOINTMENT PROCESS

While there has been some question as to the responsibility of the FBI to the Senate regarding SPIN investigations conducted for the White House, precedent and custom have clearly defined the FBI's role in the appointment process. That role has been to provide the President, through the White House Counsel's Office, with accurate and complete information concerning a nominee's character, loyalty, reputation and associates so that the President can make informed nomination decisions.

It is essential that the FBI's role be preserved as an impartial, nonpartisan investigative agency. This is best accomplished when the FBI provides the results of its SPIN investigations to the White House which would then make appropriate disclosure of this information to the Senate, consistent with the needs to secure the confidentiality of sensitive information, sources and law enforcement methods. The appointment of a nominee requiring Senate confirmation requires the interaction and ultimate agreement between the White House and Senate. The FBI has and should have no stake in the nomination or "advice and consent" process. The FBI should not be drawn into this essentially political dialogue. To place the FBI in any other position could endanger the FBI's objectivity and independence upon which both the White House and the Senate must ultimately rely.

ISSUE: THE BACKGROUND INVESTIGATION OF JOHN GOODWIN TOWER

Background: On 12/2/88, the Office of the President-Elect (OPE) requested that the FBI conduct and expedite full field investigation on former Senator John Goodwin Tower, who had been nominated as Secretary of Defense. Contained within the initial request was a White House request to resolve a rumor of Tower's alleged involvement with a female foreign national during his assignment to the Geneva Strategic Arms Reduction Talks during 1985-86.

Almost immediately upon initiation the FBI began to receive allegations concerning (1) alcohol abuse, (2) sexual misconduct, (3) conflict of interest with defense contractors, (4) improper campaign funding activities, and (5) Tower's involvement in the "Ill Wind" investigation. Tower's nomination became a front page media event resulting in numerous allegations being received by both the FBI and the Senate Armed Services Committee (SASC) on almost a daily basis.

Summary memoranda containing the results of the FBI's current investigative status were furnished to the OPE on December 13 and 23, 1988, on January 6, 13, and 25, 1989 and on February 8, 20, 27, and 28, 1989.

KEY EVENTS AND TALKING POINTS

During the period of February 1-2, 1989, a rift developed between Senator Sam Nunn, Chairman, SASC, and the Office of Counsel to the President (OCP) over the OCP's handling of the Tower confirmation process.

Pursuant to a letter dated 2/2/89 to Director Sessions from Senators Nunn and Warner of the SASC, and with the approval of the White House, additional investigation was requested into SASC concerns of Senator Tower's continued abuse of alcohol and womanizing, focusing on the period since Tower left the Senate (1983-1989).

On 2/7/89, new developments involving plea agreements in "Ill Wind" necessitated the FBI having to ask for additonal time to resolve alleged illegal campaign contribution to Senator Tower by "Ill Wind" principals. The Attorney General and the White House concurred with the need to resolve this issue.

Mr. HOLLINGS. Mr. President, this report is very revealing, especially in as much as it is an impartial assessment. It is written by the Federal Bureau of Investigation. The witness this morning, Floyd Clarke, is in charge of what they call the Special Inquiry Unit of the Federal Bureau of Investigation.

The full report makes several critically important points. No. 1, it notes that in every background investigation the FBI asks about alcohol abuse. Specifically, Senator John Tower was not asked any special question nor put to a special or separate standard. Indeed, it was brought out that Mr. CHENEY was asked the same question. I emphasize here that the standard or question was not different. It was the answer of Mr. Tower that was different. It was the answer that caused particular concern.

The report also points out that the FBI submitted nine summary memoranda, totaling 371 pages with enclosures totaling another 137 pages, regarding Senator Tower.

It states that the FBI interviewed approximately 500 individuals, and reinterviewed 20 of those individuals. The normal number of interviewees in a background check is about 35. In the Tower case, there were 500 interviewees. The FBI summary memorandum addressed 21 separate issues which required the FBI to investigate and resolve 69 separate allegations against Senator Tower.

Mr. President, I am reading this from the FBI report. I refer to another part of the report that I asked the FBI about this morning, and that goes to the matter of the care and concern that the FBI takes with respect to spurious information, rumor, and innuendo. I refer specifically to this paragraph in the report:

Because of their sensitivity, SPIN cases conducted for the White House require the most comprehensive investigation to assure that if derogatory information exists, it is developed fully and resolved whenever possible. This standard of complete thoroughness in SPIN matters is absolutely essential to best serve the President in the nomination process and to assure that the nominee's character is not impugned by spurious information, rumor or innuendo.

So I put the question to the FBI this morning, "Did you send any spurious information, rumor, or innuendo to the White House in this summary?" The answer was, "no." In other words, the FBI sends a summary to the White House, and, in turn, the White House sends a summary to us. This is a matter to be reexamined in the future because we know that, under rules of best evidence, priority is given to factual, direct evidence, eyewitness accounts. Yet here we are relying on summaries, which are not necessarily direct evidence. We will have to look into this matter further.

However, Mr. President, the FBI made a very revealing statement, and I am particularly sensitive to this, because in the Tower confirmation proceedings, this Senator, on this side of the aisle, was accused of character assassination, innuendo, rumor, and so on. Yet we now have a report from the FBI that a special thrust of its investigations is, and I quote, "to assure that the nominee's character is not impugned by spurious information, rumor or innuendo." I was accused of "character assassination" because I used the term "alcohol abuser." I am pleased to note that the FBI vindicates my use of that term, because they drew the same conclusion from the evidence on Senator Tower.

I quote the summary conclusion in the FBI report:

The FBI investigation did not disclose any illegal activity on the part of Senator Tower. However, the investigation did confirm a prior pattern of alcohol abuse, as well as the Senator's continuing sporadic use of alcohol with indications that he had greatly reduced his consumption levels during 1983 and 1989.

That, Mr. President, is the impartial Federal Bureau of Investigation summary conclusion, distilled from 500 interviews focusing on 69 allegations. An express thrust of the investigation was to weed out the rumor and innuendo. The FBI did just that, yet the Bureau confirmed—that is the report's word, "confirmed"—a prior pattern of alcohol abuse, as well as the Senator's continuing sporadic use of alcohol.

Concerning the period between 1983 and 1989, Mr. President, I invited the Senators on a guided tour of the FBI record, stating that I could point out at least 10, and more nearly 25 to 30 instances of alcohol abuse. So, therein, now we have an impartial assessment of the evidence by none other than the FBI's Special Inquiry Unit, and that impartial assessment validates my own conclusions on Senator Tower's alcohol abuse, conclusions for which I was labeled a character assassin. The FBI has had the last word, and that word is to confirm that Senator Tower was an alcohol abuser.

One other comment, Mr. President, to my distinguished colleague, the Senator from Kansas. On Sunday, he said I was the only one who had called Senator Tower an alcoholic abuser. I did, on the 3d of the month, on the floor, use the expression "alcoholic abuser." It is very apparent from the record that what I was talking about was "alcohol abuser." In fact, later on, on the 7th, when the Senator from Kansas and I had an exchange on the floor, he and I both used the term "alcohol abuser," and later on the 9th,

the Senator, himself, used the expression "alcohol abuser."

I know the difference between an "alcoholic abuser" and an "alcohol abuser." Technically speaking, where I used the noun rather than the adjective, used "alcoholic" rather than "alcohol," that would mean an "abuser of alcoholics." Certainly, no one said that Mr. Tower was an abuser of alcoholics.

I tried to be as specific and as correct as I possibly could.

I thank the Chair for the indulgence.

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER (Mr. SHELBY). Under the previous order, the Senate will now stand in recess until the hour of 2 p.m.

Thereupon, at 12:19 p.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the President pro tempore.

QUORUM CALL

The PRESIDENT pro tempore. The hour of 2 o'clock having arrived, under the order, the clerk will call the roll to establish a quorum.

The assistant legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 3]

Baucus	Dixon	Metzenbaum
Byrd	Dole	Mitchell
Cranston	Kohl	Simon
DeConcini	Leahy	

The PRESIDENT pro tempore. A quorum is not present. The clerk will call the roll of the absentees.

The assistant legislative clerk resumed the call of the roll.

Adams	Graham	Mikulski
Armstrong	Grassley	Moynihan
Biden	Harkin	Murkowski
Bingaman	Hatch	Nunn
Bond	Hatfield	Pell
Boren	Heflin	Pressler
Bradley	Heinz	Pryor
Bryan	Hollings	Reid
Bumpers	Inouye	Riegle
Burdick	Jeffords	Robb
Burns	Kassebaum	Rockefeller
Chafee	Kasten	Rudman
Coats	Kennedy	Sarbanes
Cohen	Kerrey	Sasser
Conrad	Kerry	Simpson
Danforth	Lautenberg	Specter
Daschle	Levin	Stevens
Dodd	Lieberman	Symms
Exon	Lott	Thurmond
Ford	Lugar	Wallop
Fowler	Matsunaga	Warner
Glenn	McCain	Wilson
Gore	McClure	Wirth
Gorton	McConnell	

CLOSED SESSION

The PRESIDENT pro tempore. A quorum is present. Under the previous order, as modified, the hour of 2:15 p.m. having arrived and a quorum having been established, the galleries of the Senate shall be cleared and the floor shall be cleared of all unauthorized personnel. The doors shall be closed, and the Senate will deliberate on Justice Hastings' two motions in closed session. The Sergeant at Arms will proceed to clear the gallery.

(At 2:15 p.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 4:39 p.m., at which time the Senate recessed until 4:50 p.m., whereupon the following occurred:)

The PRESIDENT pro tempore. The Senate will come to order.

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

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. 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.

There will be order in the Senate. The staff will take their seats.

Mr. MITCHELL addressed the Chair.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the voting records of those Senators who were Members of the House of Representatives during the 100th Congress and who have been excused from voting on all questions during the impeachment trail not be calculated to include any rollcall votes during the trial.

The PRESIDENT pro tempore. Is there objection?

Mr. DOLE. Mr. President, I want to establish, together with the majority leader, the fact that the unanimous-consent agreement on voting records not be a precedent for calculating voting records on any other occasion.

Mr. MITCHELL addressed the Chair.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, the Republican leader is correct. This agreement is being entered into for the protection of the Senate, not for the protection of individual Senators. It is absolutely essential that the Senate, as an institution, ensure that Judge Hastings receive a full and fair hearing, without even the slightest appearance of a lack of impartiality.

Because four Senators were Members of the House of Representatives when the House deliberated on the Hastings impeachment, some might suggest that an appearance of prejudgment exists. Their excuse from participation is intended to protect against such an appearance. Because the unanimous-consent agreement would serve for this singular purpose, and this purpose alone, there is no basis for using this agreement in the future for the protection of individual Senators for their voting records.

The PRESIDENT pro tempore. Is there objection to the request of the majority leader?

The Chair hears none. It is so ordered.

The Sergeant at Arms will issue the proclamation.

The SERGEANT AT ARMS. Hear ye, hear ye, hear ye: All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Alcee Hastings, U.S. district judge for the southern district of Florida.

Mr. MITCHELL addressed the Chair.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on the respondent's two motions at this time, with one show of seconds.

The PRESIDENT pro tempore. Is there objection?

The Chair hears none. It will be so ordered.

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

The PRESIDENT pro tempore. Is there a sufficient second?

Obviously, there is a sufficient second, and the yeas and nays are ordered on both questions.

The clerk will call the roll on the first question, the first question being Judge Hastings' motion to dismiss articles I through XV without trial based upon the 1983 jury verdict and lapse of time.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from North Carolina [Mr. SANFORD] is absent on official business.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Utah [Mr. GARN] are necessarily absent.

I also announce that the Senator from Indiana [Mr. COATS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Mississippi [Mr. LOTT], and the Senator from Florida [Mr. MACK] are officially excused from impeachment proceedings.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 1, nays 92, as follows:

(Rollcall Vote No. 22)

(Motion to Dismiss Articles I through XV without trial based on the 1983 jury verdict and lapse of time—Court of Impeachment—Judge Alcee L. Hastings.)

[Rollcall Vote No. 22]

YEAS—1

Metzenbaum

NAYS—92

Adams	Fowler	McConnell
Armstrong	Glenn	Mikulski
Baucus	Gore	Mitchell
Bentsen	Gorton	Moynihan
Biden	Graham	Murkowski
Bingaman	Gramm	Nickles
Bond	Grassley	Nunn
Boren	Harkin	Packwood
Bradley	Hatch	Pell
Breaux	Hatfield	Pressler
Bryan	Heflin	Pryor
Bumpers	Heinz	Reid
Burdick	Helms	Riegle
Burns	Hollings	Robb
Byrd	Humphrey	Rockefeller
Chafee	Inouye	Roth
Cochran	Johnston	Rudman
Cohen	Kassebaum	Sarbanes
Conrad	Kasten	Sasser
Cranston	Kennedy	Shelby
D'Amato	Kerrey	Simon
Danforth	Kerry	Simpson
Daschle	Kohl	Specter
DeConcini	Lautenberg	Stevens
Dixon	Leahy	Symms
Dodd	Levin	Thurmond
Dole	Lieberman	Wallop
Domenici	Lugar	Warner
Durenberger	Matsunaga	Wilson
Exon	McCain	Wirth
Ford	McClure	

NOT VOTING—7

Boschwitz	Jeffords	Sanford
Coats	Lott	
Garn	Mack	

So the motion was denied.

The PRESIDENT pro tempore. The Clerk will call the roll on the second question, Judge Hastings' motion to dismiss article XVII for failure to state a separate impeachable offense.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from North Carolina [Mr. SANFORD] is absent on official business.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Utah [Mr. GARN] are necessarily absent.

I also announce that the Senator from Indiana [Mr. COATS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Mississippi [Mr. LOTT], and the Senator from Florida [Mr. MACK] are officially excused from impeachment proceedings.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 0, nays 93, as follows:

(Rollcall Vote No. 23)

(Motion to dismiss article XVII for failure to state a separate impeachable offense.)

[Rollcall Vote No. 23]

NAYS—93

Adams	Chafee	Ford
Armstrong	Cochran	Fowler
Baucus	Cohen	Glenn
Bentsen	Conrad	Gore
Biden	Cranston	Gorton
Bingaman	D'Amato	Graham
Bond	Danforth	Gramm
Boren	Daschle	Grassley
Bradley	DeConcini	Harkin
Breaux	Dixon	Hatch
Bryan	Dodd	Hatfield
Bumpers	Dole	Heflin
Burdick	Domenici	Heinz
Burns	Durenberger	Helms
Byrd	Exon	Hollings
Humphrey	McClure	Rockefeller
Inouye	McConnell	Roth
Johnston	Metzenbaum	Rudman
Kassebaum	Mikulski	Sarbanes
Kasten	Mitchell	Sasser
Kennedy	Moynihan	Shelby
Kerrey	Murkowski	Simon
Kerry	Nickles	Simpson
Kohl	Nunn	Specter
Lautenberg	Packwood	Stevens
Leahy	Pell	Symms
Levin	Pressler	Thurmond
Lieberman	Pryor	Wallop
Lugar	Reid	Warner
Matsunaga	Riegle	Wilson
McCain	Robb	Wirth

YEAS—0

NOT VOTING—7

Boschwitz	Jeffords	Sanford
Coats	Lott	
Garn	Mack	

So the motion was denied.

COMMITTEE TO RECEIVE AND REPORT EVIDENCE IN WITH RESPECT TO ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS

The PRESIDENT pro tempore. Under the previous order, the Senate will now turn to the consideration of Senate Resolution 38 which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 38) to provide for the appointment of a committee to receive and report evidence with respect to articles of impeachment against Judge Alcee L. Hastings.

The Senate proceeded to consider the resolution.

The PRESIDENT pro tempore. The majority leader.

Mr. MITCHELL. Mr. President, last September the Committee on Rules and Administration reported its advice that the Senate has constitutional authority to appoint a committee pursuant to impeachment rule XI to receive and report to the Senate evidence in an impeachment trial. The Senate then, in Senate Resolution 480 of the 100th Congress, directed the Committee on Rules and Administration to hold a hearing early in the 101st Congress on the appropriate use of an evidentiary committee under rule XI in this particular impeachment. Pursuant to that directive, the Committee on Rules and Administration received and considered the views of Judge Hastings' counsel, who opposed the appointment of an evidentiary committee, and also received and considered the views of the managers.

In making its recommendation to the Senate that a committee be appointed for this impeachment, the Rules Committee concluded that fairness to the parties could be achieved in a manner that is consistent with the Senate's ability to continue to conduct other business of public importance. The Rules Committee made several recommendations to help attain that objective.

Of particular importance, the Rules Committee recommended that the impeachment committee's public proceedings be videotaped so that Members who are not on the committee will have an opportunity to see the testimony of witnesses whom they would like to observe. The Rules Committee further recommended that ample time be provided between the conclusion of the impeachment committee's proceedings and the Senate's deliberations on the articles so that Members will have sufficient time to study the printed record and review any significant portions of the videotaped record.

Committees appointed under impeachment rule XI do not make recommendations to the Senate on the conviction or acquittal of an impeached officer. Senate Resolution 38 adheres to that basic concept, but, to assist the Senate in analyzing the evidentiary record, the resolution authorizes the impeachment committee to include in its report, in addition to the full record of evidence, a statement of uncontested facts and a summary of evidence on contested facts.

It is important to note also that impeachment rule XI preserves the Senate's power to determine the competency, relevancy, and materiality of evidence reported by the committee, and also preserves the Senate's right to send for any witnesses and to hear the testimony of those witnesses before the full Senate.

The provisions of impeachment rule XI, together with the recommendations of the Rules Committee, will help to assure a fair Senate trial of this impeachment. I urge the adoption of Senate Resolution 38.

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

Mr. LEVIN. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state his parliamentary inquiry.

Mr. LEVIN. Mr. President, does this resolution determine whether or not Judge Hastings will have an opportunity to testify or be cross-examined before the full Senate if he requests to do so following a report of the impeachment committee to the Senate?

The PRESIDENT pro tempore. The Senator will please refer to rule XI of the Rules of Impeachment which clearly sets forth the powers and responsibilities of the committee. The resolution does not address that question.

Mr. LEVIN. I thank the Chair.

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

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The resolution, with its preamble, is as follows:

Resolved, That pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve senators to perform the duties and to exercise the powers provided for in the rule.

SEC. 2. The Majority and Minority Leader shall each recommend six members to the Presiding Officer for appointment to the committee. The committee shall designate one of its members to be chairman and one of its members to be vice chairman.

SEC. 3. The committee shall be deemed to be a standing committee of the Senate for the purpose of reporting to the Senate resolutions for the criminal or civil enforcement of the committee's subpoenas or orders, and for the purpose of printing reports, hearings, and other documents for submission to the Senate under Rule XI.

SEC. 4. During proceedings conducted under Rule XI the chairman of the committee is authorized to waive the requirement under the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials that questions by a Senator to a witness, a manager, or counsel shall be reduced to writing and put by the presiding officer.

SEC. 5. In addition to a certified copy of the transcript of the proceedings and testimony had and given before it, the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

SEC. 6. Necessary expenses of the committee shall be paid from the contingent fund of the Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee.

SEC. 7. The Secretary shall notify the House of Representatives and counsel for Judge Alcee L. Hastings of this resolution.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

The PRESIDENT pro tempore. The question is on the motion to reconsider.

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

The motion to lay on the table was agreed to.

APPOINTMENT OF COMMITTEE MEMBERS UNDER IMPEACHMENT RULE XI

The PRESIDENT pro tempore. The majority leader.

Mr. MITCHELL. Mr. President, in accordance with Senate Resolution 38 I recommend to the Chair the appointment of Senators BINGAMAN, LEAHY, PRYOR, BRYAN, KERREY, and LIEBERMAN to be members of the committee under impeachment rule XI.

Mr. President, at the request of the distinguished Republican leader, I hereby recommend to the Chair the appointment of Senators SPECTER, RUDMAN, GORTON, DURENBERGER, BOND, and BURNS to be members of the committee under impeachment rule XI.

The PRESIDENT pro tempore. Pursuant to Senate Resolution 38, and impeachment rule XI, the Chair appoints upon the recommendations of the two leaders, the following Senators: Messrs. BINGAMAN, LEAHY, PRYOR, BRYAN, KERREY, LIEBERMAN, SPECTER, DURENBERGER, RUDMAN, BOND, GORTON, and BURNS to be members of the committee to receive and report evidence in the impeachment of Judge Alcee L. Hastings.

The majority leader is recognized.

STATEMENTS SUBMITTED

Mr. MITCHELL. Mr. President, Senate Resolution 38 provides that the committee shall designate one of its members to be chairman and one of its members to be vice chairman. The Committee on Rules and Administration will be providing its hearing room, Russell SR-301, to the impeachment committee for an organizational meeting tomorrow, March 17, at 8:30 a.m., so that the members of the committee may designate their chairman and vice chairman and take any other initial organizational measures which they deem appropriate.

Pursuant to Senate Resolution 480 of the 100th Congress, the parties submitted to the Senate on February 21, 1989, a joint statement, and the managers submitted a separate statement, on stipulations and other evidentiary matters. I ask unanimous consent that those statements now be referred to the committee appointed under impeachment rule XI.

FILING OF STATEMENTS

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

The majority leader is recognized.

Mr. MITCHELL. Mr. President, while debate among Senators during an impeachment trial is not permitted in open session, the Senate after a vote on the issue has permitted Senators to file statements explaining their votes.

I ask unanimous consent that Senators now may, if they so wish, file statements with respect to the votes which have just occurred on Judge Hastings' motions to dismiss.

The PRESIDENT pro tempore. Without objection, that will be the order of the Senate.

EXPLANATORY STATEMENT PERTAINING TO SENATOR SPECTER'S VOTE TO DENY THE MOTIONS TO DISMISS

Mr. SPECTER. Mr. President, I have voted to deny the motions to dismiss because of my view that a motion to dismiss ought to be granted at the outset of the proceeding only if there is a conclusive legal bar to going forward, and there is not in this case.

There appears to be a conflict between fairness and what may be a technical, legal provision, but I submit that the Senate can guarantee fairness through the conclusion of our proceeding, after we hear all of the evidence and consider the matter in full.

The concept of double jeopardy has evolved in a more liberal way with courts now holding double jeopardy applicable, where in the past they had denied such claims. For example, in Pennsylvania it used to be the law that if a defendant was acquitted in the Federal court, he could be tried in the State court; and the Pennsylvania Supreme Court has changed that rule.

Just last week there was a unique decision in the Federal courts on the issue of punitive damages, where in a civil context the Court held that only one plaintiff can collect punitive damages.

That was articulated on the grounds of fairness, but there was a very substantial double jeopardy concept behind it.

So it may be that ultimately this body would conclude that double jeopardy does attach, and while we do articulate the concept that legal principles do not turn on the facts and bad cases make bad law, the reality is that cases are decided in a factual context.

After we hear the details of Judge Hastings perhaps it will set a stage which is sufficiently egregious that we would want to establish a legal principle that after an acquittal by a jury someone should not be called upon to stand in an impeachment proceeding.

The problem that this Senator has is that if we were to dismiss at this time Judge Hastings would stay in office to be a Federal judge. One might say, well, if the principle is established that double jeopardy attaches, as a matter of law, we ought not to be concerned about his staying in office. But, Mr. President, it is precisely that situation that impeachment addresses, that is, whether someone should stay in office as distinguished from whether someone ought to sustain a criminal penalty.

Mr. President, with all due respect to the arguments which we heard yesterday and the time which each of us may have had to consider this matter, I do not believe that we have had an adequate opportunity to examine this very complicated legal issue. I know that speaking for myself I have not.

I noted that the litigation preceding this impeachment has resulted in seven reported opinions from the lower Federal courts in the 11th Circuit and in the Court of Appeals for the District of Columbia, and I have started to scan some of the opinions, and they are very, very complicated. To the extent that I have been able to study them so far they do tend to establish the principle that the jurisdiction of the courts under article III is very different from the jurisdiction of the Senate and the House under the impeachment provisions, so that when Judge Hastings had argued that he should not be first tried before being

impeached the courts said, no, the article III powers are separte jurisdiction. This raises an inference that the impeachment powers of the House and now the Senate are really separate and distinct.

If we had granted the motions we would have established a binding precedent which I think would be very unwise. In the course of our later deliberations I think we can guarantee that fairness will be done. I believe that due process and an orderly deliberation calls upon this body to proceed beyond this point. For these reasons, I voted against the motions to dismiss.

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

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. 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.

The Senate will please be in order.

The majority leader.

WHISTLEBLOWER PROTECTION ACT OF 1989

The Senate continued with the consideration of the bill.

Mr. MITCHELL. Mr. President, I ask the Chair whether under the previous order a rollcall vote is now in order on S. 20.

The PRESIDENT pro tempore. The majority leader is correct.

Mr. ADAMS. Mr. President, today I rise to express my support for S. 20, the Whistleblower Protection Act.

As my colleagues are aware, S. 20 provides much needed protection for Federal employees who expose waste and mismanagement by Federal agencies. Under current law, whistleblowers who are victims of retaliation by their employing Government agency can direct their complaints to a quasi-judicial body known as the Merit Systems Protection Board [MSPB]. The Office of the Special Counsel [OSC], an investigating and prosecuting arm of the MPSB, then determines wich cases are to be brought before the merit board.

One would think that the present system of review could provide adequate protection for Federal employees who are committed to public service. This is not the case, however. Instead, the OSC has merely acted as a screen to ensure that whistleblower cases are not heard. In its first 8 years, the OSC has turned down more than 99 percent of the whistleblower cases without initiating disciplinary or corrective actions. Further, a GAO study has also found that OSC had not sought corrective action to recover the job of a single whistleblower, and in 1984 the OSC conducted actual investigations for only 8 percent of the employees who requested assistance. This lack of concern by the special counsel, combined with the heavy burden of proof required of a Federal employee, discourages those who seek to improve the management of our Federal agencies.

Of course, such discouragement is reinforced when other Federal workers hear horror stories of retaliatory action against their colleagues. I heard of one FDA scientist who challenged FDA's approval of known carcinogens for use in animal feed and claimed such carcinogens posed a threat to the human food chain. Although a congressional committee confirmed his charges, the scientist was, in essence, fired from his job in charge of quality control for new animal drug applications. I would hope that we live in a country where the Government does not chastize its employees for calling attention to public health hazards.

S. 20 helps us avoid problems such as the one I just described. It reduces the burden-of-proof standard, thereby making it easier for a whistleblower to prove retaliation by an agency. It also allows whistleblowers to appeal directly to the merit board within 60 days of the OSC terminating the investigation or within 120 days of seeking corrective action from the OSC. In addition, the measure restricts the OSC from acting in a manner that is contrary to the complainant's interest such as leaking evidence or information about the complainant to the employer.

Mr. President, such legislation is long overdue. Federal agencies have a duty to obey the law and to follow sound management practices. With the adoption of S. 20, agency retaliation will become more difficult and Federal workers will have a greater incentive to speak out. Therefore, this legislation will lead to more effective and efficient Government.

The PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall the bill pass?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from North Carolina [Mr. SANFORD] is absent on official business.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Utah [Mr. GARN] are necessarily absent.

The PRESIDING OFFICER (Mr. ROBB). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 24 Leg.]

YEAS—97

Adams	Glenn	McConnell
Armstrong	Gore	Metzenbaum
Baucus	Gorton	Mikulski
Bentsen	Graham	Mitchell
Biden	Gramm	Moynihan
Bingaman	Grassley	Murkowski
Bond	Harkin	Nickles
Boren	Hatch	Nunn
Bradley	Hatfield	Packwood
Breaux	Heflin	Pell
Bryan	Heinz	Pressler
Bumpers	Helms	Pryor
Burdick	Hollings	Reid
Burns	Humphrey	Riegle
Byrd	Inouye	Robb
Chafee	Jeffords	Rockefeller
Coats	Johnston	Roth
Cochran	Kassebaum	Rudman
Cohen	Kasten	Sarbanes
Conrad	Kennedy	Sasser
Cranston	Kerrey	Shelby
D'Amato	Kerry	Simon
Danforth	Kohl	Simpson
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dixon	Levin	Symms
Dodd	Lieberman	Thurmond
Dole	Lott	Wallop
Domenici	Lugar	Warner
Durenberger	Mack	Wilson
Exon	Matsunaga	Wirth
Ford	McCain	
Fowler	McClure	

NOT VOTING—3

Boschwitz	Garn	Sanford

So the bill (S. 20), as amended, was passed, as follows:

S. 20

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Whistleblower Protection Act of 1989".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) Federal employees who make disclosures described in section 2302(b)(8) of title 5, United States Code, serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures;

(2) protecting employees who disclose Government illegality, waste, and corruption is a major step toward a more effective civil service; and

(3) in passing the Civil Service Reform Act of 1978, Congress established the Office of Special Counsel to protect whistleblowers (those individuals who make disclosures described in such section 2302(b)(8)) from reprisal.

(b) PURPOSE.—The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by—

(1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices; and

(2) establishing—

(A) that the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers, from prohibited personnel practices;

(B) that the Office of Special Counsel shall act in the interests of employees who seek assistance from the Office of Special Counsel; and

(C) that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration.

SEC. 3. MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL; INDIVIDUAL RIGHT OF ACTION.

(a) MERIT SYSTEMS PROTECTION BOARD.—Chapter 12 of title 5, United States Code is amended—

(1) in section 1201 in the second sentence by striking out "Chairman and";

(2) in the heading for section 1202 by striking out the comma and inserting in lieu thereof a semicolon;

(3) in section 1202(b)—

(A) in the first sentence by striking out "his" and inserting in lieu thereof "the member's"; and

(B) in the second sentence by striking out "of this title";

(4) in section 1203(a) in the first sentence by striking out the comma after "time";

(5) in section 1203(c) by striking out "the Chairman and Vice Chairman" and inserting in lieu thereof "the Chairman and the Vice Chairman";

(6) by redesignating section 1204 as section 1211(b) and inserting such subsection after section 1211(a) (as added in paragraph (11) of this subsection);

(7) by redesignating section 1205 as section 1204, and amending such redesignated section—

(A) by striking out "and Special Counsel", "the Special Counsel," and "of this section" each place such terms appear;

(B) by striking out "subpena" and "subpenaed" each place such terms appear and inserting in lieu thereof "subpoena" and "subpoenaed", respectively;

(C) in subsection (a)(4) by striking out "(e)" and inserting in lieu thereof "(f)";

(D) by amending subsection (b)(2) to read as follows:

"(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

"(A) issue subpoenas requiring the attendance and presentation of testimony of any such individual, and the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

"(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.";

(E) in subsection (c) in the first sentence—

(i) by striking out "(b)(2) of this section," and inserting in lieu thereof "(b)(2)(A) or section 1214(b), upon application by the Board,"; and

(ii) by striking out "judicial";

(F) by redesignating subsections (d) through (k) as subsections (e) through (l), respectively, and inserting after subsection (c) the following new subsection:

"(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.";

(G) in subsection (e) (as redesignated by subparagraph (F) of this paragraph)—

(i) in paragraph (1)—

(I) by redesignating such paragraph as subparagraph (A) of paragraph (1); and

(II) by inserting at the end thereof the following new subparagraph:

(B)(i) The Merit Systems Protection Board may, during an investigation by the Office of Special Counsel or during the pendency of any proceeding before the Board, issue any order which may be necessary to protect a witness or other individual from harassment, except that an agency (other than the Office of Special Counsel) may not request any such order with regard to an investigation by the Office of Special Counsel from the Board during such investigation.

"(ii) An order issued under this subparagraph may be enforced in the same manner as provided for under paragraph (2) with respect to any order under subsection (a)(2).";

(ii) in paragraph (2)—

(I) by redesignating such paragraph as subparagraph (A) of paragraph (2) and striking out "of this section" in the first sentence therein; and

(II) by inserting at the end thereof the following new subparagraph (B):

"(B) The Board shall prescribe regulations under which any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board to exercise its authority under subparagraph (A).."; and

(iii) in paragraph (3) by inserting "of Personnel Management" after "Office";

(H) in subsection (f) (as redesignated by subparagraph (F) of this paragraph)—

(i) in paragraph (1) in the first sentence by inserting "of the Office of Personnel Management" after "Director", and by striking out "of this title";

(ii) in paragraph (2)—

(I) in the first sentence by inserting a comma after "subsection";

(II) in paragraph (A) by striking out "of this title"; and

(III) in subparagraph (B) by striking out "of this title"; and

(iii) in paragraph (3)—

(I) in subparagraph (A) by striking out "(A)";

(II) by striking out subparagraph (B); and

(III) by redesignating subparagraph (C) and clauses (i) and (ii) therein as paragraph (4) and subparagraphs (A) and (B), respectively; and

(I) in subsection (j) (as redesignated by subparagraph (F) of this paragraph) in the second sentence by striking out "of this title" after "chapter 33";

(8) by striking out sections 1206 through 1208;

(9) by redesignating section 1290(a) as section 1205, and inserting before such section the following section heading:

"§ 1205. Transmittal of information to Congress";

(10) by redesignating section 1209(b) as section 1206, and inserting before such section the following section heading:

"§ 1206. Annual report";

(11) by inserting after section 1205 (as redesignated in paragraph (10) of this subsection) the following:

"SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

"§ 1211. Establishment

"(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.";

(12) by amending section 1211(b) (as redesignated and inserted by paragraph (6) of this subsection)—

(A) in the first sentence by striking out "of the Merit Systems Protection Board" and "from attorneys";

(B) by striking the second sentence and inserting in lieu thereof "The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term."; and

(C) by adding at the end thereof "The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President."; and

(13) inserting after section 1211 the following:

"§ 1212. Powers and functions of the Office of Special Counsel

"(a) The Office of Special Counsel shall—

"(1) in accordance with section 1214(a) and other applicable provisions of this subchapter, protect employees, former employees, and applicants for employment from prohibited personnel practices;

"(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

"(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

"(B) file a complaint or make recommendations for disciplinary action under section 1215;

"(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

"(4) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, file a written complaint with the Board; and

"(5) investigate and, where appropriate, bring actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

"(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) The Special Counsel may—

"(A) issue subpoenas; and

"(B) order the taking of depositions and order responses to written interrogatories;

in the same manner as provided under section 1204.

"(3)(A) In the case of contumacy or failure to obey a subpoena issued under paragraph (2)(A), the Special Counsel may apply to the Merit Systems Protection Board to enforce the subpoena in court pursuant to section 1204(c).

"(B) A subpoena under paragraph (2)(A) may in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in the manner referred to in subsection (d) of section 1204, and the United States District Court for the District of Columbia may, with respect to any such individual, compel compliance in accordance with such subsection.

"(4) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c)(1) Except as provided in paragraph (2), the Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

"(2) The Special Counsel may not intervene in an action brought by an individual under section 1221, or in an appeal brought by an individual under section 7701, without the consent of such individual.

"(e)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

"(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

"(f) The Special Counsel may prescribe such regulations as may be necessary to perform the functions of the Special Counsel. Such regulations shall be published in the Federal Register.

"(g) The Special Counsel may not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

"(h)(1) The Special Counsel may not respond to any inquiry or provide information concerning any person making an allegation under section 1214(a), except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

"(2) Notwithstanding the exception under paragraph (1), the Special Counsel may not respond to any inquiry concerning a matter described in subparagraph (A) or (B) of section 2302(b)(2) in connection with a person described in paragraph (1)—

"(A) unless the consent of the individual as to whom the information pertains is obtained in advance; or

"(B) except upon request of an agency which requires such information in order to make a determination concerning an individual's having access to the information unauthorized disclosure of which could be expected to cause exceptionally grave damage to the national security.

"§ 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

"(a) This section applies with respect to—

"(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

"(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(b) Whenever the Special Counsel receives information of a type described in subsection (a) of this section, the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

"(c)(1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b) of this section, the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—

"(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

"(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Council.

"(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—

"(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

"(B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

"(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

"(1) a summary of the information with respect to which the investigation was initiated;

"(2) a description of the conduct of the investigation;

"(3) a summary of any evidence obtained from the investigation;

"(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(5) a description of any action taken or planned as a result of the investigation, such as—

"(A) changes in agency rules, regulations, or practices;

"(B) the restoration of any aggrieved employee;

"(C) disciplinary action against any employee; and

"(D) referral to the Attorney General of any evidence of a criminal violation.

"(e)(1) Any such report shall be submitted to the Special Counsel, and the Special Counsel shall transmit a copy to the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.

"(2) Upon receipt of any report of the head of any agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether—

"(A) the findings of the head of the agency appear reasonable; and

"(B) the report of the agency under subsection (c)(1) of this section contains the information required under subsection (d) of this section.

"(3) The Special Counsel shall transmit any agency report received pursuant to subsection (c) of this section, any comments provided by the complainant pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President, the congressional committees with jurisdiction over the agency which the disclosure involves, and the Comptroller General.

"(4) Whenever the Special Counsel does not receive the report of the agency within the time prescribed in susbsection (c)(2) of this section, the Special Counsel shall transmit a copy of the information which was transmitted to the agency head to the President, the congressional committees with jurisdiction over the agency which the disclosure involves, and the Comptroller General together with a statement noting the failure of the head of the agency to file the required report.

"(f) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General—

"(1) the report shall not be transmitted to the complainant; and

"(2) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(g)(1) If the Special Counsel receives information of a type described in subsection (a) from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2), the Special Counsel may transmit the information to the head of the agency which the information concerns. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed. The Special Counsel shall inform the individual of the report of the agency head. If the Special Counsel does not transmit the information to the head of the agency, the Special Counsel shall return any documents and other matter provided by the individual who made the disclosure.

"(2) If the Special Counsel receives information of a type described in subsection (a) from an individual described in subparagraph (A) or (B) of subsection (c)(2), but does not make a positive determination under subsection (b), the Special Counsel may transmit the information to the head of the agency which the information concerns, except that the information may not be transmitted to the head of the agency without the consent of the individual. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action will be completed. The Special Counsel shall inform the individual of the report of the agency head.

"(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall—

"(A) return any documents and other matter provided by the individual who made the disclosure; and

"(B) inform the individual of—

"(i) the reasons why the disclosure may not be further acted on under this chapter; and

"(ii) other offices available for receiving disclosures, should the individual wish to pursue the matter further.

"(h) the identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual's consent unless the Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.

"(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

"(1) specifically prohibited from disclosure by any other provision of law; or

"(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.

"§ 1214. Investigation of prohibited personnel practices; corrective action

"(a)(1)(A) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

"(B) Within 15 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall provide written notice to the person who made the allegation that—

"(i) the allegation has been received by the Special Counsel; and

"(ii) shall include the name of a person at the Office of Special Counsel who shall serve as a contact with the person making the allegation.

"(C) Unless an investigation is terminated under paragraph (2), the Special Counsel shall—

"(i) within 90 days after notice is provided under subparagraph (B), notify the person who made the allegation of the status of the investigation and any action taken by the Office of the Special Counsel since the filing of the allegation;

"(ii) notify such person of the status of the investigation and any action taken by the Office of the Special Counsel since the last notice, at least every 60 days after notice is given under clause (i); and

"(iii) notify such person of the status of the investigation and any action taken by the Special Counsel at such time as determined appropriate by the Special Counsel.

"(2)(A) If the Special Counsel terminates any investigation under paragraph (1), the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of—

"(i) the termination of the investigation;

"(ii) a summary of relevant facts ascertained by the Special Counsel, including the facts that support, and the facts that do not support, the allegations of such person; and

"(iii) the reasons for terminating the investigation.

"(B) A written statement under subparagraph (A) may not be admissible as evidence in any judicial or administrative proceeding, without the consent of the person who received such statement under subparagraph (A).

"(3) Except in a case in which an employee, former employee, or applicant for employment has the right to appeal directly to the Merit Systems Protection Board under any law, rule, or regulation, any such employee, former employee, or applicant shall seek corrective action from the Special Counsel before seeking corrective action from the Board. An employee, former employee, or applicant for employment may seek corrective action from the Board under section 1221, if such employee, former employee, or applicant seeks corrective action for a prohibited personnel practice described in section 2302(b)(8) from the Special Counsel and—

"(A)(i) the Special Counsel notifies such employee, former employee, or applicant that an investigation concerning such employee, former employee, or applicant has been terminated; and

"(ii) no more than 60 days have elapsed since notification was provided to such employee, former employee, or applicant for employment that such investigation was terminated; or

"(B) 120 days after seeking corrective action from the Special Counsel, such employee, former employee, or applicant has not been notified by the Special Counsel that the Special Counsel shall seek corrective action on behalf of such employee, former employee, or applicant.

"(4) If an employee, former employee, or applicant seeks a corrective action from the Board under section 1221, pursuant to the provisions of paragraph (3)(B), the Special Counsel may continue to seek corrective action personal to such employee, former employee, or applicant only with the consent of such employee, former employee, or applicant.

"(5) In addition to any authority granted under paragraph (1), the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

"(b)(1)(A)(i) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

"(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

"(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

"(B) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

"(C) The Board shall allow any agency which is the subject of a stay to comment on the Board on any extension of stay proposed under subparagraph (B).

"(D) A stay may be terminated by the Board at any time, except that a stay may not be terminated by the Board—

"(i) on its own motion or on the motion of an agency, unless notice and opportunity for oral or written comments are first provided to the Special Counsel and the individual on whose behalf the stay was ordered; or

"(ii) on motion of the Special Counsel, unless notice and opportunity for oral or written comments are first provided to the individual on whose behalf the stay was ordered.

"(2)(A) If, in connection with any investigation, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved and to the Office of Personnel Management, and may report such determinations, findings and recommendations to the President. The Special Counsel may include in the report recommendations for corrective action to be taken.

"(B) If, after a reasonable period of time, the agency does not act to correct the prohibited personnel practice, the Special Counsel may petition the Board for corrective action.

"(C) If the Special Counsel finds, in consultation with the individual subject to the prohibited personnel practice, that the agency has acted to correct the prohibited personnel practice, the Special Counsel shall file such finding with the Board, together with any written comments which the individual may provide.

"(3) Whenever the Special Counsel petitions the Board for corrective action, the Board shall provide an opportunity for—

"(A) oral or written comments by the Special Counsel, the agency involved, and the Office of Personnel Management; and

"(B) written comments by an individual who alleges to be the subject of the prohibited personnel practice.

"(4)(A) The Board shall order such corrective action as the Board considers appropriate, if the Board determines that the Special Counsel has demonstrated that a prohibited personnel practice, other than one described in section 2302(b)(8), has occurred, exists, or is to be taken.

"(B)(i) Subject to the provisions of clause (ii), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the Special Counsel has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against the individual.

"(ii) Corrective action under clause (i) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

"(c)(1) Judicial review of any final order or decision of the Board under this section may be obtained by any employee, former employee, or applicant for employment adversely affected by such order or decision.

"(2) A petition for a review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

"(d)(1) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that a criminal violation has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(2) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding unless—

"(A) the alleged violation has been reported to the Attorney General; and

"(B) the Attorney General is pursuing an investigation, in which case the Special Counsel, after consultation with the Attorney General, has discretion as to whether to proceed.

"(e) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states—

"(1) that the head of the agency has personally reviewed the report; and

"(2) what action has been or is to be taken, and when the action will be completed.

"(f) During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"§ 1215. Disciplinary action

"(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

"(A) committed a prohibited personnel practice,

"(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or

"(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board, the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

"(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

"(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

"(B) be represented by an attorney or other representative;

"(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;

"(D) have a transcript kept of any hearing under subparagraph (C); and

"(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

"(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

"(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

"(5) In the case of any State or local officer or employee under chapter 15, the Board shall consider the case in accordance with the provisions of such chapter.

"(b) In the case of an employee in a confidential, policymaking, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

"(c)(1) In the case of members of the uniformed services and individuals employed by any person under contract with an agency to provide goods or services, the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the agency concerned.

"(2) In any case in which the Sepcial Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

"§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

"(a) In additional to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

"(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

"(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

"(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

"(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

"(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5), if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

"(c)(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity prohibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7325.

"(2) If the Special Counsel receives an allegation concerning any matter under paragraph (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 in the same way as if a prohibited personnel practice were involved.

"§ 1217. Transmittal of information to Congress

"The Special Counsel or any employee of the Special Counsel designated by the Special Counsel, shall transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and the Special Counsel's views on functions, responsibilities, or other matters relating to the Office. Such information shall be transmitted concurrently to the President and any other appropriate agency in the executive branch.

§ 1218. Annual report

"The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action

by Congress the Special Counsel may consider appropriate.

§1219. Public information

"(a) The Special Counsel shall maintain and make available to the public—

"(1) a list of noncriminal matters referred to heads of agencies under subsection (c) of section 1213, together with reports from heads of agencies under subsection (c)(1)(B) of such section relating to such matters;

"(2) a list of matters referred to heads of agencies under section 1215(c)(2);

"(3) a list of matters referred to heads of agencies under subsection (e) of section 1214, together with certifications from heads of agencies under such subsection; and

"(4) reports from heads of agencies under section 1213(g)(10).

"(b) The Special Counsel shall take steps to ensure that any list or report made available to the public under this section does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

"SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES

"§1221. Individual right of action in certain reprisal cases

"(a) Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board.

"(b) This section may not be construed to prohibit any employee, former employee, or applicant for employment from seeking corrective action from the Merit Systems Protection Board before seeking corrective action from the Special Counsel, if such employee, former employee, or applicant for employment has the right to appeal directly to the Board under any law, rule, or regulation.

"(c)(1) Any employee, former employee, or applicant for employment seeking corrective action under subsection (a) may request that the Board order a stay of the personnel action involved.

"(2) Any stay requested under paragraph (1) shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date the request is made, if the Board determines that such a stay would be appropriate.

"(3)(A) The Board shall allow any agency which would be subject to a stay under this subsection to comment to the Board on such stay request.

"(B) Except as provided in subparagraph (C), a stay granted under this subsection shall remain in effect for such period as the Board determines to be appropriate.

"(C) The Board may modify or dissolve a stay under this subsection at any time, if the Board determines that such a modification or dissolution is appropriate.

"(d)(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board may issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that such subpoena is necessary for the development of relevant evidence.

"(2) A subpoena under this subsection may be issued, and shall be enforced, in the same manner as applies in the case of subpoenas under section 1204.

"(e)(1) Subject to the provisions of paragraph (2), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant.

"(2) Corrective action under paragraph (1) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

"(f)(1) A final order or decision shall be rendered by the Board as soon as practicable after the commencement of any proceeding under this section.

"(2) A decision to terminate an investigation under subchapter II may not be considered in any action or other proceeding under this section.

"(g)(1) If an employee, former employee, or applicant for employment is the prevailing party before the Merit Systems Protection Board, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees any other reasonable costs incurred.

"(2) If an employee, former employee, or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred, regardless of the basis of the decision.

"(h)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

"(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

"(i) Subsection (a) through (h) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice as defined in section 2302(b)(8) is alleged.

"(j) In determining the appealability of any case involving an allegation made by an individual under the provisions of this chapter, neither the status of an individual under any retirement system established under a Federal statute nor any election made by such individual under any such system may be taken into account.

"§1222. Availability of other remedies

"Except as provided in section 1221(i), nothing in this chapter or chapter 23 shall be construed to limit any right or remedy available under a provision of statute which is outside of both this chapter and chapter 23.".

"(b) CONFORMING AMENDMENTS.—(1) The table of chapters for part II of title 5, United States Code, is amended by striking the item relating to chapter 12 and inserting in lieu thereof the following:

"12. Merit Systems Protection Board, Office of Special Counsel, and Individual Right of Action .... 1201".

"(2) The heading for chapter 12 of title 5, United States Code, is amended to read as follows:

"CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION".

"(3) The table of sections for chapter 12 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD

"Sec. 1201. Appointment of members of the Merit Systems Protection Board.
"Sec. 1202. Term of office; filling vacancies; removal.
"Sec. 1203. Chairman; Vice Chairman.
"Sec. 1204. Powers and functions of the Merit Systems Protection Board.
"Sec. 1205. Transmittal of information to Congress.
"Sec. 1206. Annual report.

"SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

"Sec. 1211. Establishment.
"Sec. 1212. Powers and functions of the Office of Special Counsel.
"Sec. 1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters.
"Sec. 1214. Investigation of prohibited personnel practices; corrective action.
"Sec. 1215. Disciplinary action.
"Sec. 1216. Other matters within the jurisdiction of the Office of Special Counsel.
"Sec. 1217. Transmittal of information to Congress.
"Sec. 1218. Annual report.
"Sec. 1219. Public information.

"SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES

"Sec. 1221. Individual right of action in certain reprisal cases.
"Sec. 1222. Availability of other remedies.".

(4) Chapter 12 of title 5, United States Code, is further amended by inserting before section 1201 the following subchapter heading:

"SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD".

SEC. 4. REPRISALS.

(a) AMENDMENTS TO SECTION 2302(b)(8).—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) by inserting ", or threaten to take or fail to take," after "take or fail to take";

(2) by striking out "as a reprisal for" and inserting in lieu thereof "because of";

(3) in subparagraph (A) by striking out "a disclosure" and inserting in lieu thereof "any disclosure";

(4) in subparagraph (A)(ii) by inserting "gross" before "mismanagement";

(5) in subparagraph (B) by striking out "a disclosure" and inserting in lieu thereof "any disclosure"; and

(6) in subparagraph (B)(ii) by inserting "gross" before "mismanagement".

(b) AMENDMENT TO SECTION 2302(b)(9).—Section 2302(b)(9) of title 5, United States Code, is amended to read as follows:

"(9) take or fail to take, or threaten to take or fail to take, any personnel action

against any employee or applicant for employment because of—

"(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

"(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

"(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

"(D) for refusing to obey an order that would require the individual to violate a law;".

SEC. 5. PREFERENCE IN TRANSFERS FOR WHISTLEBLOWERS.

(a) IN GENERAL.—Subchapter IV of chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 3352. Preference in transfers for employees making certain disclosures

"(a) Subject to the provisions of subsection (d) and (e), in filling a positon within any Executive agency, the head of such agency may give Executive agency, to transfer to a position of the same status and tenure as the position of such employee on the date of applying for a transfer under subsection (b) if—

"(1) such employee is otherwise qualified for such position;

"(2) such employee is eligible for appointment to such position; and

"(3) the Merit Systems Protection Board makes a determination under the provisions of chapter 12 that a prohibited personnel action described under section 3202(b)(8) was taken against such employee.

"(b) An employee who meets the conditions described under subsection (a)(1), (2) and (3) may volunarily apply for a transfer to a position, as described in subsection (a), within the Executive agency employing such employee or any other Executive agency.

"(c) If an employee applies for a transfer under the provisions of subsection (b) and the selecting official rejects such application, the selecting official shall provide the employee with a written notification of the reasons of the rejection within 30 days after receiving such application.

"(d) An employee whose application for transfer is rejected under the provision of subsection (c) may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the employee receives notification under subsection (c). Within 30 days after receiving a request for review, the head of the agency shall complete the review and provide a written statement of findings to the employee and the Merit Systems Protection Board.

"(e) The provisions of subsection (a) shall apply with regard to any employee—

"(1) for no more than 1 transfer;

"(2) for a transfer from or within the agency such employee is employed at the time of a determination by the Merit Systems Protection Board that a prohibited personnel action as described under section 2302(b)(8) was taken against such employee; and

"(3) no later than 18 months after such a determination is made by the Merit Systems Protection Board.

"(f) Notwithstanding the provisions of subsection (a), no preference may be given to any employee applying for a transfer under subsection (b), with respect to a preference eligible (as defined under section 2108(3)) applying for the same position.".

(b) TECHNICAL AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3351 the following:

"3352. Preference in transfers for employees making certain disclosures.".

SEC. 6. INTERIM RELIEF.

Section 7701 of title 5, United States Code, is amended—

(1) by redesignating subsection (b) as paragraph (1) of subsection (b); and

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

"(2)(A) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (e), unless—

"(i) the deciding official determines that the granting of such relief is not appropriate; or

"(ii)(I) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and

"(II) the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.

"(B) If an agency makes a determination under subparagraph (A)(ii)(II) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (e).

"(C) Nothing in the provision of this paragraph may be construed to require any award of back pay or attorney fees be paid before the decision is final.".

SEC. 7. SAVINGS PROVISIONS.

(a) ORDERS, RULES, AND REGULATIONS.—All orders, rules, and regulations issued by the Merit Systems Protection Board or the Special Counsel before the effective date of this Act shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed.

(b) ADMINISTRATIVE PROCEEDINGS.—No provision of this Act shall affect any administrative proceeding pending at the time such provisions take effect. Orders shall be issued in such proceedings, and appeals shall be taken therefrom, as if this act had not been enacted.

(c) SUITS AND OTHER PROCEEDINGS.—No suit, action, or other proceeding lawfully commenced by or against the members of the Merit Systems Protection Board, the Special Counsel, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS; RESTRICTION RELATING TO APPROPRIATIONS UNDER THE CIVIL SERVICE REFORM ACT OF 1978; TRANSFER OF FUNDS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated—

(1) for each of fiscal years 1989, 1990, 1991, 1992, 1993, and 1994, such sums as necessary to carry out subchapter I of chapter 12 of title 5, United States Code (as amended by this Act); and

(2) for each of fiscal years 1989, 1990, 1991, and 1992, such sums as necessary to carry out subchapter II of chapter 12 of title 5, United States Code (as amended by this Act).

(b) RESTRICTION RELATING TO APPROPRIATIONS UNDER THE CIVIL SERVICE REFORM ACT OF 1978.—No funds may be appropriated to the Merit Systems Protection Board or the Office of Special Counsel pursuant to section 803 of the Civil Service Reform Act of 1978 (5 U.S.C. 5509 note).

(c) TRANSFER OF FUNDS.—The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available to the Special Counsel of the Merit Systems Protection Board are, subject to section 1531 of title 31, United States Code, transferred to the Special Counsel referred to in section 1211 of title 5, United States Code (as added by section 3(a) of this Act), for appropriate allocation.

SEC. 9. TECHNICAL AND CONFORMING AMENDMENTS.

(a)(1) Section 2303(c) of title 5, United States Code, is amended by striking "the provisions of section 1206" and inserting "applicable provisions of sections 1214 and 1221".

(2) Sections 7502, 7512(E), 7521(b)(C), and 7542 of title 5, United States Code, are amended by striking "1206" and inserting "1215".

(3) Section 1109(a) of the Foreign Service Act of 1980 (22 U.S.C. 4139(a)) is amended by striking "1206" and inserting "1214 or 1221".

(b) Section 3393(g) of title 5, United States Code, is amended by striking "1207" and inserting "1215".

SEC. 10. BOARD RESPONDENT.

Section 7703(a)(2) of title 5, United States Code, is amended to read as follows:

"(2) The Board shall be named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision on the merits on the underlying personnel action or on a request for attorney fees, in which case the agency responsible for taking the personnel action shall be the respondent.".

SEC. 11. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days following the date of enactment of this Act.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

TO PREVENT DESECRATION OF THE UNITED STATES FLAG

The PRESIDING OFFICER. Without objection, the Senate will now proceed to the consideration of S. 607, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 607) to prevent the desecration of the United States Flag.

The Senate proceeded to consider the bill.

Mr. COATS. Mr. President, I can still vividly recall the outrage and revulsion that I felt when I saw the TV pictures of rioting Iranian students stamping on the American flag, burning the American flag during the hostage crisis some years ago. And those same feelings flooded back on me when I saw the stories and viewed the pictures of how the American flag is being used as a doormat in an exhibition at the School of the Arts Institute in Chicago. There is something about this kind of desecration that provokes strong emotional reactions in all of us. It is not that we Americans are insecure or that we blindly follow traditions, but we do care deeply about symbols, especially this one.

The American flag is more than just something to wave on the Fourth of July. It is a symbol of ideals and values for which men and women have sacrificed and died in every generation, and to desecrate that symbol, I believe, is to desecrate their memory and make light of the men and women who made the ultimate sacrifice in the defense and service of their country.

It is easy to be cynical and sophisticated—as easy as repeating supposedly light and flippant opinions. But it is harder to realize that some things really do matter. They matter even if violated in the name of humor. They matter even if violated in the name of art.

Mr. President, there is one thing that we as Americans must never lose—the ability to be outraged, the ability to be offended. It means that we still hold something sacred.

I, like many Americans, am outraged at events in Chicago that desecrate one of our Nation's most sacred symbols. I am offended, and I rise to support Senator DOLE's bill to amend title 18 of the United States Code.

Mr. DIXON. Mr. President, I rise today to voice my support and add my name to a bill that would outlaw the malicious desecration of the flag of the United States of America.

We have a situation in Chicago, Mr. President, where the U.S. flag has been portrayed in art in a manner that has raised the ire and offended the sensibilities of many Americans. You know the situation, Mr. President; the flag is displayed in a way that encourages visitors to the Chicago Art Institute to walk across the flag.

Today, I join as the principal cosponsor with Senator DOLE of a bill that outlaws the "displaying of the flag of the United States on the floor or ground."

Too many men, Mr. President, have died, have given their "last full measure of devotion," for what this flag represents—whether in the smoke-filled trenches of Belleau Wood or on the beaches of Normandy, on Heartbreak Ridge or in Quang Tri Province.

The U.S. flag represents the first line of defense in the fight for the preservation of the rights and liberties of man at home and around the world. We saw our flag trampled in Iran, when our hostages were taken, Mr. President; we do not need to see our flag trampled at home.

Mr. GRAMM. Mr. President, as a cosponsor of this important bill offered by the distinguished Republican leader, I appreciate the opportunity to comment on the situation which gives rise to the need for it.

The young man who created his exhibit at the School of Art Institute in Chicago obviously is aglow with criticism for America, and it is his right to express that criticism. But one expression to which he has neither a legal nor a moral right is the intentional desecration of an American flag.

Our flag is just a yard or so of fabric and pigment, yet it is the symbol of a nation for which millions of American veterans have taken up arms and thousands given their lives.

Most of us love our flag for what it represents and we have never willingly allowed anyone, either domestic critic or foreign enemy, to desecrate it.

Again, Mr. President, I commend the Republican leader for providing an opportunity to take action against those who would sully our American flag.

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. 607) was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from North Carolina [Mr. SANFORD] is absent on official business.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Utah [Mr. GARN] are necessarily absent.

The PRESIDING OFFICER (Mr. LIEBERMAN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 25 Leg.]

YEAS—97

Adams	Glenn	McConnell
Armstrong	Gore	Metzenbaum
Baucus	Gorton	Mikulski
Bentsen	Graham	Mitchell
Biden	Gramm	Moynihan
Bingaman	Grassley	Murkowski
Bond	Harkin	Nickles
Boren	Hatch	Nunn
Bradley	Hatfield	Packwood
Breaux	Heflin	Pell
Bryan	Heinz	Pressler
Bumpers	Helms	Pryor
Burdick	Hollings	Reid
Burns	Humphrey	Riegle
Byrd	Inouye	Robb
Chafee	Jeffords	Rockefeller
Coats	Johnston	Roth
Cochran	Kassebaum	Rudman
Cohen	Kasten	Sarbanes
Conrad	Kennedy	Sasser
Cranston	Kerrey	Shelby
D'Amato	Kerry	Simon
Danforth	Kohl	Simpson
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dixon	Levin	Symms
Dodd	Lieberman	Thurmond
Dole	Lott	Wallop
Domenici	Lugar	Warner
Durenberger	Mack	Wilson
Exon	Matsunaga	Wirth
Ford	McCain	
Fowler	McClure	

NAYS—0

NOT VOTING—3

Boschwitz	Garn	Sanford

So the bill (S. 607) was passed, as follows:

S. 607

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 700(a) of Title 18, U.S.C. is amended by inserting in subsection (a), following the word "burning", the words "displaying the flag of the United States on the floor or ground".

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Kentucky.

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there now be a period for morning business not to exceed 1 hour, with Senators permitted to speak therein for not to exceed more than 10 minutes each.

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

STEPHEN DAVISON BECHTEL

Mr. CRANSTON. Mr. President, California, the Nation, and the world lost one of our true pioneers when Stephen Davison Bechtel died this week.

Steve Bechtel built, from the strong company founded by his father, the

world's largest engineering and heavy construction company. The builder of Hoover Dam, the Canadian Trans Mountain Pipeline, and the Saudi Arabian city of Jubail, he influenced topography, facilitated people's commerce throughout the world, and changed our definition of what is possible to accomplish. Steve was able to visualize solutions, where only prohibitive problems seemed apparent.

Steve Bechtel brought many of his most creative ideas to California, his home for most of his life. The San Francisco-Oakland Bay Bridge and the Bay Area Rapid Transit System owe much inspiration to him and California's outstanding shipbuilding industry traces much of its history of strength to the foundations he established.

A thoughtful and original thinker, Steve Bechtel will be long remembered as one of our Nation's giants. Steve's family, Californians, and the Nation can be proud of his legacy.

GREEK INDEPENDENCE DAY

Mr. BREAUX. Mr. President, I would like to express my sentiments on a joint resolution which passed the Senate on March 2, 1989, a joint resolution which I supported. The joint resolution to which I refer is Senate Joint Resolution 64, which establishes March 25, 1989, as Greek Independence Day: a National Day of Celebration of Greek and American Democracy.

The foundations of our present democratic form of government are found in ancient Greece. Our Founding Fathers relied greatly upon the history and teachings of ancient Greece when establishing the United States Government. As Thomas Jefferson proclaimed: "To the ancient Greeks * * * we are all indebted for the light which led ourselves out of Gothic darkness."

We are indeed indebted to the ancient Greeks, as are all democracies on the face of the Earth. This resolution does more than celebrate the sources of democratic thought, however. March 25, 1989, marks the 168th anniversary of the beginning of the Greek war for independence. Greece had been occupied and oppressed by the Ottomans for nearly 400 years prior to that war. The American Revolution became an ideal which greatly inspired the Greeks as they fought for independence in the 1820's, and America rejoiced in their victory.

Greek Independence Day, therefore, celebrates the common democratic heritage of Greeks and Americans, both in thought and practice. Most importantly, this resolution gives tribute to the close bond between the Greek people and those of the United States, and lauds the contributions made by Greek Americans to our society. I am glad to support it.

A FAMILY DOCTOR RESPONDS TO DR. KOOP ON AIDS

Mr. HELMS. Mr. President, a few days ago, a constituent sent me a copy of an article which appeared in the March 4 edition of World Magazine. The article was headed, "A Family Doctor Responds: Koop Was Wrong on AIDS," and was written by Dr. Franklin E. Payne.

Mr. President, without a doubt, America is facing the most serious plague in our history. There is no medical cure for this disease. Many thousands of Americans have died from AIDS. Hundreds of thousands of other Americans are infected with the virus. Most of the people who are infected don't know they are carrying a deadly virus. Some researchers have concluded that all those infected with the virus will eventually die.

One would think, Mr. President, that by now, public health experts would have launched an all-out assault on the virus. They haven't. Not even the requisite studies have been done to determine the rate and extent that the virus has infected our population, much less any real planning as to how we will care for those infected and protect those not yet infected.

What is amiss, Mr. President? Why is our Government pushing condoms instead of sexual abstinence? Why haven't State governments utilized measures traditionally taken to control the spread of a veneral disease? Why are many in Government determined to protect the rights of the infected at the expense of the uninfected?

Unfortunately, Mr. President, I think the answer lies in this Nation's continual rejection of biblical absolutes. Unless and until we are willing to admit that certain behaviors—adultery, fornication, and homosexuality—are wrong, and that public policy should reject these behaviors, we will continue to watch the innocent die.

Dr. Payne eloquently discusses this matter in his article, and I ask unanimous consent that his article be printed in the RECORD.

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

A FAMILY DOCTOR RESPONDS: KOOP WAS WRONG ON AIDS

(By Dr. Franklin E. Payne, Medical College of Georgia)

With all due respect to his office and his evangelical commitment, some points that the Surgeon General made were skewed at best and false at worst. This epidemic is sufficiently serious that his position must be countered with another view. It may be that the evangelical community is the only group in our society that has the necessary perspective to influence sorely needed policies.

To be fair, to Dr. Koop, I should stress that an interview does not always bring out a person's complete views on a subject—so the following must be read in that light. Nevertheless, his statements in that interview seem to represent his opinions given at other times. In my writings I have often agreed with the "establishment," sometimes in contrast to other evangelicals who take a more radical position. This interview with Dr. Koop, however, was too extremely not to receive a reply.

Dr. Koop's "most pressing" problems were compassionate care, terminal care, and home-based care of AIDS patients. While these problems are serious, it would seem that the most pressing problem is prevention of this (likely) 100% fatal disease. While it is currently confined to limited populations, the increasing number of cases of heterosexual transmission may potentially infect much greater numbers.

The measures which Dr. Koop did mention are seriously inadequate to deal with the epidemic. There are two reasons for this deficiency: (1) Condoms are no answer, (2) and homosexuals have unduly influenced "official" policy.

Dr. Koop says that the first emphasizes abstinence and "mutually faithful monogamous relationships." While this position has some resemblance to Biblical values, it is woefully non-descript. Some homosexuals think that one partner a month qualifies as this type of relationship and some heterosexuals think that a relationship with only one person for several months also qualifies. What is needed is a bold advocacy of Biblical marriage: public vows by one man and woman to each other for their lifetimes.

Why cannot Dr. Koop be specific? Why does he have to use language that is vague and easily misinterpreted, and thereby dangerous. AIDS, as well as all sexually transmitted disease (STDs) would almost disappear in one generation if God's injunction for sexual relationships were followed.

Since the promiscuous are "still my [Koop's] charge," he advises that condoms are "safer than nothing" and "especially safe when used with a spermicide." Dependence on condoms, however, may actually increase a person's risk for AIDS. First, consider the two situations where they might be used. If neither sexual partner is infected, then a condom is not necessary. But if one is infected, then the condom is not 100% effective. As a physician, I am not willing to say that any risk of infection with a fatal disease is an acceptable medical risk.

To give any assurance of protection is likely to give false assurance—and cause the user to have greater exposure than he or his partner otherwise would have. As evidence, a strong case can be made that prescriptions of birth control pills to unmarried women have actually increased their number of pregnancies. In addition this supposed "protection" from pregnancy has contributed to a modern epidemic of STDs, in spite of the best antibiotics and medical care that the world has ever known.

I am surprised that Dr. Koop would advise that this risk is acceptable. By contrast, he does not advise that smokers use filter cigarettes. He simply says, "Stop." Further, he has declared smoking an addiction, but speaks of promiscuity only as behavior. Now, virtually every physician and psychologist will take the position that an "addiction" is harder to quit than behaviors classified otherwise. Sexual intercourse, of course, is in a different category. People are capable of keeping their sexual expression

within God's boundaries. Therefore, as with smoking, Dr. Koop could have simply advised them to stop, instead of offering condoms, the equivalent of filter cigarettes.

CHRISTIAN INFLUENCE

Why can't a public health official stand on his "very strong, personal moral base"? Aren't Christians responsible to devise methods and give advice to immoral people to lessen the consequences of their behavior?

Without question, we have a responsibility to treat such consequences. But the Bible does not support efforts to ameliorate the effects of sins not yet committed. If anything, it advocates letting sinners feel the full effects of their sin so that they will be driven to the ultimate solution in Jesus Christ—sometimes through the compassionate efforts of healers who then care for them.

Dr. Koop seems to strike out at anyone who would suggest that homosexuals have undue influence in setting government policy. He implies that those who say anything negative about homosexuals are "homophobic" and desire to "bash" homosexuals. I find it strange that he would use such words; they are the words of the liberals toward those who do not accept homosexuality. As a Christian, surely he is aware of God's condemnation of homosexuality.

HOMOSEXUALS' INFLUENCE

In spite of Dr. Koop's protests—"This is not true" (that the government has not "bowed" to the homosexual lobby—it does not take much insight to see the considerable influence that homosexuals have had on official policy.

Consider these facts:

(1) In spite of every evidence that the major route of transmission for the HIV is sexual, it is still not classified officially as a sexually transmitted disease.

(2) Traditional and effective disease control measures, such as contact tracing and routine testing, have not been applied to AIDS except in a few states. Millions of Americans are needlessly threatened because these and other public health measures have not been taken to find out who is infected and to inform their sexual partners.

(3) Special exceptions have been made for patients with AIDS when they apply for Medicaid.

(4) Parents in New York City do not have the right to know if their 10-year-old child has AIDS without the child's signed permission.

(5) Homosexual representatives have been on virtually every commission to "study" and plan for this epidemic.

(6) Homosexual organizations have received millions of dollars for "education," often producing materials that are the worst sort of pornography.

(7) Insurance companies in Washington, D.C., and California are prohibited by law to test directly for the HIV, the first and only disease to be treated in this way.

(8) The legal groundwork has been established to make AIDS a federally-protected and subsidized handicap.

(9) The Food and Drug Administration (FDA) has modified its regulations on new drugs so that they can be used clinically earlier, thereby reducing their efficacy and safety.

(10) Extensive counseling has been considered necessary both before and after testing for the HIV, when such is not provided with any other test. Testing is anonymous for the HIV, when other tests are not. Health care workers are not allowed to know the HIV status of their patients when they can know all other relevant information.

While the government may not have "bowed" to the homosexual lobby, it has surely been significantly influenced. Dr. Koop should not try to make us think otherwise. It is outrageous that he would attack any criticism of this influence as "homophobia."

I do not understand how Dr. Koop could expect us to believe such a distortion of the evidence. Such distortion breeds the fear and hostile behavior that Dr. Koop abhors (and I also abhor). His statements and those of the government actually contribute to mistrust and fear because their statements can so obviously seen to be false. Instead of dousing the flames, such distortions add fuel to the flames of public opinion.

The "Tylenol scare" is a recent example of the capability of the government to mobilize to meet a public health need. Within hours, shipments of the product in question were shut down and recalled for testing. The public was warned. Within months, new regulations for containers were instituted.

But since 1981, when it was first apparent that AIDS was going to be an epidemic, government response has been slow and limited. Perhaps partly to blame are physicians who know the medical and public health measures that should have been applied. For the most part, however, they too have backed off the necessary aggressive response needed for this epidemic.

EVERYTHING HAS COME TRUE?

Dr. Koop also errs when he says, "Everything we have predicted so far has come true." Consider some observations:

(1) The prediction initially was that 5% of those infected with the HIV would develop AIDS. Then those projections become 10%. But as many as 100% may develop AIDS.

(2) Two and one-half years ago it was estimated that 1-1.5 million Americans were infected with the HIV. Two years later, this estimate has not been revised. Yet we are told that new people continue to become infected.

(3) While Dr. Koop says that AIDS cases continue to double each year, the numbers have not been doubling for at least two years. Further, the case definition of AIDS was revised in August 1987. Since then, 31% of cases that would not have been diagnosed as AIDS prior to that time, now are included in the total. Not only are the numbers no longer doubling, if these "re-defined" cases are included; the projections are even further off. Neither Dr. Koop nor any other official explains how the numbers have stayed close to the predictions. While I do not believe that this change was made in order to keep their numbers accurate, I do not think that they should be honest that based upon the original definition, AIDS cases are considerably fewer than perdicted.

ANONYMOUS TESTING

Finally, Dr. Koop advocates anonymous testing because "people won't come in to get tested."

Well, Dr. Koop should concede that current policies are virtually ineffective. Only 2% of those with the HIV know that they have it. Eventually, they will infect all their sexual partners—whether or not they use condoms.

Further, current policies of voluntary testing and rigorous counseling are almost worthless to find those who are infected with the HIV. In New York City, one-third of those who come to be tested actually go through with it after "counseling." Only half of those who are tested come back to know their results.

In a New Mexico STD clinic where everyone who came in was given the opportunity to take an HIV test, 86% agreed to be tested for the HIV and 14% refused. Upon blind testing of both groups, researchers found that the smaller group of refusals actually had more positives than the larger group who agreed to be tested. While I am not yet convinced that universal, mandatory testing is necessary, testing needs to be more extensive than it currently is, if we are really interested to protect the sexual partners of those who are infected.

DIFFICULT POSITION

I do not want to minimize the difficulty of Dr. Koop's position. But good medicine (and public health) is truly good medicine only when it is consistent with Scripture. If Dr. Koop comprehends this fact, why is he willing to provide less than good medical advice to anyone?

He would not advise people to have abortions as good medical care (as many medical leaders do). What he has done for homosexuals, however, is the moral equivalent of helping women to have "safer abortions." In reality, this "safer" approach is more dangerous than following moral (Biblical) standards.

Dr. Koop has failed to uphold Biblical morality clearly and publicly. In so doing he has failed to offer the best standard of health to the American people. These are serious accusations, for sure, but at the least all the evidence should be laid before the evangelical community and American people for their evaluation.

VENTURE CAPITAL GAINS LEGISLATION

Mr. BUMPERS. Mr. President, on March 14 I testified before the Senate Finance Committee on the capital gains issue. This was the 1st hearing in the 101st Congress on capital gains legislation.

I would like to take a minute here to review the issues I raised in my testimony.

BIPARTISAN DEBATE

The capital gains debate has been described by many commentators as a partisan debate between President Bush and congressional Democrats. This is not the case.

The capital gains debate is a bipartisan debate.

There are Democrats in the Congress—and I am one of them—who believe that we should reduce capital gains taxes.

In the Senate there are 14 Democratic Members who are supporting a capital gains tax reduction—Senators DECONCINI, DIXON, GORE, INOUYE, SANFORD, DASCHLE, HEFLIN, SASSER, DODD, KERRY, BURDICK, CRANSTON, SHELBY, and me.

There are only seven Senate Republicans sponsoring a capital gains bill—Senators BOSCHWITZ, MCCLURE, SYMMS, COCHRAN, KASTEN, GARN and LUGAR.

On February 7, 1989, I introduced S. 348, the Venture Capital Gains Act of 1989. S. 348 is cosponsored by more Members of the House or Senate than any other capital gains bill pending in the House or Senate.

Eleven Senate Democrats have joined me as cosponsors of S. 348, including Senator DASCHLE of this committee. In addition, Senator BOSCHWITZ is a cosponsor and he serves as the chairman of the capital gains coalition in the Congress.

And, of course, Chairman BENTSEN has indicated that he supports a reduction in capital gains taxes and he has organized this hearing.

I repeat and I emphasize—the capital gains debate is a bipartisan debate. Democrats are playing a constructive role, proposing alternatives and raising issues, not just opposing the President's proposal.

VENTURE CAPITAL GAINS LEGISLATION

S. 348, the Venture Capital Gains Act, proposes that we provide a modest tax incentive in favor of high-risk, long-term, growth-oriented investments in small business ventures.

I have described the bill and its rationale in my introduction statement of February 7, but when I introduced my bill the President had not as yet announced the details of his proposal, so my statement does not directly compare my bill to his proposal. So let me just make a few key points about my bill as it compares to the President's proposal.

The venture capital gains legislation is different from the President's proposal in nine respects:

First, my bill applies only to investments in stock. His applies to investments in a wide variety of capital assets.

Second, my bill applies only to investments in the stock issued by a small business venture. His applies to any investment in any stock.

Third, my bill applies only to direct purchases of the stock from the small business issuing the stock. It does not apply to trading of the stock in the secondary market. The President's proposal does.

Fourth, my bill only applies to new investments. It does not apply to investments made before the incentive goes into effect. The President's proposal is retroactive in effect.

Fifth, my bill requires a 4-year holding period. The President's requires only a 1-year holding period to start and this gradually increases to a 3-year holding period.

Sixth, my bill grants a 25-percent deduction and sets a 21-percent rate maximum capital gains tax rate. The President has proposed a 45-percent deduction and a 15-percent maximum gains rate.

Seventh, under my bill the alternative minimum tax applies to the deducted gains. With the President's proposal it does not.

Eighth, under my bill the deduction is available to corporate as well as to individual taxpayers. The President's proposal applies only to individual taxpayers.

Ninth, and, most important, I have received a favorable revenue estimate from the Joint Committee on Taxation which finds that S. 348 loses a fraction as much revenue as the President's proposal.

Let me just comment on a few of the differences between the President's proposal and my venture capital gains legislation.

A. SMALL BUSINESS CAPITAL

The availability of capital to start up small business ventures has always been a major problem. The tax reform legislation of 1986 exacerbated the problem by putting a high premium on short-term, income-oriented investments.

Venture capitalists do provide capital to start up ventures, but increasingly they are becoming involved with leveraged buy outs and other financial deals. They are more risk-averse than they used to be, partly as a result of the tax reform law and partly as a result of their experience with how risky start-up ventures can be.

There is no absence of investors who seem to be willing to invest in the established companies whose stock is traded on the major stock exchanges. And they seem to be willing to make these investments despite the absence of any capital gains preference.

My question is, Why should we give these investors a tax break for something that they are already doing without any tax break?

What we need to do is give them an incentive to change their investment strategy to place a greater emphasis to high-risk, long-term, growth-oriented investments in small business ventures.

That's where we have the need. And that's where the incentive should be directed.

B. RETROACTIVITY

The President's proposal gives a tax break for any investment, even investments made before the capital gains tax reduction goes into effect.

This means that it provides a tax break for investments that were made with no expectation that the investor would receive any capital gains preference.

To me this is an undeserved windfall.

My question is, Why should we reward investors for doing what they have already done without any expectation of a tax reward?

I think the reason for this feature of the President's proposal may be that the Treasury Department could not find any other way to make the revenue numbers show a revenue gain in the early years.

You see, if investors can cash in their old investments, they'll receive a huge windfall but they will also pay some tax. They will only pay this tax at the new 15 percent gains rate, not the 28 percent or 33 percent ordinary income rate, but they will pay some tax. I think the Department found it necessary to induce this rush of revenue in order to find that its proposal raises revenue in the first few years.

Treasury Secretary Brady has said that he will review the retroactivity issue and I have asked him in a March 7 letter to provide me with an estimate of the revenue impact of the President's proposal assuming that it is not retroactive. If it turns out that the only reason the President's proposal raises revenue in the first few years is because it confers a huge, and undeserved, tax windfall on investors, the Department may have to go back to the drawing board.

The President presents his capital gains bill as an incentive for investment. It is ironic that the principal impact of the proposal in its first years would be to encourage investors to cash in their old investments.

S. 348 is prospective only and confers no windfall, but the Joint Tax Committee still finds that it loses a fraction as much revenue as the President's proposal. This is true because of the other limitations in S. 348, which I have mentioned.

C. PHASE-IN OF HOLDING PERIOD

S. 348 requires a 4-year holding period for any investment that qualifies for the tax incentive. The President only requires a 1-year holding period for investments made during the first 3 years, 2-year holding period for investments made in 1993 and 1994 and a 3-year holding period for investments made after 1994.

My question is why should we wait to put the longer holding period into effect?

If we want to encourage long-term investments, why should we start out by encouraging shorter-term investments?

I don't understand the logic of phasing in the longer holding period.

There is no fairness problem with immediately requiring a 4-year holding period. Any investor making a new investment would know what the holding period is and would not be surprised in any way if it starts at 3 years. And, if the investor made the investment with no expectation of any capital gains preference, he can hardly complain about a 4-year holding period.

Of course, if the holding period starts at 4 years, more reaping their windfall. This would reduce the rush of revenue to the Treasury Department.

Even if the tax preference applies only to new investments, there would be some slowing of gains realizations if the 4 year holding period goes into effect immediately.

For these reasons the Treasury may have found that if it immedately went to a 3-year holding period, it could not project a revenue gain. In fact, it does acknowledge that the President's proposal would lose $11.3 billion in 1996, right after the 3-year holding period goes into effect. So, the phase in of the holding period is obviously another case of revenue considerations driving tax policy.

But, again, S. 348 puts a 4-year holding period into effect immedately and it does not lose large amounts of revenue in the early years.

Again, the reason why this is true is that S. 348 is focused, targeted, and limited to venture capital investments, where a 4-year holding period is perfectly reasonable. Venture capital investors often could not find a market for their stock in the first 3 or 4 years. The 1-year holding period would be irrelevant to them.

D. 21 PERCENT GAINS RATE AND MINIMUM TAX

S. 348 proposes that the maximum gains tax rate be set at 21 percent, which is less generous than the 15 percent maximum gains rate the President proposes.

I would like to offer investors a more powerful incentive and I found that some of my colleagues would not cosponsor S. 348 because they thought that it did not provide a strong enough incentive.

I chose 21 percent as the maximum gains rate for two reasons.

First, under S. 348 the alternative minimum tax applies. So, if S. 348 were to give investors a 15 percent gains rate, much of the benefits of that rate would be recaptured by the minimum tax, where the rate is 21 percent. The interplay of the gains rate and the minimum tax would amount to a zero sum game for the investors.

I would be very surprised if the Congress would reestablish a differential for capital gains taxes without applying the minimum tax. The minimum tax applied to capital gains before the tax reform law. The principal argument being raised against restoring the capital gains tax preference is that it would principally benefit the wealthy.

S. 348 meets this fairness argument by applying the minimum tax.

And when I applied the minimum tax, the 21-percent maximum gains rate became the logical gains rate as well.

Second, a 15-percent maximum gains rate would lose more revenue than a 21-percent maximum gains rate.

I have asked the Joint Committee on Taxation to give me revenue estimates of S. 348 assuming that it sets a 19-percent, a 17-percent and a 15-percent maximum gains rate and assuming that the minimum tax does not apply.

When I receive these estimates I will reevaluate the provisions in S. 348. As I said, I would like to provide a more powerful incentive for venture capital investments if it is fiscally responsible and fair to do so.

E. REVENUE ESTIMATE

I already have obtained a revenue estimate from the Joint Committee on Taxation on S. 348 as it was introduced.

The Committee gave me this estimate on September 18, 1987, based on the predecessor bill to S. 348, S. 931, which I introduced on April 7, 1987. The capital gains tax incentive provided in S. 931 was available only for companies with $10 million in paid-in capital and the committee found that it would lose only $40 million in the first 5 years. I asked the committee how high this threshold might be raised and not lose $500 million in revenue and the committee said that I could eliminate this threshold and not exceed a 5-year revenue loss of $500 million.

When I reintroduced the bill in this Congress I raised the threshold to $100 million in paid-in capital. This was the only change I made in the bill, so the revenue loss for S. 348 would be what the committee has found in its September 18, 1987, estimate, less than $500 million over 5 years. I have asked the joint committee to confirm this revenue estimate and trust that it will again find that S. 348 is a fiscally responsible bill.

As you know the Joint Committee found that the President's proposal would lose $24 billion in revenue in its first 6 years as law. So, if the President's proposal is sometimes referred to as the "15 percent solution," then maybe S. 348 should be referred to as the "2 percent solution"—2 percent as much revenue loss.

JOINT TAX STUDIES

I have asked the Joint Committee on Taxation to prepare three other studies for me and I hope to receive them shortly.

The first is on the interplay between the gains rate and the minimum tax. I have asked the committee to quantify the extent to which there is a zero sum game between the gains rate and the minimum tax.

The second is on the distribution of benefits by income class for the President's proposal and S. 348. Fairness is a key issue with the capital gains tax and I want to know how the two proposals compare.

And third, I have asked the committee to try to determine to what extent the President's proposal and S. 348 simply reward investors for doing what they are inclined to do without any tax preference. If we are looking at tax incentives, we should know how much new activity of the desired type we expect to generate.

POLITICAL REALITY

S. 348 is a realistic capital gains bill. I didn't run for President and S. 348 is not a campaign-type proposal.

I am trying to legislate, not to make everyone happy.

S. 348 does not overpromise. It does not promise that you can "have it all." It is not fancy.

It is focused. It is a bill we need and it is a bill we can afford.

I do not challenge the revenue estimates of the joint committee. I do not have to do that. I voted against supply side economics in 1981 and it was one of the best votes I ever cast. I do not rely on magic to argue that we can cut tax rates and generate more revenue. S. 348 does lose some revenue, but it is a manageable amount.

My bill is prospective only and confers no windfall on past investment.

It rewards capitol formation, not shuffling of assets among investors.

It is fair because the minimum tax applies.

In my view, the sooner the President and his supply side supporters begin to focus on these issues, the sooner we can have a real debate on capital gains taxes here in the Congress.

Finally, I am trying to turn this debate into a bipartisan debate, with Democrats speaking out in favor of capital gains tax reductions, instead of just opposing the President's proposal.

I ask unanimous consent that a chart summarizing the differences between the President's proposal and S. 348 be printed at this point in the RECORD.

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

COMPARISON OF CAPITAL GAINS PROPOSALS

	President Bush	Senator Bumpers (S. 348)
Maximum tax rate	15 percent	21 percent.
Exclusion on gain	45 percent	25 percent.
Holding period	1 year until 1992, 2 years in 1993–94 and 3 years after 1994.	4 years—favors long-term investments.
Investments covered.	Many capital assets	Stock of small business ($100 million paid in capital).
Capital formation	Covers secondary market trading.	Covers only direct investments that put capital in hands of entrepreneurs.
Taxpayers	Individual	Individual and corporate.
Windfall	Retroactive to past investments, confers huge windfall.	Only applies to new investments, no windfall.
Minimum tax apply	No	Yes, ensuring fairness.
Revenue loss	$24 billion over 6 years: Joint Tax Committee.	Less than $500 million over 5 years: Joint Tax Committee.

MARCH 25, 1989—GREEK INDEPENDENCE DAY

Mr. PELL. Mr. President, on March 25, 1989, the Nation will continue its longstanding tradition of celebrating Greek Independence Day. I have supported legislation for many years to

mark this fitting tribute to the ties that bind Greece and the United States. This year, I was both pleased and proud to offer my cosponsorship of legislation to be introduced by my colleagues, Senators SPECTER and LAUTENBERG, to continue the tradition and designate this national day of recognition in 1990.

Two thousand years ago, the Greek statesman Pericles proclaimed that the Greek "Constitution is called a democracy because power is in the hands not of a minority, but of the whole people." One can easily recognize the extent to which America's Founding Fathers looked to the Greeks as they crafted our own Constitution and shaped our Nation. The Greek contribution to the democratic heritage of our country was epitomized by Thomas Jefferson when he stated that "to the ancient Greeks we are all indebted for the light which led us out of Gothic darkness." This contribution is especially compelling to Americans as we are now completing the celebration of the bicentennial of our Constitution.

However, the contributions that Greeks have made to American society go far beyond the words and guidelines of the ancient Greeks. Over the years, Greek immigrants have had a tremendous impact on American society. Greek Americans have contributed significantly to all aspects of our culture, including the areas of literature, art, medicine, music, sports, and politics. Indeed, a son of Greek immigrants, Michael S. Dukakis, was last year chosen as the standard-bearer of the Democratic Party in its bid for the Presidency. I can think of no better tribute to our deep ties to Greece than the fact that an American of Greek heritage was selected as a candidate for the Presidency of the United States.

Mr. President, as America is thankful to Greece for so much of its culture, so too has Greece benefited from its close relationship with the United States. Just as the democratic principles of the ancient Greeks inspired a young America, so did the American Declaration of Independence inspire the modern Greeks in their struggle for their own independence in the 1820's. Greek intellectuals translated our Declaration of Independence and embraced it as their own. In 1821, a Greek commander stood before the Messenian Senate of Calamata and appealed to the citizens of the United States with these words:

> Having formed the resolution to live or die for freedom, we are drawn toward you by a just sympathy since it is in your land that liberty has fixed her abode, and by you that she is prized as by our fathers.

This Greek and American love of liberty again brought us together as we fought side by side against oppression in World War II. It continued as Greece and America determined the necessity to overcome the threat of communism through the Truman doctrine, which exemplified the commitment of our Nation to a free and independent Greece, and marked a watershed in United States foreign policy.

As we look to the celebration of Greek Independence Day this year, we are reminded of the common bonds that exist between the United States and Greece. We celebrate the tremendous contributions that Greek Americans have made to our way of life, and we commemorate the freedoms and principles that are dear to Greeks and Americans. I am proud to be an original cosponsor to legislation that would enable us to observe once again this celebration next year, and I urge the support of my colleagues.

MAYOR FLAHERTY'S PROPOSALS FOR THE HOMELESS

Mr. PELL. Mr. President, in the past several years the America people have come to the shocking realization that our Nation faces a serious problem of homelessness.

We have come to the realization that the scope of the problem is greater than we had imagined, and we are learning that the homeless population is different than we had assumed it to be.

We now know that this is a national problem, not limited to one or two of our large cities. We now know that the problem is not limited to the mentally disturbed homeless found in large inner cities. Homelessness is now being found in middle- and upper-class suburban cities and its victims include children, single parents, and even low- to moderate-income working couples who cannot come up with the down payments and security deposits required to purchase or rent housing even if it is available.

This situation has posed a new challenge to city govenments, and in many cases municipal leaders are leading the way in meeting the challenge. In the State of Rhode Island, for example, Mayor Francis X. Flaherty of the suburban city of Warwick has undertaken an energetic program to aid the homeless. I recently had the opportunity to meet with Mayor Flaherty to discuss this and other problems confronting our cities, and just yesterday the Providence, RI Journal published an excellent article by Mayor Flaherty on the problem of homelessness, what has been done and what remains to be done.

As he points out in the article, solving the problem of homelessness effectively will require combined and cooperative action by local, State and Federal governments.

Mr. President, I think my colleagues will find Mayor Flaherty's article of interest as the Senate faces the challenge of dealing effectively with the problem of homelessness and I ask unanimous consent that the article entitled "Consider the Homeless and Their Families," be printed in the RECORD at this point.

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

CONSIDER THE HOMELESS AND THEIR FAMILIES

(By Francis X. Flaherty)

At a time in our nation of relative prosperity, it is easy for us to take for granted the prosperous economic good fortune, and the resultant benefits of an economic boom, including housing. I ask that we reflect on this prosperity by considering the plight of those less fortunate, who are not able to benefit from such wealth: Namely, the homeless.

I speak of the growing number of homeless families Around the country, in our own state, and yes, even in the city of Warwick, the fastest growing population of homeless are children. Take a minute to consider the life of a child waking up in a strange place, being shuffled from one place or one shelter to another, and even sleeping in a cold house or car. Consider that child's view of the world around him or her, worrying about where the next meal will come from, or whether or not he or she will go to school.

Then consider the families who are working with an income of $16,000–$22,000. Though they struggle to maintain a stable life for their children, they surely know that the next rent increase will most definitely put them on the streets or in their car.

Let's not forget the elderly, those who can no longer afford to keep their homes and who cannot find affordable housing elsewhere. And finally, consider the young people who are priced out of the housing market by skyrocketing prices, and accordingly must spend 50, 60 and even 70 percent of their income on rents without ever being able to save or afford their own house.

We must ask ourselves if we have done enough to help others.

I recognize that the housing problem is a national issue which calls for the cooperation of federal, state and local governments. For too long the federal government has abandoned its responsibility in setting a comprehensive, national housing policy. Now, however, the Bush Administration has taken a first step in renewing its responsibility towards the homeless by calling for full funding of the McKinney Act, which provides funds for programs for the homeless.

We have heard much talk about the housing crisis in Rhode Island by our governor. But, to date, we have not seen results. And although legislation was passed in the last session of the General Assembly establishing a rental assistance program, the growing numbers of homeless families have not benefited from the effects of such legislation.

Warwick cannot wait for the actions of others. Last October, we developed an innovative model program to relocate 13 abandoned houses from the Green Airport "clear zone" to other parts of the city. I am pleased to state that last month the City Council approved the city's petition to rezone the property, thereby enabling the city to use city-owned land for the relocation of the homes. The houses will soon be made available to families needing housing assistance. I was also able to convince the

state to allow us to turn two additional abandoned houses into shelters for Warwick's homeless families.

These are good programs, but the city still has a list of 450 families who have asked us for housing assistance. We hope to do more. Last year, Warwick qualified for a $25,000 state grant to study the issue of affordable housing, to be overseen by the city's Affordable Housing Board. We have completed that study and hope to begin implementation of the recommendations contained in the report.

Our first priority should be to provide housing assistance to the homeless and to families with children headed by single parents. Only slightly less urgent is the need to help the elderly and renters who live in substandard dwellings.

Since Rhode Island's housing market became so attractive, housing prices have skyrocketed, and more of our residents have been left unable to enter the housing market. With prices up, and the supply of suitable housing sites ever-dwindling, government has an obligation to address affordable housing issues. The first thing government must do is recognize the problem. We need a Rhode Island Housing Policy which addresses the needs of all those seeking affordable housing.

After that, there are a variety of program ideas which, if persuaded as part of an overall policy, could help alleviate affordable housing problems. These include local initiatives to encourage development of affordable housing where appropriate, establishment of a state trust fund for use in development of affordable housing-equity programs to help the elderly, enhanced enforcement of local and state building codes to bring about rehabilitation of substandard housing, and improved "equity-sharing" programs for first-time buyers.

Here in Warwick we are currently examining a program that offers tax incentives to owners of retail property willing to participate in the Warwick housing Section 8 program, specifically providing affordable housing for families. This program would be designed to offer returns at a lower market rate in return for a "tax incentive" or credit on their property tax bill.

As we begin to act at the local level to address this very important problem, it is paramount that a federal and state policy be developed to quickly begin addressing the needs of those families and individuals who are without adequate housing. Our initiatives in Warwick are just a beginning in the movement to end the crisis in the life of a homeless child and family.

Much more remains to be done, and action must begin immediately.

SENATOR DANIEL PATRICK MOYNIHAN COMMEMORATES 20TH ANNIVERSARY OF THE WILSON INTERNATIONAL CENTER FOR SCHOLARS

Mr. PELL. Mr. President, on March 7, 1989, the Wilson International Center for Scholars celebrated its 20th anniversary. On this occasion, our distinguished colleague from New York, Senator MOYNIHAN, reflected on the meaning that the anniversary holds for him, and, by extension, all who have been involved with the center during its existence.

As one who has been closely tied to the development of the Wilson Center since its inception, Senator MOYNIHAN is singularly qualified to speak of the significance of its 20th anniversary. Drawing from his experiences as the first vice chairman of the center, Senator MOYNIHAN in his remarks offers a fascinating account of the little-known history of the events surrounding the foundation of the center. At that time, and indeed ever since, I was very interested in and followed very closely the advancement of the Wilson Center. As chairman of the Smithsonian Subcommittee of the Senate Committee on Rules, I conducted hearings and was floor manager of the legislation that established the Wilson Center. Yet despite my close association with the Wilson Center, I learned a great deal from Senator MOYNIHAN's remarks.

Senator MOYNIHAN captures perfectly the hopes that we all held for the Wilson Center. His eloquent discourse on the center's namesake gives us a rich and balanced portrait of one of America's greatest statesmen. In calling to mind the goals, ideals and vision of President Wilson, Senator MOYNIHAN validates the import and distinction that the Wilson Center enjoys today.

It is an excellent speech and I commend it to my colleagues. I ask unanimous consent that it be printed in the RECORD at this point.

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

REMARKS BY SENATOR DANIEL PATRICK MOYNIHAN

Woodrow Wilson was not, one fears, unfailingly accommodating. He would have judged that a form of indulgence, providing pleasure not only to others but to one's own self, and on a sustained basis. Hence, a disposition to be kept at a distance.

The more then, thinking back some thirty years now, are we struck at how accommodating others have been to him, or rather to his memorial. From the moment the proposal of an International Center for scholars appeared, it was uniformly agreed by the city planners, the Congress, as in the person of Sidney Yates, Frank Thompson and Claiborne Pell, the various agencies involved that it ought to be done, and it was done with dispatch. Most especially are we struck by the enthusiasm of recent Presidents, from John F. Kennedy in 1961 who signed a joint resolution of Congress creating the Woodrow Wilson Memorial Commission to consider the enterprise, to President Bush who has done us the singular honor of coming to speak on this occasion of our Twentieth Anniversary.

It happens that I had the opportunity to observe this Presidential disposition at first hand, and at a moment of some delicacy. Lyndon B. Johnson signed the legislation creating the Center on October 24, 1968. The bill provided for a 15-member Board of Trustees of which there would be seven from "within the Federal Government; and eight appointed by the President from private life." The Chairman is to be appointed from among the Private Members.

On January 18, two days before leaving office, President Johnson exercised his undoubted right to appoint the Private Members. Among these was Hubert H. Humphrey, who he also named Chairman.

As is well known, the records of that turbulent era are incomplete and often misleading. Thus, for example, no mention of these appointments will be found in the "Public Papers of Lyndon B. Johnson." Yet, it is reasonably well established that on January 18, 1969, Hubert Humphrey was Vice President of the United States and remained such until noon on January 20. In which event he would not have been eligible for appointment as a Private Member and Chairman of the Board of Trustees. On January 21, I was named an Assistant to the New President, and owning to my earlier involvement with the Center, it fell to me to point out this nicety to Richard M. Nixon.

President Nixon was not the least put off. He much approved of the idea of a Wilson Center, being an admirer and a student of Wilson. (He would relax by reading out loud long passages from Wilson's works.) And he was an admirer of Hubert Humphrey. He insisted that Humphrey stay on as Chairman and, perhaps to emphasize his support, he appointed me Vice Chairman, beginning a practice, now verging on a tradition, of Presidents appointing a member of the White House staff to the Board of Trustees.

For the first and last time in his adult life, Hubert Humphrey had no other public business, and he turned to the work of Chairman with that great energy and indomitable enthusiasm, thus beginning what we may hope will also become a tradition of exceptional chairs. Dillon Ripley, with accustomed laconic magnificence, turned over the Smithsonian Castle on the Mall to the new Center as interim quarters, and in no time the institution was off and going.

It didn't have to happen, but it needed to happen. Those years, 1968 and 1969, strained the Wilsonian tradition at home and abroad to the breaking point, and in the view of many, past that point. Now ours is not a center of Wilson Studies. Princeton University carries forward that task with great distinction. Even so, an international center for scholars cannot and would not wish to avoid the issue which absorbed Wilson in his final years, which is to say the quest for legitimacy in the world order. He had, of course, the most emphatic views on this matter, and if they are frequently derided as Wilsonian idealism, it may be worth pointing out that time and again he went to war in the name of such ideals.

No American has ever so influenced the world. No other person, before or since, has attained such stature. Herbert Hoover, in his own last book, "The Ordeal of Woodrow Wilson," put the matter fairly:

"For a moment at the time of the Armistice, Mr. Wilson rose to intellectual domination of most of the civilized world. With his courage and eloquence, he carried a message of hope for the independence of nations, the freedom of men and lasting peace. Never since his time has any man risen to the political and spiritual heights that came to him."

We would do well to remember that the world forgot this. Wilson was seen to have failed. Lenin had appeared on the international scene and a half century of hell ensured, as a totalitarian Marxist state asserted its claim to be the next stage in history. We would also do well to concentrate on the overwhelming evidence that that claim now lies in ruins. There is a clear sense in which

it fails to the coming political generation, here and around the world, to resume the Wilsonian enterprise, to establish a world order in which legitimacy derives from lawfulness, accommodation, and above all, the affirmation of political and personal freedom. That we have been given this second chance is in some measure surely owed to the redemptive power of that ordeal.

Wilson died just 65 years ago, on February 3, 1924. Yet, in a legitimate sense he had died of a stroke five years earlier on September 25, 1919 on a railroad train near Pueblo, Colorado barnstorming across the country in quest of support for the League of Nations which was going down in the Senate. His public life thereupon came to a close. We remember Wilson for practicing, as Martin Green has it, the politics of "precise intelligence". Yet the man was capable of transcendent passion.

Fifteen years ago I was asked to speak at the Center on the Fiftieth year from the time of his death. I thought of his last words. They were surely a premonition, an evocation almost, of death. A speech from the cross. A speech, to be sure, by a Presbyterian Saint Jerome, contesting texts to the very end, but a Passion withal. It is a premonition of his own death, and a prophecy, I suppose, of the death of the Western civilization that would not be saved. Excepting always that, while those who believed would be saved, the city would not be saved: the city would be lost to war and rumors of war.

The biblical cadence, the New Testament ecstasy in that extempore speech are as moving as anything in the language of the American presidency:

"Again and again, my fellow citizens, mothers who lost their sons in France have come to me and taking my hand, have shed tears upon it not only, but they have added, "God bless you, Mr. President." Why, my fellow citizens, should they pray God to bless me? I advised the Congress of the United States to create the situation that led to the death of their sons. I ordered their sons overseas. I consented to their sons being put in the most difficult parts of the battle line, where death was certain, as in the impenetrable difficulties of the forest of Argonne. Why should they weep upon my hand and call down the blessings of God upon me? Because they believe that their boys died for something that vastly transcends any of the immediate and palpable objects of the war. They believe and they rightly believe that their sons saved the liberty of the world. They believe that wrapped up with the liberty of the world is the continuous protection of that liberty by the concerted powers of all civilized people. They believe that this sacrifice was made in order that other sons should not be called upon for a similar gift—the gift of life, the gift of all that died—and if we did not see this thing through, . . . and now dissociated ourselves from those alongside whom we fought in the war, would not something of the halo go away from the gun over the mantelpiece or the sword? Would not the old uniform lose something of its significance? These men were crusaders. They were not going forth to prove the might of the United States. They were going forth to prove the might of justice and right, and all the world accepted them as crusaders, and their transcendent achievement has made all the world believe in America as it believes in no other nation organized in the modern world. There seems to me to stand between us and the rejection or qualification of this treaty the serried ranks of those boys in khaki, not only these boys who came home but those dear ghosts that still deploy upon the fields of France."

He tells of visiting a cemetery in France where French women tended American graves:

"France was free and the world was free because America had come. I wish some men in public life who are now opposing the settlement for which these men died could visit such a spot as that. I wish that the thought that comes out of those graves could penetrate their consciousness. I wish that they could feel the moral obligation that rests upon us not to go back on those boys, but to see the thing through, to see it through to the end and make good their redemption of the world. For nothing less depends upon this decision, nothing less than the liberation and salvation of the world."

Did he know how close he was to collapse? I do not know; I don't know how you would know. But for certain Wilson understood the price he new mode of Presidential politics was exacting. He had watched Bryan in 1896 and commented in his lectures on "Constitutional Government in the United States," given at Columbia:

"Men of ordinary physique and discretion cannot be presidents and live, if the strain be not somehow relieved. We shall be obliged always to be picking our chief magistrates from wise and prudent athletes—a small class."

In any event, we are no longer comfortable with political discourse that intense, iambic, salvific. Nor ought we be. The 20th century has knocked a lot of that out of us. Yet there is an essential Wilson that remains, and his case remains, essentially, the American case. I for one would hope to see us press it once more. To a world that might listen a little more intelligently than it was doing a quarter century ago.

It was at about that time that Charles Blitzer and I drew up a prospectus for the new Center. We proposed "an institution of learning that the 22nd Century will regard as having influenced the 21st." Not bad for hedging your bets. Yet, I dare to think that events are speeding up; that the relevance and significance of the Woodrow Wilson Center has become greater sooner than we had hoped for. But not a moment too soon!

JAMES MADISON'S BIRTHDAY

Mr. LEAHY. Mr. President, today is James Madison's Birthday. Madison was one of the first to propound rights for all Americans that we now take for granted. He believed passionately in the separation of church and state, and in the importance of protecting the rights of the minority in a democracy. Having watched in horror the crisis surrounding author Salman Rushdie in the past few weeks, it is important to remember these principles.

Madison believed in the importance of the public's access to government information. Madison wrote, in an 1822 letter:

[Knowledge] throw(s) that light over the public mind which is the best security against crafty and dangerous encroachments on the public liberty.

Since 1822, we have been reminded over and over of the importance of the public's access to the information generated by those the public entrusts with governance.

Recent investigations discovered that safety problems were directly linked to poor management within NASA; that some of America's most distinguished writers have been the subject of surveillance over the last half century; that opposition to American foreign policy in Central America can get the FBI on your trail; that cigarettes pose a greater danger to health than previously suspected; and that certain medication given mothers during childbirth impair infant brain development.

In every case, the investigations that led to disclosure were carried out by private organizations and reporters who requested Government documents under the Freedom of Information Act. Access to Government information ensures accountability.

The Freedom of Information Act is the most important tool for that access. Healthy open Government is the result. The FOIA grants the American people the statutory right to information about Government decisions, processes and actions, giving meaning to our first amendment right "to petition the Government for a redress of grievances."

Government agencies are not always forthcoming with information about problems and mistakes. Many Government officials complain about the Freedom of Information Act. They say citizens' FOIA requests get in the way of the "real" business of Government. They say it is too time-consuming to respond to requests for information, that it costs too much money to photocopy Government records, and that disclosures only make running the country more difficult.

These are excuses for Government secrecy. And they could be an impenetrable shield for failed policies and political embarrassment—were it not for the Freedom of Information Act.

Informing the public is an integral part of the "real" business of Government in a democracy: Without it, democracy cannot exist.

It is often through the persistence of journalists, scholars and other individuals making FOIA requests that examples of Government waste, fraud and abuse are brought to the attention of Congress. Thus, the Freedom of Information Act also plays a critical role for those of us in Congress who are charged with Government oversight.

For example, we now know that there were serious problems in past years at NASA with management and safety, but NASA officials kept quiet about it, despite inquiries from Congress. After journalists and others requested information through the FOIA and made it public after the *Challenger* tragedy, we in Congress found out and were able to conduct

more effective oversight. Journalists obtained information through the FOIA that NASA should have volunteered to us, but did not.

This is just one example of the crucial role that the FOIA plays in making Government accountable to the people and preventing "crafty and dangerous encroachments on the public liberty."

James Madison could never have anticipated such horrors, but he had the foresight to realize that a democracy thrives only when the public is informed about its Government. That is as true today as it was in 1822.

I am pleased to say that the Bush administration has given us no indication that gutting the FOIA is high on its agenda. In fact, I understand Vice President QUAYLE spoke this noon at the National Press Club and noting his own first amendment roots, addressed the importance of the Freedom of Information Act for an informed public which is the basis of our democracy. I look forward to working with the new administration to promote accountable government.

A strong FOIA is the best way to do it.

TOBACCO AND NICOTINE HEALTH AND SAFETY ACT OF 1989

Mr. BINGAMAN. Mr. President, today in the House of Representatives, Mr. WHITTAKER and 14 of his distinguished colleagues introduced the Tobacco and Nicotine Health and Safety Act of 1989. I commend my friends for taking this important step toward the final demise of what may be one of the greatest killers of all time—tobacco.

I pledge to work with Mr. WHITTAKER on this important issue, and I urge the Members of this body to join our effort. Shortly after the Senate's Easter recess, I will introduce legislation identical to the House bill, and I will look to my good friends and colleagues for their support and cosponsorship.

I would hope that every Member of the Congress would join Mr. WHITTAKER and me, but I know that such an expectation is unrealistic. That is a shame because before this day ends, 1,000 people will die from smoking or chewing tobacco. Tomorrow another 1,000 will die. And they will continue to die until we make a serious commitment to addressing the dangers of tobacco use.

Indeed, the Surgeon General of the United States has named tobacco use as the single most preventable cause of death and disability in our country. Every year tobacco products kill more Americans—about 350,000—than does alcohol and drug abuse, accidents, and suicides combined.

But aside from the personal loss of life, the economic and social costs of tobacco use are enormous. Estimates are that tobacco use costs our country more than $60 billion in lost productivity and health care expenses. And every day, more than 3,000 American teenagers—or 60 percent of all new smokers—start smoking.

Yet the manufacture and sale of tobacco products remain virtually unregulated, and tobacco products are largely exempted from the laws we have established to protect the public from unsafe consumer products. All of this despite the fact that we now know without question that cigarettes and other tobacco products containing nicotine are highly addictive.

It is time for a change. It is time for the Federal Government to take an active role in regulating the manufacture and sale of tobacco products. It is time for the Federal Government to provide the American public with the facts they need to make informed decisions about the use of tobacco products.

The Tobacco and Nicotine Health and Safety Act of 1989 will lay the foundation for the type of change we need, and it will lead to a safer, healthier America.

The act will:

Prohibit the sale of tobacco products to anyone under the age of 18;

Provide the Secretary of the Department of Health and Human Services with the authority to reduce the levels of harmful additives or prohibit the use of those additives entirely;

Provide the Food and Drug Administration with the authority to regulate nontobacco products that contain nicotine, which shall be categorized as drugs;

Require that tobacco manufacturers fully disclose all chemical additives in tobacco products;

Prohibit the distribution of free samples and coupons for cigarettes; and

Require a new warning label on the addictive nature of tobacco use.

This is important legislation, and again I commend Representative WHITTAKER and all of his cosponsors in the House for their commitment to this issue.

INTRODUCTION OF THE PRESIDENT'S CHILD CARE INITIATIVE

Mr. HATCH. Mr. President, I am truly delighted to join the distinguished minority leader, Senator DOLE, as a cosponsor of the child care legislation submitted by President Bush and hope that the Congress will give it the consideration it is due.

The President has been true to his word. During the campaign he promised to put forward a workable child care bill based on freedom of choice for families, and he has delivered on that promise.

I have been working on the child care issue for several years now and have come to several conclusions.

First, any child care bill, to be effective, needs to address all three of the major problems areas—availability and options for care, affordability for low-income families, and quality of care.

Second, tax credits, such as outlined in the President's proposal, can be of enormous value to American families struggling to make ends meet on limited incomes and who deserve the same child care choices as other families.

Third, we must recognize the costs of caring for young children that are incurred whether the children are in out-of-home child care or not. Clearly, there is a cost to sacrificing an income to care for children. Federal child care legislation which does not account for this sacrifice will be seriously flawed.

Fourth, a bipartisan approach to child care is necessary, not only to achieve passage of child care legislation, but also to ensure the success of the program once it is enacted. While any Federal program must certainly have proper oversight, I do not think that it is healthy for us to establish a new Federal role in child care, no matter how limited or broad that role may ultimately be, and then subject that program to constant political second guessing. A child care bill rammed through Congress by one party will be doomed by the political bitterness left in its wake.

It has been my pleasure to cross the chasm of political party on this issue and work with Senators DODD and MIKULSKI in an effort to develop a compromise. Senator DODD has been a tireless advocate for programs he believes will benefit children and families, and I have appreciated Senator MIKULSKI's personal insights as a former social worker and local government official. It is my fervent wish that this bipartisanship can continue and that our incorporation of the President's recommendations into the debate will be constructive and not political.

The President has submitted an excellent proposal. He has indicated his willingness to work with us. He actively seeks the enactment of responsible, effective child care legislation. We cannot ask for a more open invitation than that from the White House. I urge all Senators to take this invitation seriously, to look at the merits of the President's tax credit proposal, and to participate in the development and eventual enactment of a landmark child care bill.

JOURNALISTS' COMMITTEE TO FREE TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I have at the desk a resolution prepared by the Journalists' Committee to Free Terry Anderson, Senate Resolution 81.

It will be called up later by the majority leader. I ask now simply to record that the resolution is submitted for myself, Mr. MITCHELL, Mr. DOLE, Mr. PELL, Mr. ARMSTRONG, Mrs. KASSEBAUM, Mr. GRAHAM, and Mr. MATSUNAGA.

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

Mr. MOYNIHAN. Mr. President, this morning in the caucus room of the Cannon House Office Building, there was an extraordinary, moving, persuasive, and evocative ceremony recording the fourth anniversary of the kidnaping in Beirut of Terry Anderson of the Associated Press, who is still alive and still there. It was a ceremony on behalf of all the hostages in Lebanon, and I would like to take a moment of the Senate's time to read their names. It is so important that their names never disappear from our memory. They are Americans, Terry Anderson, Thomas Sutherland, Frank Herbert Reed, Joseph James Cicippio, Edward Austin Tracy, Alann Steen, Jesse Jonathan Turner, Robert Polhill, and, of course, the most recent hostage, Lt. Col. William Higgins of the U.S. Marine Corps, who was there with a United Nations peacekeeping force.

Of the British hostages there are Alec Collett, who was seized just a week after Terry Anderson, John McCarthy, and Terry Waite. Of the Irish, Brian Keenan, and Italian, Alberto Mlinari. The program from our ceremony notes that since the war began in 1975, more than 3,000 Lebanese citizens have been kidnaped and held hostage in the Middle East.

On this occasion, we heard from some remarkable persons. Foremost in my view, and I think the Senate would so share, was Bruce Laingen, who was the head of our delegation in Tehran in those long 440 days that ended only on January 20, 1981. We heard from James Reston of the New York Times, who covered Beirut with Mr. Anderson; from Bob Schieffer of CBS News; from David Ignatius of the Washington Post, all of whom had been there; and from Peggy Say, the sister of Terry Anderson.

Mr. Schieffer's remarks begin in a most extraordinarily perceptive, powerful statement. He said:

> The historian Ariel Durant once wrote that civilization is not imperishable but must be relearned by every generation.
>
> "Barbarism," she observed, "is like the jungle. It does not die out but only retreats behind the barriers that civilization has thrown up against it, and waits there always to reclaim that to which civilization has temporarily laid claim."
>
> Because we live on civilization's side of the barrier, it is sometimes easy to forget that there is still evil in the world.

In conclusion, Mr. President, with respect to this whole question of civilization, I hope there would be those in Tehran and those in Beirut who would know that all they have done is hurt their own causes by this barbarism. They should not ever suppose that the resources of civilization against its enemies are exhausted. They are not, sir. We have only begun to deploy them; that we should do so with greater urgency and, if necessary, an equivalent violence it seems to this Senator to be not only appropriate but necessary.

Mr. President, I see the Republican leader is on the floor.

The PRESIDING OFFICER. The Chair recognizes the Republican leader.

Mr. DOLE. Mr. President, I have been made a cosponsor of the resolution?

Mr. MOYNIHAN. Yes.

Mr. DOLE. I thank the distinguished Senator from New York. I certainly appreciate his efforts and I hope, as he does, we will have an appropriate response. One day longer is too long.

COMMENDATION OF JO-ANNE COE

Mr. DOLE. Mr. President, I have cleared this with the majority leader's staff. It is simply a commendation resolution. I send it to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> A resolution (S. Res. 84) commending Jo-Anne Coe.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 84) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

> Whereas Jo-Anne Coe became an employee of the Senate of the United States on January 3, 1969, and since that date has ably and faithfully upheld the high standards and traditions of the staff of the Senate of the United States for a period that included ten Congresses;
>
> Whereas Jo-Anne Coe has served as Senior Advisor to the Republican Leader from January 6, 1987 until January 31, 1989;
>
> Whereas Jo-Anne Coe served prior to 1987 as Secretary of the Senate, Administrative Director of the Committee on Finance, Administrative Director of the Office of Senator Bob Dole and other posts under Senator Dole;
>
> Whereas Jo-Anne Coe faithfully discharged the difficult duties and responsibilities of her positions on the staff of the Senate of the United States with great efficiency, devotion, and dedication;
>
> Whereas Jo-Anne Coe's clear understanding of the challenges facing the Nation has left her mark on many areas of public life;
>
> Whereas Jo-Anne Coe retired from the Senate of the United States on January 31, 1989; Now, therefore, be it
>
> *Resolved*, That the Senate of the United States commends Jo-Anne Coe for her exemplary service to the Senate and the Nation, and wishes to express its deep appreciation and gratitude for her long, faithful, and outstanding service.
>
> SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Jo-Anne Coe.

Mr. DOLE. I move to reconsider the vote by which the resolution was agreed to.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that I be made a cosponsor of the resolution in honor of Jo-Anne Coe.

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

Mr. MATSUNAGA. I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. FORD). The Senator from Kansas is recognized.

(The remarks of Mrs. KASSEBAUM pertaining to the introduction of legislation are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

EASTERN AIRLINES STRIKE

Mr. KENNEDY. Mr. President, I understand that in just a few moments the majority leader will be urging the Senate to consider emergency legislation to deal with the Eastern Airlines strike. I hope the Senate will take up this emergency legislation that was adopted yesterday in the House of Representatives by a vote of 252 to 167. I believe the Senate has a responsibility to act on this matter before we begin our recess tomorrow.

It is wrong for us to prolong the current impasse, where a more satisfactory alternative is so obviously available. The question comes to us is, who is to prevail? The national interest, or the interest of Frank Lorenzo.

We are about to enter the third week of a bitter strike. Thousands of employees are out of work, hundreds of thousands of passengers have been disrupted, and many of them have been stranded.

In similar instances in the past, Presidents have created Emergency Boards in air and rail disputes. In fact, every single President has done so, from Roosevelt to Reagan. No exceptions. Ten times it was recommended to President Reagan that he create an Emergency Board, and 10 times President Reagan did so.

The inaction of President Bush may be unprecedented, but congressional action is not. In 1978, Congress created an Emergency Board by statute in an Alaska airlines dispute. Three years ago, in the Maine Central Railroad

dispute, Congress created a Congressional Advisory Board to recommend a settlement.

For over a half a century, the Railway Labor Act has contained provisions for use in precisely this sort of situation. The President should appoint the Emergency Board authorized by the statute to encourage the parties back to work, then to bargain in good faith.

In the face of Presidential inaction, this legislation is our best available means to put striking employees back to work and save a once-proud airline. I urge the Senate to enact it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EASTERN AIRLINES STRIKE—EMERGENCY BOARD LEGISLATION

Mr. MITCHELL. Mr. President, yesterday, the House of Representatives voted 252 to 167 in support of legislation to require the President to appoint an Emergency Board to review the ongoing dispute between Eastern Airlines and the International Association of Machinists.

That legislation, H.R. 1231, has arrived in the Senate. It is now our responsibility to act. It is my hope that the Senate will do so expeditiously.

The Eastern Airlines strike poses serious consequences for the United States and our air transportation system. Since the strike began at midnight on March 4, almost 2 weeks ago, Eastern Airlines has filed for bankruptcy.

There is uncertainty about the fate of the airline and the impact of the strike on the aviation industry. Eastern is the Nation's sixth largest airline. In 1988, Eastern carried 35.6 million passengers representing 7.5 percent of our total domestic airline traffic.

On many air routes in the eastern United States, Eastern is the dominant carrier. In the first three quarters of 1988, the airline carried 67 percent of the New York-Miami market; 57 percent of LaGuardia-Boston and New York-Washington; and 52 percent of the Miami-Atlanta market.

Under the Federal Railway Labor Act, the primary responsibility for action in disputes of this nature rests with the President. Under the law, if a dispute between a transportation carrier and its employees should in the judgment of the National Mediation Board "threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service," the Board shall notify the President, who in his discretion may create an Emergency Board "to investigate and report" respecting such a dispute.

On February 24, the National Mediation Board did make such a determination and did notify the President. On March 3, the President declined to appoint an emergency board.

That was the President's prerogative.

That was his judgment at that time—before the strike began.

That was the President's judgment—in spite of the fact that in over 30 cases involving the airline industry, when the National Mediation Board has recommended creation of an emergency board order, an emergency board always has been created.

But that was 2 weeks ago.

We now face the issue under drastically changed circumstances.

Before the strike began, no one could be certain whether the Eastern's pilots would honor machinist picket lines. Today we know they did. They are. They will, as long as the strike continues. Except for a very few flights, Eastern Airlines is no longer flying.

Eastern is in bankruptcy. And according to the House committee report on H.R. 1231, issued following a full day of hearings on March 7:

> Unless the labor disputes can be resolved promptly, Eastern is unlikely to be able to reorganize and resume operations as a major airline.

Since the strike began, thousands of Eastern passengers have found their travel plans disrupted. There has been an immediate adverse impact.

These conditions by themselves may warrant imposition of an emergency board. However, the need for an emergency board is now required by the even broader implications of Eastern's present situation.

The loss of Eastern Airlines would represent a loss of up to 30,000 jobs and substantial damage to communities where Eastern operations are based.

The loss of Eastern would represent a loss of competition in the domestic air transportation industry. Although Eastern Airline passengers were impacted adversely during the last 2 weeks, the short-term disruption is nothing compared to the long-term structural, competitive implications if the dispute continues on its present course.

In the last few years, there have been 10 mergers of major airlines. Of the 22 new airlines that entered the domestic market since deregulation, only 5 are still operating as separate airlines.

From 1983 to 1987, the market share of the top 8 airlines increased from 74 to 91 percent. The loss of Eastern Airlines would add to this concentration of power within the airline industry.

According to the House committee report:

> If Eastern is not able to resume operations as a major carrier, the company's assets will be liquidated in bankruptcy. There is no assurance that the purchaser or purchasers of assets will duplicate Eastern's important competitive service. To the extent that Eastern's assets were acquired by companies already serving Eastern's routes, there would be one less carrier and a loss of competitive service. Even if Eastern's assets were purchased by carriers which were not competing with Eastern before the strike, there is no assurance that the end result would be a pattern of competitive service as extensive and effective as that which Eastern provided.

The stakes are bigger than just Eastern or just this dispute. The impact is broader than just the inconvenience already suffered by Eastern ticketholders, and by communities which depend on service through Eastern airport hubs.

The stakes are high. They also are imminent, and the Federal Government should not simply sit waiting for something more to happen.

The urgency of the situation—and the 2 weeks that already have gone by—are reflected in the legislation passed by the House. The ordinary provisions for an Emergency Board and the cooling-off period that results have been shortened. Under the Railway Labor Act, an Emergency Board has up to 30 days to report back to the President, after which the "conditions out of which the strike arose" cannot be changed for another 30 days.

Under H.R. 1231, the period for the emergency board's investigation has been shortened to 14 days, with the opportunity for the President to extend it up to 5 days if necessary.

Instead of an additional 30 days after the emergency board submits its report, the cooling-off period under H.R. 1231 will extend an additional 7 days.

The total cooling-off period will last only between 21 and 26 days, depending on whether the President grants the Board an extension before making its report. This is reasonable. And it is necessary.

On March 7, the Secretary of Transportation told the House Aviation Subcommittee that Eastern Airlines and its unions are nowhere near an agreement, and in fact, are even further apart today than they were at earlier stages in the dispute.

On March 3, when the President declined to create an emergency board, he indicated that there was no reason to believe that additional investigation or delay of the strike would produce an agreement. What this assessment overlooked was the likelihood of dete-

rioration in negotiations between the parties.

It also overlooked the very dramatic difference between an emergency board investigation and standard negotiations. The traditional procedure of an emergency board in reporting to the President has been to include specific recommendations for resolving the underlying labor dispute.

As the product of impartial analysis, such recommendations traditionally carry great weight. They become a model for ultimate settlement of the dispute—either as a result of continued negotiations, or if it becomes necessary, congressional legislation.

According to the House committee report, "there appears to be little prospect the company and the unions could reach agreement through ordinary collective bargaining negotiations. On the other hand, we believe there is a reasonable possibility that the parties would be able to agree to accept the recommendations of an impartial board."

A cooling-off period will not hurt. It will not prevent the parties from seeking a negotiated settlement of the strike on their own.

It will help.

It will not interfere with bankruptcy proceedings, nor will it prevent management from taking actions—including job reductions—that it considers necessary under existing financial circumstances.

Nor will this legislation impose any terms stacked in favor of either labor or management. No one can know ahead of time what findings and recommendations an emergency board will make to the President.

A cooling-off period will not hurt.

What will hurt is further delay or further inaction. And those who will be hurt the most are the American people—and the public interest.

Accordingly, Mr. President, I ask unanimous consent that the Senate proceed to immediate consideration of H.R. 1231.

Mr. DANFORTH. Mr. President, reserving the right to object.

Mr. President, it is my understanding that the majority leader does have the parliamentary right to make a nondebatable motion to proceed as early as tomorrow. Therefore, it is within the ability of the majority leader to get us on this bill at a very early time. We could go on the bill tomorrow, assuming that he has the votes for a nondebatable motion to proceed, or, in the alternative, we could wait until after the forthcoming recess and bring it up at that time. I do not think the majority leader intends us to stay here during the recess.

Therefore, I think that the practical effect of what we are discussing right now is whether the Senate is going to proceed to this matter very shortly after the recess is over without any committee consideration or instead whether it would be more advisable for this to be referred to committee, the Labor Committee in this case, for at least a limited period of time. Earlier this afternoon, I suggested to the majority leader that one possibility that he might consider would be to provide for the referral of the bill to the Labor Committee for a 1-week period of time.

It had been my understanding that the leader wanted to go to the minimum wage bill as soon as we returned from the recess. During that time, the committee could at least have 5 days to consider this legislation. Then we could agree to bring it to the floor on the week that begins Monday, the 10th of April.

Now, why do I think this is a matter that requires at least some committee attention? Because it is a very unusual situation at any time to utilize the Mediation Board, but it is unique under present circumstances.

A petition in bankruptcy has been filed. The bankruptcy court has assumed jurisdiction over Eastern Airlines. I am told that there is no case law informing us as to the relationship between a bankruptcy proceeding and the existence of a mediation board. In other words, a mediation board could be in existence staying activity relating to Eastern Airlines, ordering employees back to work, trying to maintain the status quo at the time that the bankruptcy court has jurisdiction over the operation of the airline.

A second course of fluidity at this time is the fact that apparently there are negotiations, at least if the newspapers are correct, there are negotiations going on with respect to the sale of Eastern Airlines. And a lot of people view the possible sale of the airline as the great hope for its future. I would think that some considerations should be given not only to the effect of this on the bankruptcy court but to the effect on the possible sale to purchasers of Eastern Airlines.

Therefore, Mr. President, it would seem to this Senator that the more logical and orderly way to proceed, instead of getting this on the floor of the Senate without any committee consideration, is to refer this to a committee not for the sake of deep-sixing the legislation, but for the sake of giving the committee maybe 5 days to consider it. Why be on the floor of the Senate debating the bill without any committee consideration when we could proceed with the minimum wage bill, dispose of that one way or another, or move from that to this bill at some day certain, say, the 10th of April?

So that is the reason for my reservation and that is the question that I would put to the leader.

I think that, Mr. President, there will be an objection from somebody on the floor right now to this particular unanimous-consent request. But I also believe that there is a desire for us to not bottle this thing up forever. We realize that the Eastern strike is a very serious matter. It is certainly a serious matter for the families that are involved.

But we would simply ask the majority leader whether the better course of action would not be to allow the Labor Committee at least some time to consider the novel legal and economic issues that would be raised by the invoking of a mediation board at this time.

Mr. HATCH. If the Senator will yield for a few comments, if I may, and I also would reserve the right to object to this matter and I believe the minority leader will object.

I think there are two or three things that need to be brought up. First of all, negotiations have gone on for 17 months with the help of the National Mediation Board for most of that time without any effect. Both sides were so far apart there was no way they could be brought together. That was one of the paramount considerations that the President made when he decided that it would have been futile to have that Presidential Emergency Board. But now that Eastern has been taken into bankruptcy, this becomes much more complicated.

I join in the request of the distinguished ranking member of the Commerce Committee that this matter, before we debate it on the floor, contains so many legal implications that it really ought to be referred on an expedited basis if necessary to both the Labor and Human Resources Committee, upon which I am the Republican leader and ranking member, and to the Judiciary Committee where I am next ranking member.

Now, why? Well, first of all, the President decided not to convene a Presidential emergency board. I think he is entirely right in doing what he has done. Presidential emergency boards have almost invariably—and I do not know of any instance where they have not favored one side over the other, and that is the unions. Because what they do is they come up with a recommendation that generally splits the difference. The unions make outrageous demands, sometimes the businesses make outrageous offers, and the next thing you know, they split the difference and it generally is in favor of the unions and everybody knows that.

It has worked very well in the railroad industry because of the Railway Labor Act. Pursuant to that act, they have a right to secondarily picket. And with that right, nobody wants to put up with that because that could shut

down the transportation industry in this country and inconvenience everybody and hurt the country economically. And so what they do is they generally convene a Presidential emergency board. Both sides understand that. And they split the difference and they have learned to live with that in the railroad industry.

But here you have a difficult situation. In this particular situation, we have Eastern Airlines trying to make it on its own. When it was apparent that they could not do it, because the pilots would not cross over the picket lines and fly the planes, they then decided they had to go into bankruptcy. Now, I knew that had to be the case whether the pilots crossed over or not. I predicted that they would go into bankruptcy.

If an Emergency Board was convened, they would have gone into bankruptcy for keeps, it seems to me. Without the Emergency Board, they have gone into chapter 11 bankruptcy in the fond hope that Eastern Airlines will survive and that someone will come along, and it may even be the union consortium that will come along and take over Eastern Airlines and run it from that point on.

Because it is in bankruptcy, it is very complicated. Because if we now by congressional enactment force the President to convene a Presidential Emergency Board, that may constitute tremendous interference with the requisites of the Bankruptcy Code under circumstances that have never arisen before.

Let me just say this. A Presidential Emergency Board now, given the bankruptcy proceeding, cannot help but raise serious legal questions. The Bankruptcy Code otherwise governs and specifically sets up procedures regarding the use of Eastern resources. The use of a Presidential Emergency Board might in this regard jeopardize these very bankruptcy proceedings that might lead to the salvation of Eastern in one form or another.

And, I might say, that the imposition of a Presidential Emergency Board on one specific chapter 11 debtor raise tremendous constitutional questions. These include the constitutional requirement that empowers Congress to enact uniform laws on the subject of bankruptcy. That is in article 1, section 8, clause 4. There are cases on this point. I will be happy to cite those tomorrow, if we are able to resolve this matter.

A second constraint may be imposing a Presidential Emergency Board on Eastern requiring restoration of the status quo, which will constitute an uncompensated taking of private property for a public purpose. That would, therefore, violate the just compensation clause of the fifth amendment.

There are many other serious legal ramifications. And to just ram this thing forward on the floor, with today, tomorrow, or when we get back, immediately, without some sort of hearing—and I think in both of those important committees—I think is just rushing blindly into a situation where we might really doom any potential Eastern Airlines has to save itself at all. So, what seems to be such a nice idea really is not a nice idea unless we approach it in the most intelligent fashion and that is, it seems to me, listening to the top experts in the country through hearings. So the distinguished Senator from Missouri raises some very important issues.

What I would suggest to the majority leader is that maybe the way to do this would be to agree to move this on a debatable basis. We chatted about this. And as soon as we get back, either debate the matter, have cloture, or allow enough time for the two committees to hold at least a hearing on this matter, perhaps in the first week we are back, and try to get to the matter fully on the next Monday.

We get back on Tuesday. We ought to be able to hold some hearings on that. However, if we are going into the minimum wage, that is going to take both Senator KENNEDY and me and other members of the Labor Committee to participate on the floor all day long in those battles. If not all day on the floor, all day anyway, because it takes that kind of work to handle those kinds of battles.

I would suggest what we try to do is, in that first week, hold a couple of hearings in both committees, get the very best advice we possibly can out of those committees, and then try to shoot for bringing this matter to the floor, say the Monday following the Tuesday when we come back.

That would be an expedited approach. You would have the benefit of at least erudition from outside people who understand these matters, perhaps better than we in the Congress do. Or at least we would have the benefit of hearings.

I think that is an appropriate way to do it. I would hate to rush into a bankruptcy proceeding and impose an emergency board on the bankruptcy proceeding with the concomitant violations of bankruptcy law and maybe unconstitutional law. And, in the end, signal the complete doom of Eastern Airlines.

I can see Eastern surviving even what has happened to it up to now. I can perceive how the unions, in a consortium, if they are able to do it, and able to get the people who would help them, could take over Eastern Airlines. Then they would have the problem of running it, which the managers have had over the last 10 years. And they can see how they can run it, paying the rates and using the forms and procedures of employment that they have used over the last 10 years. Maybe they will make Eastern even a better airline than it has been in the last 10 years. But they will at least have a shot at it like anybody else.

But it may very well be that another purchaser may come, union or nonunion, that may be able to save this airline and keep it flying and keep the competition going that would come from the airline. So there is much to be said in the position of the President; much to be said in backing the position the President has taken on this matter.

To just rush into this because one side of the issue thinks that Presidential emergency review board might help matters I think is a real mistake. It may be that in these hearings they will conclude that an emergency board is doable. It is a possibility. It may be a type of a thing that will happen. I doubt that seriously. In fact, I think it would be very unwise to convene an emergency board after Eastern has gone into bankruptcy.

But at least let us look at it and get the best minds that we can on both sides of the issue and approach this intelligently rather than just try to ramrod it through and have Congress tell the executive branch of Government what has to be done in this matter. I hope we can resolve it but those would be the suggestions I would make to the distinguished majority leader.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, if I could make a few comments in response to what we have just heard? A great American theologian, Harvey Cox, has attributed to him the quotation of, "Not to decide is to decide." We are at one of those moments where a nondecision or a decision to postpone decision for the time suggested is effectively to decide the demise of this airline.

I have spent most of my life in the shadow of Eastern Airlines' primary facility in Miami. I suggest I know this airline well. It has been a great airline, a premier standard of service to the public and corporate responsibility for much of its history.

It is an airline now which has fallen onto distressingly and increasingly difficult times. It is an airline which has moved from the outpatient clinic to the hospital to the emergency room and some would say now in the ambulance to the morgue.

I was one, frankly, who favored letting the marketplace, the collective bargaining process work as long as possible. For the better part of 2 years that process moved forward with zero positive contribution.

Then we entered into a 30-day period of intensive impasse with even more involvement by the mediation

service. At the end of that 30 days, zero.

The President made a decision to let the process of collective bargaining function a little longer. Five days later, the airline was in bankruptcy. Thousands of customers, thousands of families of employees, the threat of the removal of a major competitive factor within the airline industry, the chilling effect that all of the above has had on third parties who might be interested in acquiring this airline—those have been the product of the 2 weeks that we will celebrate at midnight tomorrow of this strike.

Now we have a suggestion that we ought to wait another 3 weeks or more before the Senate even begins the serious process of considering this matter. I think that we ought to be frank and candid, that if that is the decision, we have already made the decision. That is the decision that Eastern Airlines as an independent airline will not exist.

I am reluctant to come to the conclusion, which I have now reached, that if this airline is to have any chance of independent survival, it has got to have some external force which can establish a relationship between management and labor which may not be acceptable to the current parties involved in Eastern Airlines, but could create a standard by which new third parties could be induced to seriously look at acquiring this airline because they would have a basis upon which they could make an economic judgment as to whether it was in their interests to do so.

In my judgment, our highest priority in terms of serving the public is to maintain Eastern as an independent airline for all of the service to the public and economic benefits that would flow from that. A decision to wait 3 weeks will see this hemorrhage stop because we are now talking about a corpse, not a very ill body.

Mr. HATCH. If the Senator will yield on that? You are not talking about a corpse. Chapter 11 connotes the fact there may be a way of saving the airline. If you want to guarantee a corpse, put it into a Presidential emergency review board which restores the status quo ante. It restores the full costs of that airline and imposes all of the things that caused the demise of the airline thus far.

Let me make another point. The National Mediation Board is part of this process of disallowing the collective bargaining process to work. They held onto this matter for 17 months, and they knew it. Even the New York Times last April said, "What's going on here? Why don't you let the parties go to battle here and get this matter resolved?"

They held on from April of last year to March of this year, almost 11 months, after the New York Times came out. If you want to really have Eastern Airlines go down once and for all, interfere with the rights of the creditors and the rights under chapter 11 for companies to come in and maybe save this airline, and you will see it will go down once and for all because you cannot restore the full collective bargaining package as it existed then and have Eastern survive. You just cannot do that. That is what is being proposed here by the distinguished majority leader and by yourself.

Let me tell you something, that is a guarantee that collective bargaining does not work, and that is a guarantee the process is going to fail; that is a guarantee that you are going to interfere with the bankruptcy process that holds out some measure of hope that Florida and many other States and the unions will have a chance of participating in the salvation of this airline, or maybe not have a chance of participating.

Mr. DANFORTH addressed the Chair.

Mr. GRAHAM. Do I still have the floor, Mr. President?

The PRESIDING OFFICER. The floor is in possession of the majority leader.

Mr. MITCHELL. I yield to the Senator from Florida to permit him to complete his statement, and then I will be pleased to yield to anybody else.

The PRESIDING OFFICER. The Chair will point out the request of the majority leader is still pending.

Mr. GRAHAM. Just to complete my statement and respond to the comments of the Senator from Utah, there is no credible evidence or rationale that by deferring this decision until April 10, or another 3 weeks, for an airline which is now losing substantially more in its current circumstance than it was losing when it was operating 30 days ago, that there will be any viable entity left.

I believe the kind of issues that the Senator from Utah is raising are exactly the kind of issues that we ought to be debating, but there is no basis to say we ought to put this debate off for 3 weeks when we will virtually assure that all we will be doing is looking at a signed death warrant on this airline and all of the negative consequences that will flow from that demise.

So, Mr. President, I urge that at the earliest moment that this Senate take up legislation which has already been passed by a substantial majority in the House of Representatives and at least give us the opportunity to be a positive force for the traveling public and for the families of Eastern Airlines and not be subject to the criticism that we decided the demise by our unwillingness to decide.

Mr. MITCHELL. Mr. President, if I may respond to the question initially posed to me by the Senator from Missouri, indeed the request is not merely to postpone the decision for 3 weeks until April 10. Rather, as I understand the request, and I will ask a clarification, it is to postpone consideration of the matter in the full Senate until April 10 because am I not correct, in asking the Senator from Missouri, when you suggest that we refer to committee with instructions to report it out on April 10, you are suggesting merely that we begin consideration of the matter at that time and you do not propose, indeed would not agree, to a request to vote at that time or at any specified time thereafter; am I correct in that understanding?

Mr. DANFORTH. Yes, I think, Mr. President, that the issue before the Senate is when and under what circumstances do we commence this debate. My understanding of the position of the majority leader is that he wishes to proceed to consideration of this legislation. Then at the close of business tomorrow, the Senate will be in recess until the Monday after Easter, which would be the 3d of April. In fact, it is the 4th of April, Tuesday, after Easter that we would come back.

And then beginning on that Tuesday that it would be the hope of the majority leader to take up the minimum wage bill so that, under those circumstances, the earliest we would be able to get to the Eastern bill to commence action on the Eastern bill would be sometime late in that week that begins on April 3.

My suggestion is that if that is, in fact, the case, this bill should be referred to committee. In fact, we shopped it on this side, we have put it on the hot line, and we could give unanimous consent to an agreement under which this bill would be referred to the Labor Committee with instructions to report it out or be discharged by the close of business on Friday, April 7, and with the leader then being able to bring the bill up beginning on Monday, April 10.

So the real question is not when we begin discussions, debate on this bill. Yes, I am sure it will be a healthy debate. The question is not when we finish debate, rather when we begin it and under what circumstances. I think that under both proposals, we will begin it about the same time and probably finish it about the same time.

So really the issue is, is this going to be referred to the Labor Committee and is someone going to have the responsibility of looking at the legal and economic implications of convening a mediation board at this time?

Mr. MITCHELL. I believe the Senator has misunderstood my position because what triggered this discussion was my request, to obtain unanimous consent to begin consideration of the bill now. I have not proposed that we begin consideration of the bill on April

4 or April 7 or April 10. I propose that we begin consideration of it right now. It is that to which the Senator has indicated an intention to object.

Now, then, the question is, hold within your rights under the rules the opportunity to prevent consideration of the bill now, which is what I would like to do, and we are confronted with the most unfortunate coincidence of facing an emergency situation on the one hand, and having a recess beginning tomorrow on the other hand, when after the recess could we commence it? It has been my intention to take up the minimum wage bill, but I will say to the Senator that I think this is an emergency and when we come back, we ought to go on this.

I would also say that it is very clear that whatever the intention of the Senator, the plain effect of the proposal he would have would be merely to delay commencement of consideration of this matter until April 10 with the full expectation that there would be an extremely lengthy debate by Senators who oppose the measure in any event. So really what you are talking about is delaying for 3 weeks beginning the process and then assuring that there will be a lengthy, difficult procedure before we get to any vote on it.

Mr. DANFORTH. Mr. President, if the Senator will yield, I have not heard the Senator suggest that he intends to keep the Senate in session during the 2 weeks that are closed for the recess.

Mr. MITCHELL. No, I do not intend that. I think it is impractical.

Mr. DANFORTH. Further, I do not think the majority leader believes this bill can be passed in 1 day or that it would be responsible if we tried to do it in 1 day without any hearings. That would be to pass major legislation without even debate.

Mr. MITCHELL. No; I am in favor of debate and passage; not in favor of hearings. I think we confront an emergency. I cannot do it. I think you prevent me from doing it.

Mr. DANFORTH. However, realistically then, the most we are talking about, is it not true, is a few days from when we begin the debate? Either we are going to begin the debate at the earliest on Tuesday, 4th of April, or in the alternative we will begin debate on Monday, the 10th. We are not talking about 3 weeks. We are talking about 6 days and whether or not we can take that time for the purpose of holding hearings. That really is the issue before us. It is not here are these unreasonable people on the other side of the aisle trying to delay something for 3 weeks that we should do right now. Rather, it is going to be delayed for 2 weeks anyhow for the recess. Can we not at least have a time for committee consideration? Under the procedure that has been recommended by the majority leader, the committee process will be nonexistent.

Mr. MITCHELL. I think the distinguished Republican leader ought to have a chance to get a word in edgewise here so I will yield to him. I just say when you say "anyhow," the anyhow of not being able to take it up now is the Senator's objection to my request to take it up now. He is assuming that as a fact and I accept it as a fact, but it is not my desire and it is contrary to my wishes and is contrary to what I think should be done.

Mr. DANFORTH. Whether we take it up now or not, the bill cannot be disposed of prior to Easter, and I think the majority leader would agree to that as a practical matter.

Mr. MITCHELL. It cannot because the Senator objects to it.

Mr. DANFORTH. No, if we did not object and we proceeded right now to consideration of the bill, it really is not possible. As a practical matter, as an experienced legislator, it is not possible for us to dispose of this legislation before Easter.

Mr. MITCHELL. It is not possible because of the objections to it by the Senator and his colleagues.

Mr. DANFORTH. No. That is not the reason.

Mr. MITCHELL. Oh, it is. We could pass this bill——

Mr. DANFORTH. Tomorrow?

Mr. MITCHELL. I have seen major legislation passed in a short period of time here when there is a will by 60 or more Senators to do so.

Mr. DANFORTH. All right. Well, then, the Senator's position is that we should pass it neither with committee consideration nor with floor debate. That is possible——

Mr. MITCHELL. I want floor debate.

Mr. DANFORTH. Procedurally, I think it is possible. I just do not think it is wise.

Mr. MITCHELL. I think we should let the distinguished Republican leader get a word in edgewise here.

Mr. DOLE. I just wanted to make a parliamentary inquiry. Is there a unanimous-consent request pending?

The PRESIDING OFFICER. There is a request pending.

Mr. DOLE. That request would be to go to the bill immediately, is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. Mr. President, for the reasons stated, I must say, without debating the issue tonight, it is a problem, no doubt about it. There are people out of work, people with families. Commuters, travelers, and consumers of all kinds have been disrupted. The airline is losing money. I understand there has not been an emergency board in the airline industry for 20 years. But it would seem to me at this point, as stated by both my colleagues, Senator DANFORTH and Senator HATCH, and others who I visited with earlier to see if we could grant this request, the debate will be—I do not say there will be a filibuster but the debate would be intense and I think there are a lot of different views. I cannot accommodate the distinguished majority leader, although I know he is sincere in his request. Therefore, I object.

The PRESIDING OFFICER. Objection has been heard.

Mr. MITCHELL. Mr. President, I now ask unanimous consent that H.R. 1231 be placed on the calendar and that it be in order to make a debatable motion to proceed to the bill at 9 a.m. tomorrow morning. I further ask unanimous consent that the time between 9 a.m. and 10:30 a.m. on this matter be equally divided between Senators KENNEDY and HATCH or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE addressed the Chair.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, in the spirit of accommodation—and we do want to accommodate the majority leader every time we can—I have no objection to this request except I am wondering if we can work it out on this side. I think Senator HATCH has indicated he would like the distinguished Senator from Missouri, if he could, to control the time from 9 to 9:30 on this side tomorrow.

Mr. DANFORTH. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, let me see if I understand what the intention of the majority leader is. The majority leader's intention is to commence a debatable motion to proceed tomorrow, and it is my understanding that if that motion to proceed is not agreed to tomorrow and then we go into recess, it would not be the intention of the majority leader to then attempt to arrange a nondebatable motion to proceed, so that any motion to proceed that would be made with respect to this legislation would be a debatable motion?

Mr. MITCHELL. I was asked that question earlier with respect to tomorrow morning, and that clearly is my intention as the Senator has stated it with respect to tomorrow morning. I would like to reserve my rights beyond that. My intention, as stated, is to make a debatable motion to proceed tomorrow morning, have discussion for 90 minutes on it, during which time it is my intention to file a cloture petition, which I then understand would be in order for vote on the Wednesday

following our return, Wednesday, April 5. It is not my intention to do anything with respect to a nondebatable motion tomorrow morning, and I have made no decision with respect to that—indeed, I had not even thought about it until the question was raised—beyond tomorrow morning, that is, when we return. So I would like, if I could, to reserve my rights on that, not expressing any intention one way or the other, with respect to the time when we return.

Mr. DANFORTH. Mr. President, further reserving the right to object, this really presents a very serious problem in the opinion of this Senator, because if it is the intention of the leader to vote on cloture on the Wednesday after we return and then let us say that cloture is invoked, or is not invoked, then to proceed on that course, that is one entirely different situation from reserving the possibility of, say, the Tuesday after we come back of arranging for a nondebatable motion to proceed. It was my understanding that the leader intended not to utilize the nondebatable motion.

Mr. MITCHELL. As I indicated in my response just prior to this, I had not intended that in any event. In a discussion prior to our open debate, I was asked a specific question whether I proposed to do that tomorrow morning. I said I did not. Frankly, I had not thought of it prior to then with respect to either tomorrow morning or the period after the recess.

I am glad now to put in a brief quorum call and discuss that further, but the Senator from Missouri is asking me a question now which had not previously been asked of me in the discussion prior to our open debate. I would like a moment to reflect on it and discuss it with my colleagues before making a decision in that regard.

Mr. DANFORTH. 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. MITCHELL. 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 PROCEDURE

UNANIMOUS-CONSENT AGREEMENT—H.R. 1231

Mr. MITCHELL. Mr. President, it is my intention to proceed to a vote on cloture on this matter as soon as that occurs under the rules, which I understand will be, if the cloture petition is filed tomorrow, on Wednesday, April 5.

Accordingly, Mr. President, I renew my request, which I will restate, that H.R. 1231 be placed on the calendar, and that it be in order to make a debatable motion to proceed to the bill at 9 a.m. tomorrow morning.

I further ask unanimous consent that the time between 9 and 10:30 a.m. be equally divided between Senators KENNEDY and HATCH or their designees.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

THE CHENEY NOMINATION

Mr. MITCHELL. Mr. President, I further ask unanimous consent that the Senate go into executive session tomorrow at 10:30 a.m. to consider the nomination of Congressman RICHARD CHENEY to be Secretary of Defense.

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

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8:45 a.m. tomorrow; and that on tomorrow, the time for the two leaders be reduced to 5 minutes each; after which there will be a period for morning business not to extend beyond 9 a.m. with Senators permitted to speak therein for up to 1 minute each.

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

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair at this particular point on behalf of the Vice President, pursuant to 22 U.S.C. 276d-276g, as amended, appoints the Senator from Alaska [Mr. STEVENS] as the Vice Chairman of the Senate Delegation to the Canada-United States Interparliamentary Group during the 101st Congress.

MESSAGES FROM THE HOUSE

At 10:25 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 553. An act to provide for more balance in the stocks of dairy products purchased by the Commodity Credit Corporation.

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

H.R. 1231. An act to direct the President to establish an emergency board to investigate and report respecting the dispute between Eastern Airlines and its collective-bargaining units.

The message further announced that pursuant to title III of the Energy Policy and Conservation Act, as amended by section 4(a) of Public Law 100-494, the Speaker appoints Mr. ALEXANDER to the U.S. Alternative Fuels Council on the part of the House.

At 2:14 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 23. A concurrent resolution providing for a conditional recess or adjournment of the Senate from March 17, 1989, until April 4, 1989, and a conditional adjournment of the House from March 23 or 24, 1989, until April 3, 1989.

ENROLLED JOINT RESOLUTION SIGNED

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

H.J. Res. 148. Joint resolution designating the month of March in both 1989 and 1990 as "Women's History Month."

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, March 16, 1989, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 64. Joint resolution to designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-720. A communication from the Assistant Secretary of the Army (Financial Management), transmitting, pursuant to law, a report on the value of property, supplies and commodities provided by the Berlin Magistrate for the quarter October 1 to December 31, 1988; to the Committee on Armed Services.

EC-721. A communication from the Acting Assistant Secretary of the Interior (Land and Minerals Management), transmitting, pursuant to law, a report on compensatory royalty agreements for oil and gas entered into during fiscal year 1988 which involved unleased Government lands; to the Committee on Energy and Natural Resources.

EC-722. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on the use of excess foreign currency; to the Committee on Foreign Relations.

EC-723. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on Worker Rights Reporting; to the Committee on Foreign Relations.

EC-724. A communication from the President of the United States, transmitting, pursuant to law, notice of his intention to sign an Executive order to extend the waiver of the application of the relevant export criterion of the Nuclear Non-Proliferation Act for an additional 12 months from March 10,

1989; to the Committee on Foreign Relations.

EC-725. A communication from the Director of the Office of Personnel Management, transmitting a draft of proposed legislation to amend title 5, United States Code, to ensure the equitable application of a General Schedule alternative plan or other pay limitation to certain other Federal employees, and for other purposes; to the Committee on Governmental Affairs.

EC-726. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, notice of the approval of a Federal Aviation Administration personnel management demonstration project; to the Committee on Governmental Affairs.

EC-727. A communication from the Deputy Director of Central Intelligence (Administration), transmitting, pursuant to law, the annual report of the Agency under the Freedom of Information Act for calendar year 1988; to the Committee on the Judiciary.

EC-728. A communication from the Acting Chairman of the National Endowment for the Arts, transmitting, pursuant to law, the annual report of the Endowment under the Freedom of Information Act for calendar year 1988; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1231. An act to direct the President to establish an emergency board to investigate and report respecting the dispute between Eastern Airlines and its collective bargaining units.

H.J. Res. 117. A joint resolution to proclaim March 20, 1989, as "National Agriculture Day."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Special Report entitled "Legislative Review Activity" (Rept. No. 101-9).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services:

Richard B. Cheney, of Wyoming, to be Secretary of Defense (with additional views) (Exec. Rept. No. 101-3)

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

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

Lawrence S. Eagleburger, of Florida, to be Deputy Secretary of State.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. BENTSEN, from the Committee on Finance:

Edith E. Holiday, of Georgia, to be General Counsel for the Department of the Treasury; and

David W. Mullins, Jr., of Massachusetts, to be an Assistant Secretary of the Treasury.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. CRANSTON, from the Committee on Veterans' Affairs:

Anthony Joseph Principi, of California, to be Deputy Secretary of Veterans Affairs.

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. BOSCHWITZ (for himself and Mr. GORE):

S. 603. A bill to establish, within the Department of State, the Office of Global Warming, and for other purposes; to the Committee on Foreign Relations.

By Mr. BIDEN (for himself, Mr. MOYNIHAN, Mr. SIMON, and Mr. DECONCINI):

S. 604. A bill to amend title 31 of the United States Code to increase settlement authority and expand coverage relating to claims for damages resulting from law enforcement activities; to the Committee on the Judiciary.

By Mr. BRYAN (for himself, Mr. GORE, Mr. KERRY, and Mr. REID):

S. 605. A bill to authorize appropriations for the Consumer Product Safety Commission, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BOND (for himself, Mr. CONRAD, Mr. NICKLES, Mr. MURKOWSKI, Mr. GORE, Mr. HARKIN, and Mr. BOSCHWITZ):

S. 606. A bill to amend the Agricultural Act of 1949 to permit producers to plant supplemental and alternative income-producing crops considered to be planted to a program crop; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOLE (for himself, Mr. MURKOWSKI, Mr. BURNS, Mr. HELMS, Mr. BOND, Mr. HEFLIN, Mr. DIXON, Mr. COHEN, Mr. BYRD, Mr. KASTEN, Mr. SYMMS, Mr. PRESSLER, Mr. MCCAIN, Mr. COATS, Mr. WARNER, Mr. GRASSLEY, Mr. SHELBY, Mr. MATSUNAGA, Mr. BOREN, Mr. COCHRAN, Mr. D'AMATO, Mr. DOMENICI, Mr. GRAMM, Mrs. KASSEBAUM, Mr. LOTT, Mr. HEINZ, Mr. MACK, Mr. MCCLURE, Mr. MCCONNELL, Mr. NICKLES, Mr. ROBB, Mr. RUDMAN, Mr. SIMPSON, Mr. STEVENS, Mr. THURMOND, Mr. WALLOP, and Mr. WILSON):

S. 607. A bill to prevent the desecration of the U.S. flag; considered and passed.

By Mr. WALLOP (for himself and Mr. HELMS):

S. 608. A bill to require that catastrophic health coverage under Medicare part B be listed as a separate benefit and to allow for the separate election of such benefit, and for other purposes; to the Committee on Finance.

By Mr. HELMS (for himself, Mr. ARMSTRONG, Mr. GARN, Mr. GRAMM, Mr. HATCH, Mr. HUMPHREY, Mr. LOTT, Mr. MACK, Mr. MCCLURE, Mr. NICKLES, Mr. SHELBY, and Mr. SYMMS):

S. 609. A bill to provide nonlethal assistance to the Nicaraguan democratic resistance; to the Committee on Foreign Relations.

By Mr. HEFLIN:

S. 610. A bill to amend the Internal Revenue Code of 1986 to restore income averaging for farmers, to restore the investment tax credit and accelerated cost recovery for property used in the trade or business of farming, and for other purposes; to the Committee on Finance.

By Mr. INOUYE (for himself, Mr. BREAUX, Mr. D'AMATO, Mr. DODD, Mr. HATFIELD, Mr. JOHNSTON, Mr. LEVIN, Mr. PACKWOOD, Mr. PELL, Mr. RIEGLE, Mr. SANFORD, and Mr. SHELBY):

S. 611. A bill to establish administrative procedures to determine the status of certain Indian groups; to the Select Committee on Indian Affairs.

By Mr. SARBANES (for himself, Ms. MIKULSKI, Mr. ROBB, Mr. WARNER, and Mr. SASSER):

S. 612. A bill to amend the National Capital Transportation Act of 1969 relating to the Washington Metrorail System; to the Committee on Governmental Affairs.

By Mr. CRANSTON (by request):

S. 613. A bill to amend title 38, United States Code, to index rates of veterans' disability compensation and surviving spouses' and children's dependency and indemnity compensation to automatically increase to keep pace with the cost of living; to the Committee on Veterans' Affairs.

By Mr. SIMON:

S. 614. A bill to amend title XIX of the Social Security Act to require States to make prompt payment for medical assistance provided under such title; to the Committee on Finance.

By Mr. DECONCINI:

S. 615. A bill providing for a 14-year extension of the patent for the badge of the American Legion; to the Committee on the Judiciary.

S. 616. A bill providing for a 14-year extension of the patent for the badge of the American Legion Auxiliary; to the Committee on the Judiciary.

S. 617. A bill to provide for a 14-year extension of the patent for the badge of the Sons of the American Legion; to the Committee on the Judiciary.

By Mr. SARBANES (for himself, Mr. KERRY, Mr. INOUYE, Ms. MIKULSKI, Mr. PRESSLER, Mr. PELL, Mr. BURDICK, Mr. LIEBERMAN, and Mr. LAUTENBERG):

S. 618. A bill to authorize the Indian Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia; to the Committee on Rules and Administration.

By Mr. SARBANES (for himself, Mr. RIEGLE, Mr. INOUYE, Ms. MIKULSKI, Mr. HATCH, Mr. BRADLEY, Mr. DODD, Mr. HOLLINGS, Mr. BURDICK, and Mr. LAUTENBERG):

S. 619. A bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr. in the District of

Columbia; to the Committee on Rules and Administration.

By Mr. STEVENS:

S. 620. A bill for the relief of Leroy W. Shebal of North Pole, Alaska; to the Committee on Energy and Natural Resources.

By Mr. CONRAD (for himself, Mr. BOND, Mr. BURDICK, Mr. DASCHLE Mr. HARKIN, Mr. GLENN, Mr. KENNEDY, Mr. BOSCHWITZ, Mr. FOWLER, and Mr. SIMON):

S. 621. A bill to provide financial assistance for the commercialization of agricultural research, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DECONCINI (for himself, Mr. DURENBERGER, Mr. ADAMS, and Mr. GORTON):

S. 622. A bill to amend title 35 of the United States Code to clarify the Drug Price Competition and Patent Term Restoration Act of 1984 with respect to medical devices, to promote increased competition and innovation in life-saving medical technologies and to improve patient and physician access to advanced experimental therapeutical alternatives; to the Committee on the Judiciary.

By Mr. HARKIN:

S. 623. A bill to amend the Federal Food, Drug, and Cosmetic Act to prescribe labeling requirements for foods which contain vegetable oils and for other purposes; to the Committee on Labor and Human Resources.

By Mr. REID (for himself and Mr. BRYAN):

S. 624. A bill to provide for the sale of certain Federal lands to Clark County, Nevada, for national defense and other purposes; to the Committee on Energy and Natural Resources.

By Mr. NICKLES (for himself and Mr. FORD):

S. 625. A bill to eliminate artificial distortions in the natural gas marketplace, to promote competition in the natural gas industry, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HATCH (for himself, Mr. DECONCINI, Mr. BRADLEY, Ms. MIKULSKI, and Mr. JEFFORDS):

S. 626. A bill to amend the Lanham Trademark Act regarding gray market goods; to the Committee on the Judiciary.

By Mr. BOREN:

S. 627. A bill to provide that congressional newsletters shall not be franked mail, to restrict certain congressional mass mailings, to require disclosure of certain costs of congressional mailings, and for other purposes; to the Committee on Rules and Administration.

By Mr. RIEGLE:

S. 628. A bill to amend title 3, United States Code, and the Uniform Time Act of 1966 to establish a single poll closing time in the continental United States for Presidential general elections; to the Committee on Rules and Administration.

By Mr. CRANSTON (for himself, Mr. HOLLINGS, Mr. GORE, and Mr. WILSON):

S. 629. A bill to amend the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701); to the Committee on Commerce, Science, and Transportation.

By Mr. BREAUX (for himself, Mr. MITCHELL, and Mr. JOHNSTON):

S. 630. A bill to conserve, protect, and to restore the coastal wetlands of the State of Louisiana, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BREAUX (for himself and Mr. INOUYE):

S. 631. A bill to further the development and maintenance of an adequate and well-balanced American merchant marine; to the Committee on Commerce, Science, and Transportation.

By Mr. BREAUX:

S. 632. A bill to amend the Internal Revenue Code of 1954 to exempt from tax earnings on certain investment accounts for savers and investors; to the Committee on Finance.

By Mr. MATSUNAGA (for himself, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. INOUYE, Mr. WIRTH, Mr. PELL, and Mr. LIEBERMAN):

S. 633. A bill to promote the development of technologies which will enable fuel cells to use alternative fuel sources; to the Committee on Energy and Natural Resources.

S. 634. A bill to develop a national policy for the utilization of fuel cell technology; to the Committee on Energy and Natural Resources.

By Mr. McCLURE (for himself, Mr. JOHNSTON, Mr. GARN, Mr. NICKLES, Mr. BRADLEY, and Mr. MURKOWSKI):

S. 635. A bill to prevent the unintended licensing of federally nonjurisdictional pre-1935 unlicensed hydroelectric projects; to the Committee on Energy and Natural Resources.

By Mrs. KASSEBAUM:

S. 636. A bill to amend the Foreign Assistance Act to improve management of economic assistance, and for other purposes; to the Committee on Foreign Relations.

By Mr. WILSON:

S. 637. A bill to designate certain lands in Los Padres National Forest as wilderness, to designate Sespe Creek and the Sisquoc River in the State of California as wild and scenic rivers, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KASTEN:

S. 638. A bill to authorize a certificate of documentation for the vessel *Norwester*; to the Committee on Commerce, Science, and Transportation.

By Mr. MATSUNAGA (for himself, Mr. INOUYE, Mr. WIRTH, Mr. PELL, and Mr. LIEBERMAN):

S. 639. A bill to establish a hydrogen research and development program; to the Committee on Energy and Natural Resources.

By Mrs. KASSEBAUM (for herself, Mr. BOND, Mr. CHAFEE, Mr. DANFORTH, Mr. DOLE, Mr. EXON, Mr. FORD, Mr. GARN, Mr. HATCH, Mr. HEINZ, Mr. HUMPHREY, Mr. INOUYE, Mr. KASTEN, Mr. KERRY, Mr. LOTT, Mr. McCAIN, Mr. PELL, Mr. PRESSLER, Mr. RUDMAN, Mr. SYMMS, Mr. WALLOP, and Mr. WILSON):

S. 640. A bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents; to the Committee on Commerce, Science, and Transportation.

By Mr. LAUTENBERG:

S. 641. A bill to amend title 23, United States Code, with relation to the reduction in apportionment of Federal-aid highway funds to certain States, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATFIELD (for himself, Mr. HARKIN, Mr. CRANSTON, Mr. JEFFORDS, and Mr. DASCHLE):

S. 642. A bill to restrict United States military assistance for El Salvador, and for other purposes; to the Committee on Foreign Relations.

By Mr. DIXON:

S.J. Res. 81. Joint resolution to designate the week of October 1 through 7, 1989, as "National Health Care Food Service Week"; to the Committee on the Judiciary.

By Mr. HELMS (for himself, Mr. D'AMATO, Mr. DECONCINI, and Mr. LOTT):

S.J. Res. 82. Joint resolution disapproving the certification by the President under section 481(h) of the Foreign Assistance Act of 1961; to the Committee on Foreign Relations.

By Mr. KERRY:

S.J. Res. 83. Joint resolution to establish a bipartisan commission on Third World debt; to the Committee on Foreign Relations.

By Mr. HATCH:

S.J. Res. 84. Joint resolution to designate April 30, 1989, as "National Society of the Sons of the American Revolution Centennial Day"; to the Committee on the Judiciary.

By Mr. ARMSTRONG (for himself and Mr. GLENN):

S.J. Res. 85. Joint resolution to designate the week of July 24-30, 1989, as the "National Week of Recognition and Remembrance for Those Who Served in the Korean War"; to the Committee on the Judiciary.

By Mr. RIEGLE (for himself, Mr. BRADLEY, Mr. WILSON, Mr. CONRAD, Mr. INOUYE, Mr. COATS, Mr. ROBB, Mr. SANFORD, Mr. METZENBAUM, Mr. PRYOR, Mr. STEVENS, Mr. MITCHELL, Mr. SIMPSON, and Mr. BOSCHWITZ):

S.J. Res. 86. Joint resolution designating November 17, 1989, as "National Philanthropy Day"; to the Committee on the Judiciary.

By Mr. DOLE (for Mr. BOSCHWITZ (for himself, Mr. PELL, Mr. HELMS, Mr. MOYNIHAN, Mr. MITCHELL, Mr. DOLE, and Mr. GRAHAM)):

S.J. Res. 87. Joint resolution to commend the Governments of Israel and Egypt on the occasion of the 10th anniversary of the Treaty of Peace between Israel and Egypt; considered and passed.

By Mr. WIRTH (for himself, Mr. JOHNSTON, Mr. HEINZ, Mr. CHAFEE, Mr. DURENBERGER, Mr. LUGAR, Mr. BUMPERS, Mr. GORE, and Mr. CRANSTON):

S.J. Res. 88. Joint resolution to establish that it is the policy of the United States to reduce the generation of carbon dioxide and for other purpose; ordered held at the desk.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself, Mr. MOYNIHAN and Mrs. KASSEBAUM):

S. Res. 84. Resolution to commend Jo-Anne Coe; considered and agreed to.

By Mr. MITCHELL:

S. Con. Res. 23. Concurrent resolution providing for a conditional recess or adjournment of the Senate from March 17, 1989, until April 4, 1989, and a conditional adjournment of the House from March 23 or 24, 1989, until April 3, 1989; considered and agreed to.

By Mr. MACK (for himself, Mr. GRAHAM, Mr. WILSON, Mr. BOSCHWITZ, Mr. KASTEN, Mr. ROBB, Mr. HOLLINGS, Mr. DECONCINI, Mr. HATCH, and Mr. DIXON):

S. Con. Res. 24. Concurrent resolution expressing the sense of the Congress that the Cuban Government permit a free and open plebiscite on whether the Cuban people wish to continue to be ruled by Fidel Castro and the Cuban Communist Party; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOSCHWITZ (for himself and Mr. GORE):

S. 603. A bill to establish within the Department of State, the Office of Global Warming, and for other purposes; to the Committee on Foreign Relations.

GLOBAL WARMING ACT

Mr. BOSCHWITZ. Mr. President, today I am introducing the Global Warming Response Act of 1989.

Last year, I addressed the United Nations on the threat of global warming. In that speech, I stressed the importance of international cooperation. No one nation, acting alone, can substantially affect global warming. Water and air move without reference to national boundaries. If we are going to have a substantial effect, we must act on a multilateral basis.

The administration has expressed a willingness to move in that direction. During his campaign, President Bush promised to convene an international conference on the environment during this year. In his first speech as Secretary of State, Secretary Baker signaled a commitment to global environmental issues. "The political ecology is now ripe for action," he said. "Time will not make the problem go away."

As we in the Congress consider global warming legislation, we must have an international scope. If the United States acts alone, the effect will not be enough. If we work together with other nations, we can address the problem effectively. The legislation I am introducing today would help establish such an approach.

It works to heighten cooperation among nations on research. It makes our foreign assistance more sensitive to environmental concerns. And it lays the groundwork for negotiations to reduce the emission of harmful gases worldwide.

The destruction of tropical forests is increasing the concentration of greenhouse gases and adding greatly to the threat of global warming. Twenty-five percent of carbon dioxide emissions worldwide come from deforestation, primarily from the destruction of tropical forests through slash-and-burn agriculture. In this bill, I expand AID support for reforestation and provide for grants to nongovernmental organizations.

U.S. executive directors of multilateral development banks would also be required to oppose loans to countries that have not established goals for forestation.

Mr. President, we must preserve the biological resources of the world. This bill would call for renewed efforts through AID and the multilateral development banks to preserve biological diveristy.

In recent days, there has been a number of international meetings to consider further reductions in the level of chlorofluorocarbons. Recent reports from the Arctic have raised serious concerns about the effects of these gases on the ozone layer. These same gases, along with carbon dioxide, nitrous oxide, and methane, are the principal gases related to global warming. This legislation would call on the administration to negotiate binding agreements with other nations for reduction of these emissions, modeled on the experience of the Montreal protocol.

This legislation would establish an Office of Global Warming within the State Department, headed by a deputy assistant secretary. The Office would work to develop a clearly defined, coordinated effort on global warming, in consultation with all other Federal agencies involved in the issue. Working to heighten international attention on global warming, the bill also urges the administration to gain designation of an International Year of Global Climate Protection within the U.N. system.

In the last 2 years, the Agency for International Development has made important strides in making our foreign assistance environmentally sound. This bill would strengthen those efforts and require AID to evaluate foreign assistance projects to encourage sustainable development in the areas of energy, environment, and natural resources.

It would also take steps to improve the lending policies of multilateral development banks such as the International Monetary Fund and the World Bank. As a matter of policy, the U.S. executive directors of these MDB's would urge that each loan be assessed for energy efficiency and environmental effects. The bill would also establish a $10 million trust fund for the World Bank to use in assessing the environmental impact of all projects.

In the area of research, this bill supports both domestic and international research efforts, working to coordinate information and avoid duplication of efforts.

Our current aid and lending programs do not adequately promote energy efficiency. This bill instructs the U.S. directors of the development banks to urge that, within 4 years, 80 percent of all energy-sector loans adopt efficiency measures.

As I stated at the outset, Mr. President, the United States cannot solve the global warming issues alone. It takes international cooperation, with U.S. support. This bill increases our support for the U.N. Environment Programme and other international efforts. The success of the Montreal protocol points to UNEP's invaluable role in facilitating international agreements. We must continue to support those efforts.

Mr. President, we can, if we commit ourselves, prevent the deterioration of our global environment. There are steps we should take in our domestic policy, but we also need to develop an international strategy. I believe this bill will help establish that strategy as well as U.S. leadership on this issue.

Mr. President, I ask unanimous consent that the bill be printed in full. I also ask unanimous consent that an article from the National Journal on this subject be inserted in the RECORD at this point. I yield the floor.

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

S. 603

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

TITLE I—ESTABLISHMENT OF A SINGLE COORDINATING BODY ON GLOBAL WARMING

SEC. 101. SHORT TITLE; FINDINGS.

(a) This Act may be cited as the "Global Warming Response Act of 1989".

(b) The Congress finds that—

(1) problems of the global environment require the coordinated attention of the United States on both foreign and domestic levels. Among the environmental problems requiring national and international attention are changes in climate, depletion of the ozone layer, loss of the ecosystems (especially tropical rain forests), loss of biodiversity, depletion of fossil fuels, acidification of the biosphere and other significant changes to water resources;

(2) although some global climate changes are naturally occurring over geologic time frames, human activities have accelerated the rate and magnitude of changes in recent history;

(3) given the increasing number of efforts underway domestically and internationally with regard to the global warming issues, there is an urgent need to coordinate domestic and international efforts in the areas of global warming research, policy and response;

(4) the following three areas require immediate study in order to respond with policy initiatives to global environmental problems—

(A) quantification of the amount of pollution emissions that result from human activities;

(B) the effects of those emissions on altering natural global processes, including global climate systems; and

(C) the effects of other human-initiated changes, such as the destruction of ecosystems, on natural global processes;

(5) the United States Government must develop policy responses to effectively change human activities that are causing global environmental effects and determine the extent to which these changes in policy will affect the rate and magnitude of change to the global environment;

(6) scientific research in global change is being coordinated by the Committee on

Earth Sciences of the Federal Coordinating Council on Science, Engineering and Technology, within the Office of Science and Technology Policy, incorporating the work of seven Federal agencies;

(7) to increase the benefit of scientific research, a parallel policy research effort providing recommendations on global policy based on current scientific understanding must be developed, and such effort must be responsive to future changes in scientific understanding of the phenomena; and

(8) a coordinating office, located in the Department of State, is required to oversee the design and implementation of strategies to develop policy responses to global warming problems and encourage energy efficiency and use of renewable resources.

SEC. 102. ESTABLISHMENT OF OFFICE; FUNCTIONS.

(a) Effective on the date of expiration of the 90-day period following the date of enactment of this Act, there is established, within the Bureau of Oceans and International Environmental and Scientific Affairs of the Department of State, the Office of Global Warming (hereinafter in this Act referred to as the "Office"). The Office shall be headed by a Deputy Assistant Secretary for Global Warming, who shall be appointed by the President. The Office shall serve as the single point of coordination for the United States on all global warming policy and response matters.

(b) The Office shall establish an interagency team for ongoing formulation of policy and response mechanisms to the global warming problem. Responsibilities and authorities of team members shall be consistent with those decided upon by the task force established by the Global Climate Protection Act of 1987. Efforts of the team shall be coordinated with the Intergovernmental Panel on Climate Change. The team shall consist of such members as shall be appointed by the Deputy Assistant Secretary, and the ex-officio members designated by subsection (b) or designated by the Deputy Assistant Secretary pursuant to subsection (c).

(c) Ex-officio members of the team shall include, but not be limited to representatives of, the Administrator of the Environmental Protection Agency, the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Agency for International Development, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of the Treasury, the Secretary of Energy, the Secretary of Health and Human Services, Director of the Office of Management and Budget, the Administrator of the National Aeronautics and Space Administration, the Director of the National Science Foundation, and the Director of the President's Office on Science and Technology Policy.

SEC. 103. DUTIES AND FUNCTIONS.

(a) The Office shall develop within 12 months of the date of enactment of this Act and update every year thereafter and transmit to the President and the Congress, a Global Warming Strategy Plan (hereinafter referred to as the "Plan") which will coordinate policy, research and response efforts. The Plan shall be fully coordinated with the scientific policy research efforts developed and implemented by the Committee on Earth Sciences, and the Office of Science and Technology. The Plan shall also incorporate efforts of the Intergovernmental Panel on Climate Change, and shall coordinate and incorporate efforts among all Federal agencies, and all United States supported bilateral and multilateral aid institutions (including but not limited to the United States Agency for International Development, and the World Bank). The Plan shall make every effort to encourage all participating Federal agencies and United States supported aid institutions to avoid unnecessary duplication of effort in global warming research and policy.

(b) The Secretary of State based on recommendations of the Office shall consult with and advise the President on the effects of United States policy and scientific research on global warming problems focusing on international problems of climatic changes, depletion of the stratospheric ozone layer, acidification of the biosphere, deforestation, energy efficiency, loss of biodiversity, air emissions, waste disposal, generation and minimization. Additional problems related to global environmental deterioration as it effects global warming may also be considered by the Office. The Secretary of State shall also advise the President on these and similar issues, as requested by the President. The Secretary of State shall consult with the President and report to the Congress, on an annual basis, as to the progress made in areas of research, policy, response, and future plans to decrease global warming and consequent environmental deterioration. This report shall include information and views about any Federal policies which, in the opinion of the Secretary of State, retard the progress of the United States in reaching the goals established under section 103, or any other provision of this Act, without review, clearance or approval by any other administrative authority.

(c) The Office shall also serve as a focal point for all United States efforts undertaken on global environmental policy with the United Nations Environment Programme and other international organizations developing environmental policy by ensuring that United States participation on these bodies is fully coordinated with efforts of the Office.

(d) All Federal agencies shall develop guidelines for review of proposed regulations and policy to minimize the negative effects on global warming problems and to, if possible, make a positive contribution to the improvement of the global environment, in coordination with the Plan.

SEC. 104. AUTHORIZATION.

There is authorized to be appropriated to the Office for implementation of the provisions of this Act, $3,000,000 for each of the fiscal years, 1990, 1991, 1992, and 1993.

SEC. 105. SUPPORT STAFF.

The Deputy Assistant Secretary for Global Warming shall hire such staff for the Office as shall be necessary to accomplish the purposes of this Act. Such staff shall not concurrently serve as full- or part-time officers in the State Department or of any other department, agency, or instrumentality of the Federal Government.

SEC. 106. AMBASSADOR AT LARGE FOR THE ENVIRONMENT.

The President may appoint an ambassador to represent the United States in negotiations relevant to global warming and related environmental issues. The ambassador shall closely coordinate his efforts with the Plan developed by the Office of Global Warming of the Department of State.

SEC. 107. DESIGNATION OF 1990 AS THE "INTERNATIONAL YEAR OF GLOBAL CLIMATE PROTECTION".

It is the sense of Congress that—

(1) The President should promote and support—

(A) global and domestic research and response efforts with respect to the greenhouse effect and other global environmental issues;

(B) the efforts of the United Nations with regard to global warming, such as the International Geosphere-Biosphere Programme's study on global change, the efforts of United Nations Environment Programme, the efforts of the World Meteorological Organization and the Intergovernmental Panel on Climate Change;

(C) the goals of the Global Climate Protection Act of 1987, which called for the focus of international attention and concern on the global warming problem and also called for the early designation of an International Year of Global Climate Protection;

(2) the President should instruct the Ambassador at Large to the United Nations to call for the United Nations to declare 1990 to be the International Year of Global Climate Protection;

(3) the President should take all appropriate actions, in cooperation with the United Nations Environment Programme and other international organizations, to establish a long-term cooperative, international program with respect to global warming issues. Such activities should work to foster cooperation among nations to develop more extensive research efforts, promote transfer of technologies that reduce or eliminate emissions related to global warming and identify the potential alternative policies to avoid a continuing trend of buildup of emissions;

(4) any such program established by the President should be started during calendar year 1990 and the 12-month period beginning January 1, 1990, shall be known as the "International Year of Global Climate Protection";

(5) the participation of the United States in any such program established by the President should be planned and coordinated on behalf of the United States by the Office, in cooperation with the interagency team established in section 102.

SEC. 108. MULTILATERAL GLOBAL CLIMATE PROTECTION CONVENTION.

The President is called upon to instruct that the Secretary of State, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, and interested science agencies, to convene an international meeting to be held to actively encourage the adoption of binding multilateral agreements to adopt measures to reduce the threat of global warming, such as reduction of global emissions and destruction of tropical ecosystems as specified in this Act. The Secretary of State shall sponsor such other meetings as may be necessary to ensure that the convention or conventions are opened for signature no later than the end of calendar year 1993. Such efforts shall be fully coordinated with actions taken by the Intergovernmental Panel on Climate Change.

TITLE II—GLOBAL SUSTAINABLE ECONOMIC DEVELOPMENT

SEC. 201. FINDINGS.

The Congress finds that—

(1) current policies have attempted to recognize that the United States has failed in the past to actively encourage economically and ecologically sustainable development in its lending and aid programs and that the past practices have had a negative effect on global warming trends;

(2) planning for economic development must include planning for sound ecological management as part of an integrated approach to sustainable growth;

(3) an integrated approach to sustainable growth should be applied to United States supported financial assistance from the Agency for International Development;

(4) despite recent progress toward an integrated approach in the United States and abroad, one of the most important continuing shortcomings is the absence of public information concerning proposed major projects to be financed by multilateral development banks; and

(5) actions taken by the World Bank, other multilateral development banks and the International Monetary Fund can have a powerful influence on global ecological issues.

SEC. 202. UNITED STATES SUPPORTED FINANCIAL ASSISTANCE.

(a) Section 119 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151q) is amended to read as follows:

"SEC. 119. (a) The Administrator of the Agency for International Development shall—

"(1) establish a central bureau for planning and implementing environmental, energy and natural resources projects;

"(2) in connection with such bureau, place special emphasis on projects which encompass economically and ecologically sustainable development in areas of energy, environment, and natural resources development as well as agriculture and conservation of water resources;

"(3) continue to emphasize agricultural development program which works directly with farmers, encourages small-scale agriculture, encourages technology transfer at the local level and establishes a full dialogue with recipients;

"(4) establish an early warning system to avoid negative global environmental impact of United States supported projects and serve as technical advisor to the United States Executive Directors of Multilateral Development Banks concerning projects which have the potential for negative environmental impact to the world;

"(5) provide technical assistance to the Overseas Private Investment Corporation in conducting environmental assessment of sustainable development projects, especially with regard to energy, environment and natural resources and to assist the Overseas Private Investment Corporation in the encouragement of United States private investment in ecologically and economically sustainable development; and

"(6) establish an interagency task force concerning sustainable economic and ecological development and its effects on global warming, preservation of biodiversity, preservation of forests and forest restoration, sustainable agriculture and other environmental policy with the Departments of State, Interior, Energy, Commerce, Agriculture, Treasury, the Overseas Private Investment Corporation and the Environmental Protection Agency. The interagency task force efforts shall be coordinated with United States participation on the Intergovernmental Panel on Climate Change and the interagency team on global warming issues established by the Department of State.

"(b) There is authorized to be appropriated to the Administrator of the Agency for International Development $50,000,000 for fiscal year 1991, and $60,000,000 for each of the fiscal years 1992 and 1993, to carry out the provisions of this title. The Administrator of the Agency for International Development shall make not more than 10 percent of the funds appropriated pursuant to this authorization available to the Overseas Private Investment Corporation for use in environmental assessment and development of ecologically and economically sustainable development. This authorization shall be in addition to authorization of programs already in place in the Agency for International Development.

"(c) The Administrator of the Agency for International Development shall—

"(1) develop, with the cooperation of recipient countries, a strategy to maintain biological diversity in those countries building upon existing efforts;

"(2) develop a strategy for United States participation in global conservation of biological diversity;

"(3) cooperate with appropriate international organizations both governmental and nongovernmental;

"(4) engage in dialogues and exchanges of information with recipient countries which stress the importance or conserving biological diversity for the long-term benefit of those countries and which identify and focus policies of those countries which directly or indirectly contribute to the loss of biological diversity;

"(5) analyze current assistance and plans for assistance for the direct value (such as consumptive use, productive use) and indirect value (such as nonconsumptive use, option use, extensive value) of the recipient countries biological resources;

"(6) in consultation with the recipient countries, develop economic incentives (such as rewards to villagers, community organizations, compensation for damage, grants, subsidies, land banks) and disincentives (such as fines, denial of future assistance) for United States supported projects to conserve biological diversity;

"(7) provide technical assistance to the Overseas Private Investment Corporation to analyze the direct and indirect values of biological resources involved in proposed projects and to encourage United States private sector investment in projects which preserve biological diversity;

"(8) support training and education efforts which improve the capacity of the recipient countries to prevent further loss of biological diversity;

"(9) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or wildlife habitats recommended for protection, and provide additional assistance necessary for the establishment and maintenance of protected areas;

"(10) support efforts to identify and survey ecosystems in recipient countries which may be deemed worthy of protection;

"(11) cooperate with and support the efforts of other Federal agencies and coordinate all activities through the Office of Global Warming;

"(12) review the environmental regulations of the Agency of International Development and revise them to ensure that ongoing and proposed actions do not inadvertently damage the biological diversity of a given area. The Administrator shall incorporate this review into the report to Congress required in section 402(a);

"(13) ensure that the country profiles regarding the environment sponsored by the Agency for International Development are updated as necessary to include information for the preservation of biological diversity; and

"(14) at the discretion of the Administrator, deny assistance to any recipient who takes actions to significantly degrade national parks or other protected areas.

"(d) Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity; and

"(2) the extent to which the actions proposed for support by the Agency for International Development meets the needs identified in clause (1).

"(e) To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) Whenever feasible, the objectives of this section shall be achieved through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations active in the country where the project is located.".

SEC. 203. REPORT BY THE ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

(a) Not later than 12 months after the date of the enactment of this title, the Administrator of the Agency for International Development, in consultation with the Secretary of State and the Secretary of the Treasury, shall submit to the Secretary of State a report describing options and strategies for the use of bilateral and multilateral assistance programs sponsored by the United States to control emissions into the atmosphere of carbon dioxide, oxides of nitrogen, methane and other greenhouse gases and to provide energy utilizing renewable resources as a substitute for fossil fuels and other energy efficient technologies to be included in the report to Congress required in such section 103(b). The report shall also assess the potential raising of productivity of small landholders, the role of nongovernmental organizations in sustainable development, the role of private investment in sustainable development and other areas which may bring about sustainable economic development while diminishing global climate change. The report shall also specifically address direct and indirect values of biological resources, forest resources, and other global natural resources and shall examine methods and policies to create economic incentives and disincentives to protection of these resources, where appropriate, in order to ensure that the effects of global warming are diminished.

(b) The Secretary of the Treasury shall, within 12 months following the date of enactment of this Act, develop, with the Administrator of the Agency for International Development, an analysis of mechanisms by which strategies to encourage forest preservation, minimization of global climate change, reforestation, sustainable agriculture, energy conservation, end use energy efficiency and renewable energy resources can be incorporated into the programs of the International Monetary Fund. This report shall be submitted to the Secretary of State to be included in the report to Congress required in section 103(b). The report shall make recommendations on methods by which the United States Executive Director of the International Monetary Fund shall urge policy and staff changes to establish a systematic review of the projected environmental effects of current policy and to add long-term ecologically and economically sus-

tainable development as a goal of its stabilization and adjustment policies. The report shall examine the viability of adding additional staff to the International Monetary Fund specifically devoted to the ongoing analysis of the environmental effects of the International Monetary Fund policies and for such additional staff to have a direct influence over the revision of the International Monetary Fund policies and formulation of new policies. The report shall specifically examine the long-range implications of debt policies and make recommendations on the plausibility of implementing reforms to adjust debt while encouraging sound environmental practices and energy efficiency. The report shall also establish a timetable for adoption of recommended changes by the United States Executive Director of the International Monetary Fund. All United States contributions to the International Monetary Fund shall be examined by the Secretary of the Treasury to ensure that United States participation in the International Monetary Fund does not negatively effect the global environment.

SEC. 204. MULTILATERAL DEVELOPMENT BANK SUPPORT OF SUSTAINABLE ECONOMIC DEVELOPMENT.

(a) The Secretary of the Treasury shall instruct the United States Executive Director to the World Bank to request that all future energy sector lending for new energy supplies be contingent on a finding by the Director of the World Bank Environment Department that the quantity of energy services specified in each loan proposal could not be delivered at the same or lower cost by improving the efficiency of energy use and use of renewable resources. The United States Executive Director shall also urge that within the 24-month period following the date of the enactment of this Act the World Bank shall establish as a goal that one-half of all energy sector loans shall be for least cost energy efficient projects utilizing to the maximum extent possible renewable resources and that 80 percent of all energy sector loans within the 48-month period following expiration of the 48-month period following the date of the enactment of this Act shall be for least cost energy efficient projects utilizing to the maximum extent possible renewable resources.

(b) The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to promote use of funds in an ecologically sound manner and to urge that an assessment be made on the effects of all projects on the global environment prior to the initiation of such projects. The United States Executive Directors shall especially focus on effects to forested areas and areas where water resources are scarce. The United States Executive Directors shall urge that all loans be made for projects which are economically and ecologically sustainable in the recipient country. The United States Executive Directors shall also urge that the assessments be made available to contributing countries prior to approval of such loans to ensure that all contributors are aware of the environmental impact of the proposed loans. The United States Executive Directors shall request a report from the multilateral development banks regarding the environmental factors taken into consideration by the multilateral banks on each individual project before voting on each individual project. The United States Executive Directors shall carefully analyze each project to ensure that the project is environmentally acceptable, especially with regard to global warming. The United States Executive Directors shall report to the Secretary of the Treasury, on an annual basis, on the reports received from the multilateral development banks on each project on the environmental factors taken into account on each project, the United States Executive Directors' assessment of the environmental effects, especially as regards global warming and on their votes on each such project.

SEC. 205. WORLD BANK FUND.

(a) The Secretary of State shall establish a designated fund as a portion of the United States contributions to the World Bank to provide specifically for environmental assessments of all projects, especially with regard to the impact of such projects on global warming and sustainable development. The Secretary of State shall urge other countries contributing to the World Bank to also contribute to such fund.

(b) There is authorized to be appropriated to the fund established pursuant to subsection (a) $10,000,000 for each of the fiscal years 1991, 1992 and 1993 for implementation of this section. This authorization shall be in addition to established United States contributions to the World Bank.

TITLE III—RESEARCH AND DEVELOPMENT OF POLICY RESPONSES

SEC. 301. FINDINGS.

(a) The Congress finds that both global change scientific research and policy must receive guaranteed funding over their multiyear duration, and Federal coordination of the effort must be carried out within the Executive Office of the President.

(b) The strategic plan for the United States Global Change Research Program, to be developed by 1989 by the Office of Science and Technology Policy, shall be used by the Office of Global Warming to incorporate into the strategic plan required in section 103(a). The strategic plan shall be coordinated with efforts of the Intergovernmental Panel on Climate Change.

(c) In providing information to the Office of Global Warming, the Committee on Earth Sciences shall provide the following:

(1) scientific research findings from the United States Global Change Research Program;

(2) policy research findings by the various Federal agencies, especially those serving as ex-officio members of the interagency team chaired by the Office of Global Warming;

(3) progress in addressing key uncertainties in the global climate change models; and

(4) policy updates and recommendations based on the best available scientific understanding of global climate change.

(d) The Committee on Earth Sciences of the Federal Coordinating Council on Science, Engineering and Technology shall continue to serve as the central point of coordination of scientific research for Federal agencies on global climate change. The Committee shall ensure that its efforts are fully incorporated by the Office of Global Warming into all policy development on global climate change. All budget submissions by the participating Federal agencies shall separately identify elements which involve research on global climate change as coordinated by the Committee.

SEC. 302. UNITED STATES SUPPORT FOR THE INTERNATIONAL GEOSPHERE-BIOSPHERE PROGRAMME.

It is the sense of Congress that—

(1) the United States Government should participate in and give full support to the agencies participating in the International Geosphere-Biosphere Programme, whose objective is to describe and understand the interactive physical, chemical, and biological processes that regulate the total Earth system, the unique environment that it provides for life, the changes that are occurring in this system, and the manner in which they are influenced by human actions; and

(2) the Secretary should incorporate into the strategic plan required in section 103(a) a description of the program for participation of the United States in the International Geosphere-Biosphere Programme.

SEC. 303. SUPPORT FOR RESEARCH ON THE ROLE OF THE ARCTIC, ANTARCTICA, AND TROPICAL FORESTS IN GLOBAL WARMING.

The Congress finds that—

(1) the polar regions of the Arctic and Antarctica are a focus of attention in connection with global warming because of—

(A) growing evidence that the polar regions play a key role in the physical processes responsible for global climatic fluctuations and in some cases may be a prime mover in such fluctuations;

(B) recent findings on the expansion of the hole in the ozone layer over Antarctica and findings by the National Oceanic and Atmospheric Administration on the thinning of the ozone layer over the Arctic may be linked to accumulation in the global atmosphere of greenhouse gases;

(C) widening appreciation of the polar regions as a natural repository of information about past climatic fluctuations and about past Earth-environmental events causally related to climatic fluctuations; and

(D) mounting concerns that future global climate changes may disturb the equilibrium of polar ice masses and hence global sea levels;

(2) the United States should support the ongoing efforts of the National Oceanic and Atmospheric Administration to continue its study and research of the effects of global warming and climate changes on the Arctic region;

(3) the President should support the development of an Antarctica research component of the International Geosphere-Biosphere Programme, and the Antarctic research component should include the recommendations prepared by the ad hoc Scientific Committee on Antarctic Research of the International Council of Scientific Unions; and

(4) the tropical forests are vast repositories of carbon, and as significant components of the global carbon cycle, may play an important role in mitigating the buildup of carbon dioxide, the most abundant greenhouse gas, that the tropical forests play a fundamental role in the global water cycle, with important consequences for precipitation patterns in nearby regions, and that the role of tropical forests in global and regional processes must be better understood and quantified.

SEC. 304. SUPPORT FOR MISSION TO PLANET EARTH.

The Congress finds that—

(1) the Mission to Planet Earth is a great and important initiative because of its fundamental importance to humanity's future;

(2) the initiative directly addresses the problems that will be facing humanity in the coming decades, and its benefits are clear to a public that is increasingly concerned about global environmental problems;

(3) the proposed Earth Observing System and the related polar platforms and geostationary platforms for satellite observation

will be of particular utility in research efforts on global warming trends;

(4) for these reasons, the initiative should enjoy sustained United States Government support and interest; and

(5) while the United States is the only country currently capable of leading a Mission to Planet Earth, the program is designed to include participation by the European Space Agency and the Japanese National Space Development Agency, and thus requires international cooperation, and that the initiative therefore represents an important opportunity for the United States to exercise leadership in an increasingly significant area.

TITLE IV—FOREST PRESERVATION, REFORESTATION, AND SUSTAINABLE FOREST RESOURCES.

SEC. 401. TROPICAL FORESTS AND ECOSYSTEMS.

The Congress finds that the importance of tropical forests, ecosystems and tree cover to the developing countries is vital. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical ecosystems in developing countries, which pose a serious threat to development and the environment. The Agency for International Development has to date devoted only a small portion of its efforts to forest preservation, reforestation and forest maintenance. The Congress further finds that properly managed forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike, and that the destruction and loss of tropical ecosystems can—

(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production and loss of genetic resources;

(2) result from the burning of forested areas to clear land for marginal agricultural purposes and can cause up to 20 percent of carbon dioxide emissions, contributing to the accumulation of greenhouse gases;

(3) result in desertification and destabilization of the Earth's climate; and

(4) result in diminished absorption of carbon dioxide emissions contributing further to the global warming trend.

SEC. 402. INTERNATIONAL TROPICAL FORESTRY PROGRAM.

(a) Not later than 12 months after the date of the enactment of this title, the Secretary of State, in conjunction with the Secretary of the Treasury, the Administrator of the Agency for International Development, the Secretary of Commerce, the Secretary of the Interior, and the Secretary of Agriculture, shall transmit to Congress a report containing—

(1) a description and satellite inventory of the existing resources in all tropical countries of the world in conjunction with current efforts of the United Nations;

(2) recommendations for the continued use of Landsat satellite photography for monitoring the status of tropical ecosystems and the effects on global warming trends;

(3) an evaluation of the potential in each tropical nation for reforestation, afforestation, and conservation of existing forest resources;

(4) a description of appropriate mechanisms in each country for preserving forest resources and creating new forested area, including but not limited to choice of mixed species to encourage a diverse forest and discourage monoculture estates, and involvement of local groups in the design, implementation, and monitoring of projects; and

(5) the potential for reducing, mitigating, or preventing climate disruption by providing bilateral development assistance and other forms of financial assistance and incentives to tropical countries for reforestation, afforestation, and conservation of existing forest resources.

(b) The report referred to in this section shall be prepared in consultation with the government and the public in each tropical country and shall be updated and transmitted to the Congress every 3 years thereafter. The findings of this report shall be incorporated into the strategic plan required in section 103(a).

SEC. 403. ASSISTANCE TO DEVELOPING COUNTRIES.

(a) Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 (22 U.S.C. 2151p) as section 117;

(2) by deleting subsection (d) of section 118; and

(3) by inserting at the end of section 117 (as redesignated) the following new section 118—

"SEC. 118. (a) In providing assistance to developing countries, the President, through the efforts of the Agency for International Development and the Department of State's Office of Global Warming, shall—

"(1) place a high priority on conservation and sustainable management of tropical forests;

"(2) upgrade existing efforts to assist recipient countries with protection of existing and proposed forested areas including incentives to preserve areas adjacent to national forests and parks;

"(3) to the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction;

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation;

"(C) identify and analyze the direct values (such as consumptive value, productive use value) and the indirect values (such as nonconsumptive value, option value, existence value) of forest resources prior to determining appropriate support projects; and

"(D) provide technical assistance to the Overseas Private Investment Corporation to analyze the direct and indirect values of forest resources in environmental assessments and to encourage United States private sector investment in forest preservation, reforestation and sustainable development of forest resources;

"(3) to the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests;

"(B) which help developing countries identify and implement alternatives to colonizing forested areas; and

"(C) which provide direct and indirect support for conserving forest resources (such as enhanced land tenure, food for work, subsidies for reforestation);

"(4) to the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests;

"(5) to the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people;

"(6) to the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation;

"(7) to the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation;

"(8) to the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands;

"(9) to the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations;

"(10) to the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas;

"(11) to the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests;

"(12) to the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies; and

"(13) require that any program or project under this Act significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land; and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity;
as provided for in the environmental procedures of the Agency for International Development.

"(b) There is authorized to be appropriated to the Administrator of the Agency for International Development $5,000,000 for each of the fiscal years 1991, 1992, and 1993, to carry out the provisions of this section. There is authorized to be appropriated to the Administrator for the Agency for International Development $1,000,000 to be used for efforts with the Overseas Private Investment Corporation for each of the fiscal years 1991, 1992, and 1993. These efforts include environmental assessment of projects affecting forest resources, and encouraging United States private sector investment in forest preservation, reforestation and sustainable development of forest resources. This authorization is in addition to programs already established.".

(b) The Congress finds that—

(1) current efforts by the Agency for International Development in reforestation and development of sustainable forest resources are to be commended;

(2) especially noted are efforts to reduce soil erosion and development of sustainable forest resources in Costa Rica with the establishment of a protective zone in national forests in cooperation with nongovernmental organizations, efforts in Haiti to develop sustainable forest resources and reduce soil erosion, and the fuelwood project in Central America; and

(3) current levels of the Agency for International Development are inadequate to remedy the massive deforestation and additional efforts must be extended to the developing nations, especially to Latin America and Africa.

(c) There is authorized to be appropriated to the Administrator of the Agency for International Development $25,000,000 for each of the fiscal years 1991, 1992, and 1993. Funds appropriated pursuant to this authorization shall be in addition to funds appropriated for programs already established for protection of national forest areas, forestation and sustainable development of forest resources.

(d) Upon the expiration of the 24-month period following the date of the enactment of this Act, the Secretary of the Treasury shall instruct the United States Executive Director to each of the multilateral development banks to oppose loans and other financial or technical assistance to any borrowing country that has not established and successfully implemented a program setting reasonable goals for that country for preserving existing forest resources and creating new forested areas, except where the Secretary determines that such goals are advanced more effectively by actions other than voting against such assistance.

(e) The Secretary of State shall instruct the United States representatives to the United Nations Food and Agriculture Program to promote the establishment and coordinate the implementation of forestry plans for tropical countries containing economic incentives for reforestation, forest maintenance and afforestation and economic disincentives to discourage deforestation.

(f) The Secretary of State shall instruct the United States Ambassador to the United Nations to encourage the United Nations Development Program to adopt and implement forestry programs for recipient countries that contain incentives to encourage afforestation and disincentives to discourage deforestation. Upon the expiration of the 24-month period following the date of the enactment of this Act, the Secretary of State shall instruct the United States Ambassador to the United Nations to oppose the adoption of any country programs for any recipient country that has not established and successfully implemented a program setting reasonable goals for that country for preserving existing forest resources and creating new forested areas, except where the Secretary determines that such goals are advanced more effectively by actions other than opposing the adoption of such a plan.

(g) The Secretary of State shall instruct the United States representative to the International Tropical Timber Organization to promote—

(1) a major emphasis by the Organization on conservation activities and financing of forest conservation projects; and

(2) the adoption of codes of conduct for commercial logging and private sector timber operations.

(h) Upon the expiration of the 24-month period following the date of the enactment of this Act, and annually thereafter, the Secretary of the Treasury and the Secretary of State, in coordination with the Administrator for International Development, shall submit to the Congress a report describing progress by each of the multilateral development banks, the United Nations Food and Agriculture Program, the United Nations Development Program, and the International Tropical Timber Organization in adopting and implementing programs meeting the standards set out in this section, including in particular—

(1) efforts by the Department of the Treasury, the Department of State, and other Federal agencies to assure implementation of multilateral development programs;

(2) progress by the United Nations Food and Agriculture Organization in promoting the establishment and coordinating the implementation of forestry plans for tropical countries;

(3) progress in the identification of each multilateral development bank, the United Nations Food and Agriculture Program, the United Nations Development Program of the potential for afforestation by recipient countries;

(4) progress in the establishment of goals by each multilateral development bank, the United Nations Food and Agriculture Program, and the United Nations Development Program for afforestation by each recipient country;

(5) the nature of incentives and disincentives created by each multilateral development bank and the United Nations Development Program to encourage afforestation and to discourage deforestation, respectively;

(6) the extent to which the allocation of the resources of each multilateral development bank and the United Nations Development Program to recipient countries is proportional to the success or lack of success of such country in creating new forest areas and protecting existing forest areas;

(7) a description of proposed loans affecting forested areas, involving deforestation or other impacts on forestry and emissions of greenhouse gases, country programs, and other financial and technical assistance and the reports on environmental factors taken into consideration, votes and other actions on proposals by the United States executive director to the relevant multilateral development bank and the United States Ambassador to the United Nations; and

(8) a plan for future proposed loans, country programs, financial and technical assistance which provides incentives for a recipient country's successful implementation of forestry plans and disincentives for failure to implement those plans.

(i) All national and foreign projects funded with United States funds determined to entail major environmental effects on forested areas shall be brought to the attention of the Department of State Office of Global Warming by the evaluating agency in its role as advisor to the President.

(j) Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international regional or national nongovernmental organizations which are active in the region or country where the project is located.

SEC. 404. GRANTS FOR FOREST PRESERVATION AND FOREST RESTORATION.

(a) The Secretary of Agriculture is authorized to make grants to nongovernmental entities for purposes of forestation, forest preservation and reforestation and maintenance of forest resources for both foreign and domestic efforts. The Secretary of Agriculture shall, on an annual basis, report to the Department of State Office of Global Warming on the recipients of such grants, and the progress made in efforts toward forest restoration, reforestation, and forest preservation and maintenance. Grants under this section shall be made at such times, in such amounts, and subject to such conditions as the Secretary of Agriculture, by regulation, shall provide.

(b) There are authorized to be appropriated to the Secretary of Agriculture for use in implementing this section $10,000,000 for each of the fiscal years 1991, 1992, and 1993. This authorization shall be in addition to any programs already established.

SEC. 405. PRESERVATION OF THE AMAZON BASIN.

The Congress finds that—

(1) the Government of Brazil, responding to the national perception that the compelling needs and aspirations of its people require promotion of the development of the Amazon Basin in a manner which seems certain not only to threaten Brazil's own natural endowment, but that of the entire planet;

(2) the Government of Brazil is aware of this danger, and would act to deal with it, but for the fact that its options are sharply constrained by severe problems in other sectors of its economy aggravated by its heavy international debt;

(3) the Government of Brazil cannot be expected to act as conservator of a global resource, unless the international community is prepared to act responsibly;

(4) recognizing the sovereignty of the Brazilian people, it remains evident that the natural resources of the Amazon Basin like many other areas of the world are of importance to the global community, especially due to the effects of the slash and burn agricultural practices on the generation of carbon dioxide;

(5) the United States Government should cooperate with the international community to devise mechanisms to assist Brazil to develop economically and ecologically sustainable projects that they determine to be necessary and which do not contribute to the degradation of the world's environment;

(6) that members of the international community, including international lending institutions, should reassess their investment policies to assure that these do not contribute to the accelerated destruction of the Amazon Basin rain forest; and

(7) United States directors of multilateral development banks and other development assistance institutions should urge the development of an approach which more fully blends Brazil's requirements for national and ecologically sustainable development with global environmental imperatives.

SEC. 406. ENVIRONMENTAL CONSERVATION AND DEBT REDUCTION.

(a) It is the policy of the United States that the Secretary of the Treasury, in consultation with interested members of the public, including commercial banks, shall enter into negotiations with selected developing country governments to obtain improvements in policies in the forestry and energy sectors by those countries as a condition of reducing or converting sovereign and private debt owed to creditors in the United States. As a condition of the adoption of policies or programs to preserve existing forested areas, encourage the creation of new forested areas, or promote energy conservation or end use energy efficiency, the Secretary may reduce the principal of, extend payments on, or reduce the rate of interest on up to one-half of the total sovereign debt owed to the United States by developing country governments.

(b) Not later than 12 months after the date of the enactment of this title, the Secretary of the Treasury, in consultation with interested members of the public including commercial banks, shall promulgate regulations to implement the program established in subsection (a). Such regulations shall—

(1) identify those developing countries that are promising candidates for participation in such a program from the point of view of their contribution to global climate disruption and the total amount of debt owed to official and private creditors in the United States;

(2) establish a timetable of the initiation of negotiations with each such country; and

(3) establish criteria and standards for the adoption, implementation, and monitoring or programs and policies in the forest and energy sectors by developing country governments that wish to participate in the program established by subsection (a).

(c) There is authorized to be appropriated to the Secretary of the Treasury $1,000,000 for each of the fiscal years 1991, 1992, and 1993 to provide technical assistance to commercial banks, nongovernmental organizations and foreign countries in the implementation of this section.

TITLE V—BIOLOGICAL DIVERSITY

SEC. 501. FINDINGS.

The Congress finds that—

(1) the Earth's biological diversity is being rapidly reduced at a rate without precedent in human history, and this rate is certain to increase greatly in the near future;

(2) reduced biological diversity may endanger the functioning of ecosystems and critical ecosystem processes that moderate climate change, and may endanger support of tropical forests;

(3) most losses of biological diversity are unintended and largely avoidable consequences of human activity;

(4) humans depend on biological resources, including plants, animals, and microorganisms, for food, medicine, shelter, and other important products;

(5) biological diversity is valuable as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure;

(6) reduced biological diversity may have serious consequences for human welfare as untapped resources for research and agricultural, medicinal, and industrial development are irretrievably lost;

(7) a comprehensive and coordinated Federal strategy is needed to arrest the loss of biological diversity and also, where possible, to restore biological diversity both through natural recovery and active management; and

(8) because it cannot be predicted which biological resources will be most important for future needs, maintaining the diversity of living organisms in their natural habitats is prudent policy.

SEC. 502. MULTILATERAL ASSISTANCE TO FOREIGN COUNTRIES.

It is the policy of the United States that sustainable economic growth must be predicated on sustainable use of natural resources. The Secretary of the Treasury shall instruct the United States Executive Directors of the Multilateral Development Banks to promote the use of existing mechanisms, and the development of, new mechanisms to promote the Conservation of biological diversity. Existing resources shall include, but not be limited to, the conservation data centers.

SEC. 503. AUTHORIZATION.

There is authorized to be appropriated to the Administrator of the Agency for International Development $5,000,000 for each of the fiscal years 1991, 1992, and 1993 to carry out the provisions of section 119 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151q) as amended by section 502 of this Act. The Administrator shall make available to the Overseas Private Investment Corporation not more than 10 percent of this authorization for environmental assessment of the direct and indirect value of biological resources for proposed projects. This authorization is in addition to programs already established in the Agency for International Development.

TITLE VI—INTERNATIONAL NEGOTIATIONS ON CONTROL OF GREENHOUSE GASES

SEC. 601. FINDINGS.

The Congress finds that—

(1) depletion of the stratospheric ozone and global warming resulting from the emissions of chlorofluorocarbons and other halogenated carbons and emissions of other gases including carbon dioxide, methane, and oxides of nitrogen, endanger the global public health and environment;

(2) the best available scientific evidence shows that manufactured substances, including those containing chlorofluorocarbons, are contributing to the pollution of the atmosphere and destroying the stratospheric ozone layer, as well as contributing to global warming and other changes to the atmosphere;

(3) no specified level of stratospheric ozone depletion or global warming resulting from human-induced causes may be assessed to be safe;

(4) depletion of stratospheric ozone increases levels of solar ultraviolet radiation at the Earth's surface;

(5) increased levels of solar ultraviolet radiation may be linked to increased rates of disease (such as skin cancer), threaten agricultural crops and animal husbandry in certain areas and otherwise damage the global environment;

(6) substitutes for certain types of chlorofluorocarbons are already developed and being readied for manufacturing; and

(7) emissions of carbon dioxide, methane, and oxides of nitrogen result from a variety of human activities including but not limited to industrial processes, usage of chemical products, usage of automobility and burning of forests.

SEC. 602. MEETING TO REASSESS THE MONTREAL PROTOCOL CONTROL MEASURES.

(a) No later than 12 months after the date of the enactment of this Act, the Secretary of State, in coordination with the Intergovernmental Panel on Climate Change, shall request such meetings of the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer as may be necessary for the reassessment of the control measures contained therein. The Secretary may convene meetings in the United States to discuss the reassessment. The Secretary shall consult with the Administrator of the Environmental Protection Agency in developing the United States position on reassessment.

(b) The Secretary of State shall actively encourage the adoption of additional measures requiring the virtual elimination of emissions of all substances identified in the Montreal Protocol within 5 to 7 years from the date of the enactment of this Act and appropriate measures for other ozone-depleting chemicals not identified in the Montreal Protocol.

SEC. 603. LISTING OF REGULATED SUBSTANCES.

(a) Within 120 days after the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall publish a priority list of manufactured substances which are known or may be reasonably anticipated to cause or contribute to stratospheric ozone depletion or global warming. The initial list shall include chlorofluorocarbon-11, chlorofluorocarbon-12, chlorofluorocarbon-113, halon-1211, halon-1301, and carbon tetrachloride. At any time, the Administrator may reclassify a substance from subsection (b) to subsection (a) of this section if environmental concerns dictate such action.

(b) Simultaneously with publication of the priority list, the Administrator shall create a list of other manufactured substances which meet the criteria set forth in subsection (a). If these substances, in the judgment of the Administrator, contribute to stratospheric ozone depletion or global warming, such substances shall be placed on the list. The list shall include, but not be limited to, chlorofluorocarbon-22, chlorofluorocarbon-114, methyl chloroform, methylene chloride, and chlorofluorocarbon-115. At least annually, the Administrator shall publish a proposal to add to the list other manufactured substances which meet the criteria set forth in subsection (a). Within 180 days after publication of the list, after allowing an opportunity for public comment, the Administrator shall promulgate a final regulation adding the proposed substances to the list unless he determines, on the evidence presented, that the substance does not meet the criteria in subsection (a).

SEC. 604. IMPORTING OF LISTED SUBSTANCES.

(a) Effective 12 months after the date on which a substance is placed on the priority list pursuant to section 603, it shall be unlawful for any person to import such substance, any product containing such substance, or any product manufactured with a process that uses such substance unless the Administrator, in consultation with the Sec-

retary of State, has published a decision, after notice and opportunity for public comment, certifying that the nations in which such substance or product was manufactured and from which such substance or product is imported have established and are fully implementing programs that require reduced production of such listed substance, and limit production of other substances covered by this Act, on a schedule and in a manner that is at least as stringent as the reduction schedule for, and limitations on, domestic production, which apply under this Act. The prohibition on the import of any product manufactured with a process that uses a substance listed under subsection (a) of section 603 shall include, after notice and opportunity for public comment, any product which the Administrator has reason to believe may have been manufactured with a process that uses such substance. The Administrator's decision that a product may have been manufactured with a process that uses such substance shall constitute a rebuttable presumption.

(b) The Administrator shall not certify any national program under subsection (a) unless it is determined that—

(1) the Nation has adopted legislation or regulations which give the reduction schedule for each listed substance the force of law; and

(2) the legislation or regulations include reporting requirements and enforcement provisions no less stringent than those specified in this Act, and that the information contained in such reports is available to the Administrator and the Secretary.

(c) At least annually, the Administrator, in consultation with the Secretary, shall review each certification made under this section and shall revoke such certification, after notice and opportunity for public comment, unless it is determined that the conditions of subsections (a) and (b) remain satisfied and that the reduction schedule for each listed substance is in fact being carried out in such nations. Any such revocation shall take effect 180 days after notice of the revocation has been published.

SEC. 605. METHANE SOURCE IDENTIFICATION AND ASSESSMENT.

(a) Not later than January 1, 1991, the Administrator of the Environmental Protection Agency, in consultation with the Administrators of the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, and the Secretary of State, shall submit to the Congress a report detailing the following:

(1) the contribution of methane to global climate change;

(2) the sources and sinks of methane;

(3) the methods of controlling emissions of methane; and

(4) the relationship between methane and concentrations of other trace gases, including the hydroxyl radicals.

(b) Following submission of this report, the Secretary of State shall establish within 12 months a goal for reduction of methane to be incorporated into binding multilateral negotiations. This goal shall be considered in the Multilateral Global Climate Protection Convention to be developed under section 108 of this Act.

(c) Not later than January 1, 1993, the Administrator of the Agency for International Development and the Department of State (in conjunction with efforts of the Intergovernmental Panel on Climate Change) shall issue a report advising the President and Congress of the policy recommendations it has developed for providing United States supported financial assistance and developing multilateral agreements to achieve significant reductions of methane emissions.

(d) There is authorized to be appropriated to the Administrator of the Agency for International Development $2,000,000 for each of the fiscal years 1991 and 1992 to develop the policy recommendations specified in subsection (c).

SEC. 606. ASSESSMENT OF METHODS TO OBTAIN REDUCTION OF CARBON DIOXIDE.

(a) The Secretary of State shall examine the global contributions of carbon dioxide emissions to global environmental deterioration and shall encourage the establishment of a special office in the United Nations Environment Programme and the World Meteorological Organization to monitor annual generation of carbon dioxide and other trace gases on a nation-by-nation basis. Such office shall be responsible for assisting in global negotiations on global environmental deterioration and for administering protocols developed through these negotiations. Efforts of such office shall be coordinated with the Intergovernmental Panel on climate change.

(b) The Secretary of State shall seek to make as a goal of all environmental multilateral or global negotiations in which the United States is a participant, a reduction of carbon dioxide of not less than 20 percent over 1988 levels of global generation by the year 2000. In addition, the goal shall also be a reduction of not less than 50 percent by the year 2015. This goal shall be considered in the Multilateral Global Climate Protection Convention to be developed under section 108 of this Act. The Administrator of the Agency for International Development shall take these goals into account when approving applications for United States supplied financial assistance emphasizing assistance to provide renewable resources and deemphasizing activities which increase greenhouse gases. The Secretary of the Treasury shall instruct the United States Executive Directors of the Multilateral Development Banks to vigorously promote the adoption of these goals for recipient countries.

SEC. 607. ASSESSMENT OF METHODS TO OBTAIN REDUCTION OF OXIDES OF NITROGEN.

(a) Not later than 12 months after the date of the enactment of this Act, the Secretary of State, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Administrators of the National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration, shall initiate negotiations on behalf of the United States and actively encourage the adoption, by the end of 1991, of a binding multilateral agreement requiring reductions of not less than 30 percent in emissions of oxides of nitrogen over 1988 levels by the year 2000. This goal shall be considered in the Multilateral Global Climate Protection Convention to be developed under section 108 of this Act. The Administrator of the Agency for International Development shall take these goals into account when approving applications for United States supplied financial assistance. The Secretary of the Treasury shall instruct the Executive Director of the Multilateral Development Banks to vigorously promote the adoption of these goals for recipient countries.

(b) The Secretary of State should also encourage the special office within the United Nations Environment Programme in section 606(a) to assist in global negotiations on reductions of oxides of nitrogen and in administering protocols agreed to in the negotiations.

(c) The Administrator of the Environmental Protection Agency shall promulgate regulations under the Clean Air Act to conform with negotiated protocols achieved under this title.

SEC. 608. AUTHORIZATION OF UNITED NATIONS ORGANIZATIONS.

There is authorized to be appropriated to the Secretary of State, for contributions to the United Nations Environment Programme and the World Meteorological Organization $1,500,000 for the United Nations Environment Programme and $1,500,000 for the World Meteorological Organization for each of the fiscal years 1991, 1992, and 1993 for implementation of this title. Moneys appropriated pursuant to this authorization shall be in addition to the established contributions of the United States to the United Nations Environment Programme and the World Meteorological Organization.

TITLE VII—GLOBAL ENERGY EFFICIENCY

SEC. 701. BILATERAL ENERGY PROGRAM.

(a) The Congress finds that—

(1) power shortages in developing countries are proving to be costly in terms of health, education, quality of life, employment, income, and therefore may contribute to political instability;

(2) the ongoing efforts of the Agency for International Development should be commended, especially the Asia and Near East workshops on power generation, studies on privatization of utility functions for Pakistan, Thailand, India, Barbados, the Philippines, and the Dominican Republic, and the assistance provided to the programs for energy conservation in Pakistan; and

(3) energy conservation, improvements in end use efficiency and energy production from renewable, decentralized sources have great potential for meeting energy needs in developing nations.

(b) Section 106 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151d) is amended by—

(1) changing the heading of the section to read: "Sustainable Energy Development, Private Voluntary Organizations, and Selected Development Activities.";

(2) deleting all of subsection (a)(1) except the first 2 sentences and amending subsection (a)(2) to read as follows:

"(2) The Congress finds that energy conservation, improvements in end use energy efficiency, and energy production from renewable, decentralized sources have great potential for meeting energy needs in developing nations, especially the needs of the rural poor. These techniques can enable developing countries to make efficient use of scarce resources; minimize environmental harm (including warming of the Earth's atmosphere due to the "greenhouse effect"); lessen the danger of nuclear weapons proliferation; and reduce dependence on dwindling oil reserves and expensive imported energy. Often, energy needs can be met more cheaply and more employment can be generated by these methods than by production of energy from conventional sources.";

(3) deleting the last sentence of subsection (b)(2), redesignating that subsection as subsection (a)(3), and inserting at the end of that subsection the following: "Such programs also may include any type of assistance aimed at energy efficiency, improvements in end use energy efficiency, and assistance for transmission facilities to in-

crease the availability of energy in rural areas. No assistance shall be furnished under this Act for large-scale production of energy from fossil fuels without first exploring all practicable energy efficient alternatives.";

(4) inserting the following new subsection (a)(4) immediately after subsection (a)(3) as redesignated by this section:

"(4) In providing assistance to developing countries as authorized in subsection (a)(3), the President, through the Agency for International Development and the Department of State, shall—

"(A) prepare for each aid-receiving country, in cooperation with the government and public in that country and interested members of the public in the United States, an analysis—

"(i) describing feasible actions that can reduce emissions of 'greenhouse gases', while at the same time meeting development needs, through actions which improve end use energy efficiency, promote reliance on renewable energy sources, or encourage energy efficiency or use of alternative fuels;

"(ii) comparing the economic and environmental costs of the actions described in subparagraph (i) with the economic and environmental costs of investments to provide additional supplies of energy; and

"(iii) analyzing the need for foreign assistance, and especially United States bilateral assistance, to make possible the actions described in subparagraph (i).

"(B) provide technical assistance and support projects to improve energy efficiency, with emphasis on training, information, and institution-building in all sectors; improvement of indigenous capabilities to develop and implement least cost planning strategies and programs of energy efficiency; developing indigenous capabilities to adapt technologies of energy conservation and end use energy efficiency; and, in transportation, energy-saving methods of mass transit (such as light rail, buses, and van pools), energy-efficient motor vehicles and railroads, traffic management techniques (such as computerization of traffic signals and fuel savings at airports), and transfer of appropriate United States technologies;

"(C) support projects to develop and demonstrate energy conservation, improvements in end use energy efficiency, and small-scale, decentralized, renewable energy sources for rural areas. Such projects shall use appropriate technologies and methods suited to the local environment, shall feature close consultation with and involvement of local people at all stages of project design and implementation, and shall be directed toward the earliest possible widespread application. Appropriate technologies include but are not limited to biomass, biogas, wind energy, passive solar, solar electricity, and low-head hydroelectric generation;

"(D) whenever appropriate, accomplish the objectives of this subsection through projects managed by private and voluntary organizations or international or regional or national nongovernmental organizations;

"(E) direct the Administrator of the United States Agency for International Development, in consultation with the President of the Export-Import Bank and the President of the Overseas Private Investment Corporation, to encourage private sector investment in energy efficient technologies in developing countries;

"(F) make the analyses referred to in subsection (a) available to the public and transmit them to the Congress as a portion of the report required in section 103(b) at least annually;

"(G) beginning 12 months after the date of the enactment of this Act, refuse to approve any project or program authorized by this subsection involving the obligation of more than $500,000 unless such an analysis has been prepared;

"(H) promote vigorously the adoption by other bilateral donors of energy efficiency programs for countries that receive development assistance that emphasize least-cost energy planning, energy conservation, and end use energy efficiency; and

"(I) not later than 12 months after the date of enactment of this title, and annually thereafter, submit to the Congress a report describing progress under the program established by this section, including in particular the nature of all projects supported; their costs and results; progress in reducing emissions of greenhouse gases; and progress by other bilateral donors in implementing programs of least-cost energy planning, energy conservation, and end use energy efficiency for aid-receiving countries."; and

(5) deleting subsection (b), redesignating subsection (c) as subsection (a)(5), and redesignating subsections (d) and (e) as subsections (b) and (c), respectively.

(c) There is authorized to be appropriated to the Administrator of the Agency for International Development $1,000,000 for each of the fiscal years 1991, 1992, and 1993 for supplying technical assistance to developing countries for developing energy efficient power sources. Moneys appropriated pursuant to this authorization shall be in addition to moneys already available for programs for energy efficiency.

SEC. 702. PILOT PROJECT FOR ENERGY EFFICIENT MASS TRANSIT.

(a) The Administrator of the Agency for International Development, in consultation with the Department of Transportation, shall select one project for United States provided financial assistance which shall demonstrate and implement energy-efficient mass transit for an urban area. Such a pilot program shall also comply with standards or negotiated agreements for reduction of greenhouse gases such as oxides of nitrogen and shall, if possible, use fuels generated from renewable resources. The Administrator shall prepare a report on an annual basis for submission to the Department of State's Office of Global Warming on the recipient of the assistance for the pilot project and the effectiveness of the technology, especially in meeting standards for emissions reduction and in use of renewable resources.

(b) There is authorized to be appropriated to the Administrator of the Agency for International Development $15,000,000 for each of the fiscal years 1991, 1992, and 1993 for implementation of the pilot program under this section.

SEC. 703. RENEWABLE ENERGY EXPORTS.

(a)(1) Congress finds that—

(A) among the major problems in promoting exports of renewable energy technology are the lack of available information on overseas markets and the absence of financing for the purchase of the technologies; and

(B) the Committee on Renewable Energy, Commerce, and Trade established under the Renewable Energy Industry Development Act (Public Law 98-370) currently coordinates Federal Government activities to promote renewable energy exports.

(2) The purposes of this section are to evaluate current efforts to promote exports of renewable energy technology, to establish a joint government-industry plan to identify promising technologies and increase the financing available for exports of renewable energy technologies, to target potential markets for these technologies and to authorize funding of these activities.

(b) In order to provide reliable information on overseas markets for renewable energy technology, the Secretary of Energy shall review the activities of the Committee on Renewable Energy, Commerce, and Trade in order to determine if current efforts by such Committee to promote exports of renewable energy technology are sufficient and whether additional efforts are necessary. The Secretary of Energy shall report to Congress the results of such review on or before the expiration of the 180-day period following the date of the enactment of this section.

(c) The Committee on Renewable Energy, Commerce, and Trade shall—

(1) establish a joint government-industry plan to maintain or increase the market share of the United States in international trade in renewable energy technologies, including technologies for production of alcohol fuels, biomass energy, geothermal energy, wood energy, and in technologies for passive solar energy conversion, photovoltaics, solar thermal energy conversion and wind energy conversion. Such plan shall include guidelines for agencies that are members of the Committee with respect to the financing of exports of such renewable energy technologies;

(2) develop, in consultation with representatives of affected industries, administrative guidelines for Federal export loan programs to simplify application by firms seeking export assistance for renewable energy technologies from agencies implementing such programs; and

(3) target renewable energy technology markets for primary emphasis by Federal export loan programs, development programs, and private sector assistance programs.

(d) There is hereby authorized to be appropriated to the Secretary of Energy for activities of the Committee on Renewable Energy, Commerce, and Trade an amount not to exceed—

(1) $1,500,000 for fiscal year 1990;

(2) $2,200,000 for fiscal year 1991; and

(3) $2,500,000 for fiscal year 1992.

SEC. 704. PILOT PROJECT FOR DEVELOPMENT OF RENEWABLE ENERGY TECHNOLOGY FOR UNITED STATES SUPPORTED ASSISTANCE.

(a) The Congress finds that—

(1) current efforts of the Agency for International Development in support of renewable energy resources are to be commended;

(2) especially noted are such agency's projects providing formal energy conservation and demand management for 31 countries, and the renewable energy programs established in India, Egypt, and Morocco; and

(3) such efforts should be extended to reduce energy consumption and consequent generation of carbon dioxide.

(b) The Agency for International Development, in cooperation with the Committee on Energy Conservation and Renewable Energy Technology Exports, shall select one project to demonstrate and apply the use of renewable energy technology with diminished generation of greenhouse emissions in a developing nation. Such pilot project shall be completed by the end of the calendar year 1995. Its progress shall be evaluated on

an ongoing basis during the project's life and shall be used to assess the viability of future projects of similar scope.

(c) There is authorized to be appropriated to the Administrator for the Agency for International Development $20,000,000 for each of the fiscal years 1991, 1992, and 1993 to implement this section. This authorization is in addition to programs already administered by the Agency for International Development for renewable energy. In addition, there is authorized to be appropriated to the Administrator $2,000,000 for each of the fiscal years 1991, 1992, and 1993 for assessment, development of incentives and grants for private sector investment in renewable resources.

SEC. 705. AMENDMENT TO THE EXPORT-IMPORT BANK ACT OF 1945.

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635e) is amended by adding at the end thereof the following:

"(c) Not less than .025 percent of the loan authority of the bank shall be available only for solar and renewable energy loans.".

SEC. 706. SPECIAL ACTIVITIES OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION.

Section 234(e) of the Foreign Assistance Act of 1961 is amended—

(1) in the first sentence, by inserting immediately after "cooperatives" the following: "and including the initiation of incentives, grants, and studies for renewable energy and other small business activities"; and

(2) by adding at the end of subsection (e) the following new sentence: "Administrative funds may not be made available for incentives, grants, and studies for renewable energy and other small business activities.".

TITLE VIII—COOPERATION WITH INTERNATIONAL ORGANIZATIONS

SEC. 801. FINDINGS.

The Congress finds that—

(1) the scope of global environmental deterioration is inherently international in nature;

(2) the participation of the United States in all international efforts to remedy global environmental problems is vital to the preservation of the country;

(3) the United States should make assistance available for scientific, policy and research support in this arena;

(4) full cooperation with the United Nations Environment Programme is necessary to address the total scope of global environmental programs, and that additional support of the United States is also necessary for the World Metereological Organization; and

(5) support at current levels should continue for the United Nations Economic Commission for Europe, the Organization for Economic Cooperation and Development, and the International Energy Agency.

SEC. 802. AUTHORIZATIONS.

There is authorized to be appropriated to the Environment Fund of the United Nations under the Foreign Assistance Act of 1961 $15,000,000 for each of the fiscal years 1991, 1992, and 1993. In addition, there is authorized to be appropriated to the World Metereological Organization of the United Nations under the Foreign Assistance Act of 1961 $1,000,000 for each of the fiscal years 1991, 1992, and 1993 for support of the Intergovernmental Panel on Climate Change. Additionally, there is authorized to be appropriated to the Intergovernmental Occanographic Commission of the United Nations under the Foreign Assistance Act of 1961 $1,000,000 for each of the fiscal years 1991, 1992, and 1993. Further, there is authorized to be appropriated to the International Geosphere-Biosphere Programme Study of Global Change of the United Nations under the Foreign Assistance Act of 1961 $400,000 for each of the fiscal years 1991, 1992, and 1993.

[From the National Journal, Mar. 4, 1989]

GREENHOUSE DIPLOMACY

(By Rochelle L. Stanfield)

James A. Baker III had been Secretary of State only five days when he made his first speech to an international gathering. His 500-word welcome—to delegates from 40 countries at a workshop on global warming—took just a few minutes to deliver, but its symbolism and its message continue to reverberate in widening political and policy circles.

Symbolically, Baker's choice of an environmental audience for his maiden speech as Secretary of State underscored the high priority that the Bush Administration says it gives to global environmental issues. "We face the prospect of being trapped on a boat that we have irreparably damaged—not by the cataclysm of war, but by the slow neglect of a vessel we believed to be impervious to our abuse," Baker told the assembled delegates, quoting President Bush.

At the same time, Baker claimed global warming as his issue: "This is a transnational issue. We are all in the same boat." The establishment last fall of the International Panel on Climate Change and the creation of its Response Strategies Working Group—the audience that he addressed on Jan. 30—testified to that fact, Baker said. "We face more than simply a scientific problem," He went on. "It is also a diplomatic problem of when and how we take action."

Signaling a clear break from the Reagan Administration policy—that more research must be conducted before nations embark on ambitious enviromental programs—Baker said' "The political ecology is now ripe for action. We can probably not afford to wait until all of the [scientific] uncertainties have been resolved. . . . Time will not make the problem go away."

The speech got rave reviews. But foreign delegates, domestic environmentalists and Members of Congress who praised the rhetoric are still waiting for the action.

Their initial disappointment came within minutes of the speech, when representatives of 14 federal agencies presented the U.S. plan for how the working group, which the United States chairs, should proceed. Many of the foreign delegates severely criticized the U.S. proposal at the closed-door session, according to participants. Some critics said that the complex data-gathering exercise recommended by the U.S. delegation looked suspiciously like the Reagan approach—that is, stalling in the guise of doing more research. Contributing to that skepticism was the presence on the U.S. interagency group of staff members who attempted to derail the 1987 international ozone treaty.

Bush failed to mention global warming in his Feb. 9 budget address to a joint session of Congress, although his backup document devoted two pages to the subject. Bush's fiscal 1990 budget would cut the appropriation for the United Nations Environmental Program, the parent body of the climate change panel, by $1.5 million, from $9.5 million in 1989.

"I was disappointed that [global warming] wasn't in the speech, but I'm not sure how to interpret that yet," said Rafe Pomerance, a senior associate with the World Resources Institute, a Washington think tank.

"We have not heard Baker issue another word since that day about this thing, so my question is, where's the follow-up?" said an aide to Sen. John F. Kerry, D-Mass. Kerry, a Foreign Relations Committee member, asked Baker several questions about the administration's international environmental commitments at Baker's confirmation hearings in mid-January.

To try to find out what Baker plans to do, the House Appropriations Subcommittee on Foreign Operations questioned Frederick M. Bernthal, assistant secretary of State for oceans and international environmental and scientific affairs, at a hearing on Feb. 21. The next day, Bernthal testified at a similar hearing by the Senate Commerce, Science and Transportation Committee. He did not list specific program initiatives even when pressed to do so by House subcommittee chairman David R. Obey, D-Wis., and by Kerry.

Such congressional scrutiny is more intense these days than it used to be, but it isn't new. For several years, the global environment has been a prominent topic not only in Congress but in the Environmental Protection Agency (EPA) and the State and Treasury Departments. The United States spearheaded the international negotiations that resulted in the ozone treaty signed in Montreal.

Now the heads of other industrialized countries—and of some developing countries—have placed the world environment high on their agendas. Soviet leader Mikhail S. Gorbachev mentioned its prominently in his address at the United Nations last December. And British Prime Minister Margaret Thatcher planned to host a March 6 conference on ozone depletion, one of about eight high-level environmental meetings scheduled around the world this year.

"The politics have gone international, with some competition among industrialized countries," Pomerance said. "Who's going to lead on the environment? Margaret Thatcher or George Bush or [French President] Francois Mitterrand, or will it be Gorbachev?"

Bush, who has indicated he wants the United States to remain the dominant power on environmental issues, is planning his own summit meeting on world environment but hasn't announced a schedule.

HIGH STAKES

The global environmental campaign has opened a new age of international diplomacy that factors profound scientific complexities and uncertainties into the political, economic, philosophic and cultural calculus of traditional negotiations. Global warming—or the so-called greenhouse effect—adds further complications. Actions to slow the greenhouse effect could include controls on the burning of fossil fuels, and such measures would have sweeping ramifications for agriculture, energy, industry and trade. Just about every U.S. Cabinet department—and practically every ministry in other nations—has strong views on the subject. Like the problems being addressed, the stakes are exceedingly, if immeasurably, high.

To prevail in the international arena, the specialists agree, the Bush Administration must mount a clearly defined, coordinated interagency effort. But, although Baker's speech to the working group seemed to set a clear direction, the U.S. interagency group demonstrated an absence of coherence.

"It showed considerable confusion and lack of clear direction in the U.S. government," said Thomas B. Stoel Jr., a senior attorney who specializes in international issues for the Washington office of the New York City-based Natural Resources Defense Council Inc. (NRDC). "We can't afford another episode like that."

The White House is working on an executive order to delineate responsibilities within the Administration—in general, by giving foreign policy supremacy on the global warming issue to the State Department and the domestic policy lead to EPA. "The complexity of this issue will force a lot of decisions about turf," Stoel said.

Who will head the Administration's effort is yet to be determined. If it's Baker, he will have plenty of clout with the White House—much more than EPA administrator William K. Reilly would have, for example. But Baker won't be able to devote undivided attention to the task. Reilly is heading the U.S. delegation to Thatcher's meeting on ozone. He also has plans to upgrade and expand EPA's international activities.

"On questions like where will the lead effort reside in trying to deal with the many tasks under the Response Strategies Working Group, for example, there hasn't been a final decision on some of those elements yet," Bernthal, who currently is chairman of the group, said in an interview. "But the opinions that Secretary Baker expressed are certainly indicative of the commitment that the President had already made, before his election, to an active role."

If the State Department retains the lead role, Bernthal—or his successor, if Bernthal is replaced—will supervise the project. That could prove a boon to the struggling Oceans and International Environmental and Scientific Affairs Bureau, which is trying to emerge from a forgotten corner of the State Department. Such a contentious assignment could also overwhelm the bureau, however, as was demonstrated by the interagency battles for turf that surfaced in the Jan. 30 staff proposal to the working group.

In the meantime, the Administration is relying upon Baker's rousing speech to keep up the momentum. "I thought the speech Baker gave was terrific, succinct and clear and established priorities that I think people heard," Reilly said in an interview.

LOOKING FOR SIGNALS

While they wait for action on the global warming issue, the advocates are looking for signals in symbolic gestures, Administration appointments and other such indicators.

Baker's speech raised many expectations. "It was very significant that he chose that particular meeting to make his first appearance," said Richard E. Benedick, the former deputy assistant secretary of State who negotiated the ozone treaty and who is now on departmental assignment as a senior fellow at the Conservation Foundation. "From the standpoint of protocol, it did not cry for an address by the Secretary of State. There were no ministers or deputies, but mostly delegates from lower in the bureaucracies [of foreign countries]."

Even before the speech, international environmentalists had high hopes for Baker as Secretary of State, based on his efforts as Treasury Secretary, to persuade multilateral development banks to include envrionmental impacts in their loan calculations. "Baker's interest in the environment goes back to when he was Secretary of the Treasury," Benedick said. "He is not a newcomer to this subject."

Those hopes extend to State Department counselor Robert B. Zoellick, who served as Baker's counselor at Treasury. He has had a keen interest in international environmental issues for years and is expected to take the behind-the-scenes lead on the global warming issue at State.

Another augury of an activist Administration approach is the appointment of Robert E. Grady as associate director of the Office of Management and Budget (OMB) for natural resources, energy and science. "To me, the most encouraging appointment the Administration has made in this whole area is Grady's," said John C. Topping Jr., president of the Climate Institute, a Washington organization that promotes governmental action to prevent climate change and ozone depletion.

As Bush's campaign speechwriter, Grady wrote Bush's rather aggressive environmental speeches in an effort to distance Bush from the Reagan Administration. Grady also served as Bush's liaison to environmental groups during the campaign. Previously, he was director of communications for Republican New Jersey Gov. Thomas H. Kean. In his new position, Grady has a say in the budgets of the environmental, scientific and energy agencies that will participate in the global warming talks, although his jurisdiction doesn't include the State Department's budget.

To environmentalists, perhaps the most positive signal from the U.S. government came right before last November's election, at the first meeting of the international climate change panel in Geneva, when Bernthal volunteered U.S. chairmanship of the response strategies group. At that meeting, it was decided to set up three working groups: on the science of climate change, on impacts and on responses. Britain agreed to chair the first; the Soviet Union, the second; and the United States, the third and certainly the most controversial. "It put us right in the spotlight," Stoel said.

Response strategies may include wrenching, expensive changes in energy, industrial and agricultural policies to cut emissions of carbon dioxide and other gases that cause climate change. The strategies may also deal with measures to cope with coastal flooding and radically altered patterns of rain and drought.

That then-Secretary of State George P. Shultz placed this nation in such a key spot did not surprise environmentalists, who viewed Shultz as one of the few activists on the issue in the Reagan Administration. But Shultz and his deputies often wrangled with other Cabinet departments, such as Interior and Commerce.

These observers now are looking for signals of the Bush Administration's commitments and the enthusiasm of agencies such as the Energy and Transportation Departments that will play a crucial role in domestic policies that will influence U.S. foreign policy on climate change.

HATS AND SUNGLASSES

A notable reference point in U.S. international environmental negotiations was the development of the 1987 ozone depletion treaty. That exercise set several precedents for global negotiations but also fomented interagency disputes within the Reagan Administration.

"The ozone treaty certainly plowed new ground institutionally within our own government and internationally as well," Bernthal said. "It was the first time an issue arose in the international arena that everyone understood was a problem of all countries and would require cooperation worldwide to address. . . . There's no question that that set the form institutionally."

Those negotiations also brought about a close working relationship between EPA and the State Department—specifically, in the partnership of then-EPA administrator Lee M. Thomas and State's Benedick. "There's a direct parallel (between global warming and ozone), an issue where we worked very closely with EPA because EPA has to handle the domestic regulations and implement the international treaty," Benedick said. "But in terms of leading the international negotiations, that's clearly the State Department's métier."

The precedent that worries advocates of a strong U.S. position on global warming was the effort in the Cabinet Council on Natural Resources, led by then-Interior Secretary Donald P. Hodel, to hamstring the American negotiating team after the U.S. position had been cleared by the White House and had been used in treaty negotiations.

That episode is known as the "hats-and-sunglasses" battle because Hodel and others wanted to substitute adaptive measures—such as wearing hats and sunglasses to avoid the sun's damaging ultraviolet rays—for control measures, such as reducing emissions of chlorofluorocarbons (CFCs), the gases that deplete the earth's protective ozone layer.

The dispute went up to Reagan, who decided in favor of the Shultz-Thomas team.

What worries environmentalists now is that several mid-level staff members who worked on the hats-and-sunglasses proposal participated in drafting the widely criticized U.S. proposal for the climate change working group.

The questions being raised are whether these officials, some of whom are career civil servants, will continue to take part in the global warming project, whether they will receive new instructions and, if so, how they will carry out those directives.

David M. Gibbons, deputy associate OMB director for natural resources, for example, used delaying tactics in the ozone talks, according to participants. Gibbons is also referred to as "bright," "not dogmatic" and "willing to listen to reason." "Grady is now Gibbons' boss, and that could make a big difference," Topping said. Gibbons did not respond to requests for an interview.

Another member of the hats-and-sunglasses group was Beverly J. Berger, assistant director for life sciences of the White House Office of Science and Technology Policy. "She told me personally that she opposes [climate protection policies]," said David D. Doniger, an NRDC attorney who lobbied for a strong ozone treaty. Berger declined a request for an interview but said through a spokeswoman that "she had no problem with Secretary Baker's remarks" at the climate change session.

And Acting Energy Secretary Donna R. Fitzpatrick is perceived by environmentalists as an opponent of action because of her testimony before the House Energy and Commerce Subcommittee on Energy and Power last September in her role as Energy undersecretary. She said then, "These scientific uncertainties must be reduced before we commit the nation's economic future to drastic and potentially misplaced policy responses."

A spokesman for Fitzpatrick said her views conform to Baker's on Jan. 30 when Baker said, "We should focus immediately on prudent steps that are already justified on grounds other than climate change." The

Energy spokesman said, "Because we're an agency that has to come up with the solution, and we understand perhaps a little more clearly how difficult it is to deal with these problems, we're a little more cautious."

After foreign delegates to the climate change meeting criticized the U.S. plan, an international subgroup rewrote and simplified the proposal, which was then adopted unanimously.

Administration officials dismiss the upset as minor. "To say they trashed the proposal is a misperception," a U.S. official said. Others pointed out that the final plan closely resembles the U.S. proposal and that the problem with the first version was that it was developed in a policy vacuum because the transition led to turf battles within the interagency drafting group.

Several steps have been taken to avoid a repeat of the hats-and-sunglasses episode. Congress in late 1987 attached the Global Climate Protection Act to the foreign relations authorization bill: That law gives EPA authority to develop a coordinated national policy on global climate change and gives the State Department responsibility for coordinating foreign policy on the issue.

In his backup budget document, Bush promised to issue an executive order on global climate change "setting out responsibilities of federal agencies and departments as well as establishing effective coordination mechanisms."

Ultimately, observers agree, the personalities of the players will determine how the policy turns out. "A lot of these things really come down to how people come together," Topping said.

At Baker's confirmation hearing, Kerry asked him: "There are many people who believe that membership [in the climate change working group] is made up of people who have helped to frustrate the Montreal protocol [on ozone]. Do you intend to review the membership?"

"I'm not sure that I would agree that we will, of necessity, have the same tensions within the old, because we're going to have new faces, for one thing, around the table," Baker replied. "And I think that there is a real, honest, solid appreciation on the part of this new President of the problems that are presented in this area," he said. "He's not going to let bureaucratic interagency differences get in the way. It just isn't going to happen."

Global warming is an infinitely more complex issue than ozone depletion, with profound ramifications for industrialized and developing societies alike. No one expects easy agreement in domestic debates or international negotiations.

"The degree of scientific consensus does not match that achieved in the case of CFCs and ozone," Bernthal said. "The economic ramifications are yet to be assessed. The substance of the problem is far more complex and is going to be more difficult to address. If you have unresolvable differences and if the agencies are unable to agree, finally the President decides. I don't think that's terribly surprising. That's his job."

NEW DIPLOMACY

Global warming negotiations will be part of a new type of diplomacy that presents Bernthal's bureau with significant opportunities and the State Department with substantial challenges.

The Montreal ozone treaty put the oceans bureau on the map. Congress had created it in 1974 to consolidate scattered scientific functions, foisting it on an unreceptive State Department. Traditionally, the department has viewed diplomacy as a complex of country-by-country relationships, not as a means to solve global problems such as environmental degradation or exploitation of the oceans.

When negotiations got under way on ozone, the assistant secretary in charge of the bureau was John D. Negroponte, a career foreign service officer whom Bush has named ambassador to Mexico. Negroponte is credited by State Department insiders with promoting the bureau's mission and its image. Benedick, who worked for Negroponte, received one of six departmental distinguished service awards in 1988 for his role in the ozone treaty. And a new departmental publication, State, featured the bureau in its premier issue in January.

Some observers believe that emerging international issues might have forced the bureau into prominence in any event. But traditional diplomacy doesn't adjust easily to new imperatives. Foreign service rules still prevail at the bureau; its staff members are rotated every two or three years to new postings. Tradition keeps many of the best foreign service officers from volunteering for the bureau because it's not on the usual career track to an ambassadorial appointment. But a new departmental personnel structure is being designed to enhance promotion, assignment and training prospects for foreign service officers specializing in science.

The State Department, meanwhile, could find itself in competition with EPA as Reilly expands the agency's international contingent. He has said he will promote the head of that division from associate administrator to assistant administrator.

Whatever the configuration of the U.S. negotiating team on the global warming issue, environmentalists agree that it faces a staggering task. "The stakes couldn't be larger," Pomerance said. "The three largest producers of carbon dioxide are the United States, the Soviet Union and China. If you want to solve this problem, you have to get cooperation among three nations that don't have a great habit of doing things together. And you can't get by with rhetoric."

By Mr. BIDEN (for himself, Mr. MOYNIHAN, Mr. SIMON, and Mr. DECONCINI):

S. 604. A bill to amend title 31 of the United States Code to increase settlement authority and expand coverage relating to claims for damages resulting from law enforcement activities; to the Committee on the Judiciary.

SETTLEMENT OF CERTAIN CLAIMS

● Mr. BIDEN. Mr. President, today I am introducing a bill to raise from $500 to $50,000 the ceiling on the amount that Federal agencies are permitted to pay in settlement of claims to third parties who are innocently injured in the course of law enforcement activities. A very similar bill, H.R. 972, has been introduced in the House by Representative EDWARDS of California.

Under current law, there are two ways for an innocent third party to recover for injuries caused by a Federal law enforcement agency. If the injury was the result of the negligence of Government agents, or of some other tortious act, the injured party may file suit under the Tort Claims Act. If, however, the injury was not the result of any tortious conduct, but rather resulted from the proper and lawful exercise of the agency's law enforcement responsibilities, the injured party can only recover under 31 U.S.C. 3724. This statute, which currently applies only to the FBI, allows the Government to pay up to $500 to any innocent third party who is injured in the course of the Bureau's law enforcement activities.

There are many ways in which nontortious injuries can occur to innocent third parties in the course of law enforcement activities. For example, agents in pursuit of a fleeing suspect may collide with an innocent person's car, fire a bullet through his window, or be required to break down his door. In such cases, the injured party may not recover under the Tort Claims Act unless the Government agents are held to have been negligent. Damages arising from nonnegligent acts may be compensated under section 3724, but only if the injury was caused by the FBI, and only up to the amount of $500.

The bill would amend section 3724 in two ways. First, it would raise the $500 limit to $50,000. This amount is considered necessary to cover damages to automobiles, vessels, and residences. Second, because there is no reason that the statute should apply only to the FBI, the bill would expand it to include other law enforcement agencies of the Department of Justice, including the Drug Enforcement Administration, the Immigration and Naturalization Service, and the Marshal's Service.

The effective date provision would make the amendment applicable to any claim arising in the future, any claim pending at the time of enactment, and any claim arising before the date of enactment for which the time for making a claim under current law had not yet expired.

I hope my colleagues will support this useful legislative change. I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 604

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

SECTION 1. AUTHORITY TO SETTLE CLAIMS.

(a) Section 3724 of title 31, United States Code, is amended—

(1) in the section heading, by inserting "or other law enforcement component of the Department of Justice" after "Investigation";

(2) in subsection (a), by striking "$500" and inserting "$50,000";

(3) in subsection (a), by striking out "Director" and all that follows through "Investigation" and inserting "any officer or em-

ployee of the Federal Bureau of Investigation, Drug Enforcement Administration, United States Marshal's Service, or Immigration and Naturalization Service"; and

(4) in subsection (b), by amending the first sentence to read as follows: "The Attorney General shall make an annual report to the Congress on any settlements made under this section.".

(b) The item for section 3724 in the table of sections for chapter 37 of title 31, United States Code, is amended by inserting "or other law enforcement component of the Department of Justice" after "Investigation".

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall apply to—

(1) any claim arising on or after the date of the enactment of this act;

(2) any claim pending on the date of enactment of this Act; and

(3) any claim arising before the date of enactment of this Act for which the time for presenting the claim to the Attorney General under the last sentence of section 3724(a) of title 31, United States Code, has not expired.●

By Mr. BRYAN (for himself, Mr. GORE, Mr. KERRY, and Mr. REID):

S. 605. A bill to authorize appropriations for the Consumer Product Safety Commission, and for other purposes; to the Committee on Commerce, Science, and Transportation.

CONSUMER PRODUCT SAFETY COMMISSION AUTHORIZATION ACT

● Mr. BRYAN. Mr. President, today I am introducing, on behalf of myself and Senators GORE and KERRY, legislaltion that authorizes funds to be appropriated for the Consumer Product Safety Commission [CPSC] and addresses some of the concerns surrounding the CPSC.

The last enactment of a CPSC authorization bill was during the reconciliation process in 1981. For any number of reasons, Congress has been unable to move a bill through the entire legislative process since that time. It is critical that we enact such legislation now because the CPSC needs to be revitalized.

Congress made the decision in 1972 to establish the CPSC and gave it a charter to protect American consumers. For example, in the area of toy safety, the CPSC has a vital role in protecting the most vulnerable portion of America's population—our children. There are approximately 150,000 different toys available in the United States, and they bring much enjoyment to children. Unfortunately, toys also sometimes cause injuries, and most of the harm from toys is caused to children under the age of 15. It is unrealistic to expect consumers will always be able to evaluate these toys and recognize the harm a poorly designed or constructed toy can cause. We cannot wait until a child is brought into an emergency room suffering from a toy-related injury before the hazard is identified and corrected.

There are, of course, other kinds of hazards we encounter daily. In 1987, there were 185,000 injuries from playground equipment, including fractures, internal injuries, and concussions; 40 percent of those injuries involved children younger than 6 years of age. In 1985, the Nation lost 164 elderly persons to fires caused by sleepwear that ignited. The very furnishings in our homes and offices are cited as sources of indoor air pollution, posing harmful health effects. So, all of us are the CPSC's constituency, and we all need the CPSC to be effective.

It is not just the American consumer who is harmed by problems at the CPSC. American business also suffers when an important agency like the CPSC is not as effective as it could be, for then our businesses do not know what to expect from the very Federal unit that is charged with monitoring their product-related activities.

Unfortunately, the CPSC has suffered in recent years from reduced funding, internal conflict and lack of direction. I believe it is time to refocus the CPSC, and spur it on to protect American consumers.

The legislation that I introduce today provides this impetus in several ways. First, it addresses the administration and structure of the CPSC. The recent history of the CPSC has been contentious. This division does not advance the public safety; it hinders its progress, and needs to be eliminated. We need a CPSC that will work together on behalf of product safety. But how does one legislate responsibility and discretion? The short answer is that we cannot. Instead, we must appoint individuals who are aware of safety issues and dedicated to furthering them. That is why this legislation requires the President to consider individuals with safety experience in making appointments to the CPSC.

When the Consumer Product Safety Act was enacted in 1972, Congress envisioned that a collegial body would exchange ideas and suggest alternative solutions to safety problems. That objective has succeeded, to some extent. I believe the basic premise behind that legislative determination is valid: Several minds are better than one. However, to address some of the internal difficulties that have recently crept into the CPSC, this legislation also provides that the heads of all of the major departments at the CPSC shall be appointed and removed by the Chairman of the CPSC, with the approval of the full Commission. This will avoid having any employee fear that disagreement with any particular commission or point of view will bring retribution.

Finally, since the CPSC is currently limited to three members by appropriations constraints, the bill provides that, during the life of this authorization, two members of the CPSC shall constitute a quorum for the transaction of business. Current law requires that three members must be present for action to occur. But under recent circumstances, in the event of illness, resignation or other absence of one member, the CPSC has been unable to act. In fact, today the CPSC cannot meet to attack product safety concerns because there are only two members at the Commission, since the resignation earlier this year of the Chairman. This bill will permit the CPSC to meet even when it is operating with less than the full complement of members provided under the Consumer Product Safety Act.

Second, we must consider the question of how the CPSC approaches its substantive responsibilities. Since 1981, the CPSC is to defer to a voluntary standard developed by industry whenever the CPSC determines substantial compliance with the standard is likely and that compliance with the standard will eliminate or adequately reduce the risk of injury involved. This authority is restricted to situations where the CPSC had already undertaken action on a problem by commencing an advance notice of proposed rulemaking. It has been suggested that the authority has been misapplied and/or misperceived as an indication that the CPSC cannot or should not act to address safety matters. Some industries have been forthcoming and active participants in the development of voluntary standards, but others have not.

This legislation addresses the issue of voluntary standards by permitting certain parties to file a petition with the CPSC alleging that the development of a voluntary standard is either proceeding too slowly or that the standard will be inadequate to address the risk of injury. The CPSC must act on the petition within 120 days of its filing. This will ensure that the CPSC will focus on a potential safety matter in a timely, responsible matter.

In addition, the legislation requires the CPSC to defer to a voluntary standard pursuant to section 9 of the Consumer Product Safety Act only where the standard actually exists. This should preclude even the appearance that the CPSC is to defer to a mere hope or promise that voluntary action will be taken. Also, the bill mandates that interested persons have the opportunity to comment on a voluntary standard before the CPSC defers to it. Finally, the bill provides that the CPSC establish a system to monitor compliance with the voluntary standards which are used by industry, to ensure that these standards are being met.

This legislation also would require the CPSC to conclude any rulemaking proceeding within 1 year after it is

begun by the publication of an advance notice of proposed rulemaking. In those circumstances where the CPSC requires more time to develop a rule—for example, because of complex subject matter—the bill permits a 6-month extension. Testimony produced at previous Consumer Subcommittee hearings suggest that CPSC rulemakings on average take as long as 4½ years to be completed. This bill will ensure that the CPSC acts expeditiously to conclude its formal rulemaking process.

The legislation contains a section precluding the CPSC from conducting a formal, mechanical cost-benefit analysis in situations where a manufacturer voluntarily indicates that it will take corrective action with regard to a product. Also, this section makes it clear that the CPSC is not required to conduct this kind of detailed analysis in each case where it acts under sections 12 and 15 of the Consumer Product Safety Act.

Section 15 of that act requires manufacturers to provide notice about potential defects in their products. This is a kind of early warning system to alert the CPSC and others to the fact that a product may be dangerous. The bill adds requirements that manufacturers provide this notification when their product is not in compliance with a voluntary standard on which the CPSC has relied under section 9 of the Consumer Product Safety Act, or when the product is the subject of a civil action for serious injury or for death. This should assist the CPSC to identify those products that need attention.

The legislation also increases the amount of civil penalties in the Consumer Product Safety Act. When the act was enacted in 1972, the amount of these penalties was set at $2,000. Due to inflation since that time, the current value of those penalties has been significantly reduced. The bill raises the level to $5,000 to counter the erosion in value caused by inflation. The bill also adds civil penalties to the Federal Hazardous Substances Act. The absence of these penalties was felt quite recently when a young girl was killed by a lawn dart, and the CPSC was not able to assess penalties to enforce the lawn dart regulations which had been promulgated under the Federal Hazardous Substances Act.

We have an obligation to ensure that America's products are safe, and that consumers can use them with confidence. Our products cannot be competitive in the marketplace if they are not safe and if our citizens cannot rely on their construction. The CPSC has a vitally important function to perform, and this legislation will set new directions for the CPSC and help it to achieve its mandate. I invite my colleagues to join me in support of this legislation.●

● Mr. KERRY. Mr. President, I am pleased to join as a cosponsor of legislation to revitalize the Consumer Product Safety Commission. Sadly, the SPSC has been an ineffective voice on behalf of consumers in recent years.

I cosponsor this legislation because I believe that it will help to redirect the CPSC's priorities. The provisions requiring the CPSC to receive public input on its agenda, to conclude its rulemakings in an expeditious fashion, and to improve its procedures regarding voluntary standards should help to address some of the more egregious shortcomings in the CPSC's recent past.

The CPSC is a vital agency, and it has been bogged down lately in conflict and turmoil. Consumers have suffered from this lack of direction, and we cannot allow this important agency to continue to drift.

I understand that the Consumer Subcommittee will consider this legislation in a hearing next week, and I look forward to working with my colleagues to get the agency moving once again.●

By Mr. BOND (for himself, Mr. CONRAD, Mr. NICKLES, Mr. MURKOWSKI, Mr. GORE, Mr. HARKIN, and Mr. BOSCHWITZ):

S. 606. A bill to amend the Agricultural Act of 1949 to permit producers to plant supplemental and alternative income-producing crops on acreage considered to be planted to a program crop; to the Committee on Agriculture, Nutrition, and Forestry.

INDUSTRIAL CROP LEGISLATION

Mr. BOND. Mr. President, on behalf of Senators CONRAD, NICKLES, MURKOWSKI, GORE, HARKIN, and BOSCHWITZ I am introducing legislation which is a very important component in the new linkage of American agriculture and industry. Recent technological advances have led to the development of many new industrial uses for such unfamiliar crops as crambe, high erucic rapeseed and guayule. I am convinced that given proper support, these crops will become viable alternatives to traditional crops such as soybeans and wheat.

There is no doubt that agriculture is at a crossroads. Emerging technologies such as biotechnology and genetic engineering are ushering agriculture into a new era. Advances in processing technologies are opening vast new doors to agricultural commodities. For our Nation's farmers to realize the potential benefits of these new markets, we must ensure that any potential roadblocks are eliminated.

Even though there are several new crops ready for significant expansion, farmers remain wary due to the structure of farm programs. Under current law, a farmer's crop acreage base is simply the average of the previous 5 year's acreage devoted to the crop. In other words, decisions to experiment with industrial crops must be weighed against the economics of a corresponding base reduction. Given the benefits of producing program crops, this artificial impediment has been difficult to overcome.

Mr. President, my legislation would simply remove this disincentive associated with current farm programs by protecting farmers' crop acreage bases. Farmers will have the flexibility to produce for specific markets, not Government programs. In addition to promoting alternatives for our Nation's farmers, this legislation could also reduce Government spending on traditional crops by reducing deficiency payments to traditional crops.

Farmers who produce these new crops will not be eligible for any Federal farm program payments on production foregone. For example, a farmer would not be eligible to receive deficiency payments on corn acreage which is shifted to the production of an approved new crop.

Although the bill identifies six industrial crops which would be eligible for base protection, the Secretary of Agriculture is given the authority to expand the list to new industrial crops. The six crops identified in the bill are: crambe, high erucic rapeseed, meadowfoam, kenaf, guayule and milkweed.

For the record, I'll expound on a couple of these crops. Crambe is an annual crop which produces seeds with high levels of erucic acid. Erucic acid is an industrial raw material used to manufacture nylon, plastics, and lubricants. Increased production could decrease, or eliminate, our current dependence upon imported sources of high erucic acid.

Guayule is a shrub, native to northern Mexico and southwestern Texas, which has both strategic and industrial importance as a source of domestic rubber. A domestic source of natural rubber could improve our balance of trade as imports amounted to $655 million in 1983.

Mr. President, this bill should be viewed as an important first step. But we must realize that research and production are both useless without a commercialization component. In this regard, there is a distinct lack of financing and technical assistance available to companies interested in commercializing new industrial products.

I am very pleased to work with my distinguished colleague from North Dakota, Senator CONRAD, in addressing this pressing need. The Agricultural Research Commercialization Act of 1989, which will also be introduced today, recognizes the importance of assisting companies as they progress from the research stage to the commercialization stage. While our re-

search network is second to none, we have not been so successful in capitalizing in our efforts. Together, these two pieces of legislation will enable American agriculture to expand its involvement in the industrial sector.

Mr. President, I ask unanimouis consent that the text of the bill be printed in the RECORD at this point.

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

S. 606

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

SECTION 1. CROP ACREAGE BASES.

Effective for each of the 1989 and 1990 cropyears, section 504 of the Agricultural Act of 1949 (7 U.S.C. 1464) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (D)(iii) by striking out "and" at the end thereof;

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting immediately after subparagraph (D), the following new subparagraph:

"(E) notwithstanding the provisions of subparagraph (D), in the case of each of the 1989 and 1990 crop years, acreage in an amount not to exceed 100 percent of the permitted acreage for a program crop for each of the 1989 and 1990 crop years, if—

"(i) the acreage considered to be planted is planted to supplemental and alternative income-producing crops (as identified under subsection (e)); and

"(ii) payments are not received by producers under section 101A(c)(1)(B), 103(c)(1)(B), 105C(c)(1)(B), or 107D(c)(1)(C) as the case may be; and"; and

(2) by adding at the end thereof the following new subsection:

"(e)(1) The supplemental and alternative income-producing crops referred to in subsection (b)(2)(E)(i) are kenaf, crambe, guayule, high erucic rapeseed, milkweed and meadowfoam.

"(2) The Secretary shall have the authority to add additional crops to those referred to in paragraph (1), and interested parties may petition the Secretary for such.

"(3) The Under Secretary for International Affairs and Commodity Programs and the Assistant Secretary for Science and Education shall make recommendations to the Secretary regarding the inclusion of additional crops under paragraph (1).

"(4) The Secretary shall promulgate regulations necessary to carry out this section.".

By Mr. WALLOP (for himself and Mr. HELMS):

S. 608. A bill to require that catastrophic health coverage under Medicare part B be listed as a separate benefit and to allow for the separate election of such benefits, and for other purposes; to the Committee on Finance.

VOLUNTARY CATASTROPHIC HEALTHCARE ACT

● Mr. WALLOP. Mr. President, today I am joined by my colleague from North Carolina, Mr. HELMS, in introducing legislation to provide a necessary modification of the Medicare catastrophic health benefit enacted last year. This legislation revives an amendment I offered to the catastrophic health-care bill when it was considered by the Senate on October 27, 1987. That amendment and our bill represent an attempt to balance the sometimes overwhelming coercive power of the State with the right of individuals to exercise some control over their actions. What we are proposing is to allow Medicare beneficiaries to make a voluntary choice whether to participate in the new benefit.

When the Senate originally debated this health benefit, the first major expansion of Medicare since its enactment, this provision was included in the Part B Program. Now, part B of Medicare covers physician services and is voluntary participation program. In other words, when a retired or disabled individual becomes eligible for Medicare, they are automatically covered for part A benefits. Coverage is automatic because it is funded by the payroll taxes paid during the working years of the beneficiary. When they are eligible for part A, they can also elect to participate in the Part B Program. Part B is funded by premiums paid by beneficiaries and by general revenues. But, it is up to the individual to choose whether to pay the premium and receive part B coverage.

The new catastrophic benefit also involves a premium. It is fully funded by participants. And, like the Part B Program, this coverage should be voluntary. I believe the benefit package, which includes acute long term hospital care and prescription drugs, is an important health benefit which everyone should have. I also believe that utilizing the user pay, user benefits policy for this new benefit is an appropriate decision. However, the third component is missing, the right to decide whether they will receive this coverage through Medicare or through private insurance. The legislation we are introducing today provides this missing element.

There are some who worry that making the program voluntary will mean that so few will participate that the program will be unworkable, unaffordable. They base this assumption on the fact that the premium is means tested. Those with higher, taxable, income will pay a higher rate. If the program is voluntary, opponents of my amendment have argued, these individuals will not participate. I obviously do not agree with that scenario.

The Medicare catastrophic healthcare benefit is a good buy for most individuals. By 1993, when the benefits are fully implemented, the basic premium for each individual eligible for Medicare will be $122.40 per year. This is all that a majority of participants will pay. The supplemental premium will be capped at $1,050 in 1993. So, the total maximum premium payment that an individual would have to pay for coverage will be $1,172.40 in 1993. I will not hazard a guess as to that private health insurance for the same benefits will cost in 1993, but it will probably be comparable. Our argument is that individuals should be able to decide which approach to use, public or private health insurance.

The new catastrophic health-care benefit is a marvelous benefit. It will be hard to match the coverage with a similar policy from the private sector. When the Finance Committee reviewed this subject as we drafted the Medicare catastrophic bill, we discovered that private premiums would cost about the same or slightly more than the Medicare coverage. Since it will be such a good buy for most seniors, participation should be close to the maximum. We can use the current Part B Program as a rough guide for participation rates; 95 percent of all those eligible have voluntarily chosen the Part B Program, along with its premium payments. I suspect that similiar participation rates would occur for the catastrophic health-care benefit. But, people should have the opportunity to make the decision whether or not to participate.

It is ironic that so many senior citizens have objected to this benefit despite the fact that it is the first major expansion of Medicare in 20 years. Many are concerned about the potential cost. Others are upset that this benefit duplicates existing benefits they now receive. As to the first concern, I have already described the cost of the premium. In regards to the latter point, many Federal and railroad retirees have catastrophic coverage. Private sector employers have also provided such coverage to their retirees as part of their employee benefit package. Some retirees may want to continue this arrangement. We should allow them that option.

The American Association of Retired Persons did a survey of members. While a substantial majority of seniors supported the new benefits, about 40 percent surveyed objected to the new income tax surcharge. I have received quite a bit of mail from my constituents also objecting to the financing. They have raised very legitimate concerns and I am sympathetic, up to a point. Catastrophic health-care coverage is necessary. The hospitals in my State have been severely burdened by uncompensated care. This coverage will relieve some of that problem.

The way to resolve this concern is to make the program voluntary. We will preserve the very important principle that the benefits be self-financing. Individuals will decide whether to obtain these self-financed benefits through Medicare or a private policy. By maintaining self financing and recognizing a role for private sector insurance, we set the framework for our up-coming work on long-term care.

The bill we are introducing today should resolve the remaining financing controversy surrounding the new catastrophic health-care benefit. We had an opportunity to adopt this approach when the Senate first debated this matter back in 1987. We obviously made a mistake in not approving this amendment. I urge the Senate to take up this matter at an early date.

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

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

S. 608

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

SECTION 1. ELECTION TO RECEIVE CATASTROPHIC COVERAGE BENEFITS.

(a) IN GENERAL.—Title XVIII of the Social Security Act is amended by adding at the end thereof the following new sections:

"ELECTION TO RECEIVE CERTAIN BENEFITS UNDER PARTS A AND B

"SEC. 1893. (a) An individual is described in this section for any period of time in which the individual elects in accordance with subsection (b) to receive the additional benefits under this title established by the amendments made by the Medicare Catastrophic Coverage Act of 1988 and to pay the appropriate monthly catastrophic coverage premium amount under section 1839(g) and (if required for such individual) applicable supplemental premium under section 59B of the Internal Revenue Code of 1986.

"(b) An election made under subsection (a) shall be made under procedures established by the Secretary and (subject to section 1894) shall be effective with respect to any calendar year beginning after the date on which the election is made.

"CONSTRUCTION OF TITLE WITH REGARD TO MEDICARE SUPPLEMENTAL POLICIES

"SEC. 1894. Nothing in this title shall be construed as to prohibit the offering of a medicare supplemental policy which provides benefits that duplicate any benefits provided by any section of this title which is subject to voluntary participation.".

(b) MODIFICATION OF SUPPLEMENTAL PREMIUM.—Section 59B(b) of the Internal Revenue Code of 1986 (26 U.S.C. 59B(b)) is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and"; and

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

"(3) such individual elects in accordance with section 1893(b) of the Social Security Act to pay the appropriate monthly catastrophic coverage premium amount under section 1839(g) of such Act and is otherwise subject to a premium under this subsection and elects to pay such premium in accordance with section 1893(b) of such Act.".

(c) ADJUSTMENT OF MEDICARE PART B BENEFITS.—Section 1839(g) of the Social Security Act (42 U.S.C. 1395r(g)) is amended—

(1) by striking out "the monthly premium for each individual enrolled under this part otherwise determined, without regard to this subsection" in paragraph (1XA) and inserting in lieu thereof "the monthly premium, otherwise determined without regard to this subsection, for each individual enrolled under this part and who elects in accordance with section 1893(b) to pay the appropriate monthly catastrophic coverage premium amount under this subsection"; and

(2) by striking out "the monthly premium for each individual enrolled under this part otherwise determined, without regard to this subsection" in paragraph (4)(A) and inserting in lieu thereof "the monthly premium, otherwise determined without regard to this subsection, for each individual enrolled under this part and who elects in accordance with section 1893(b) to pay the appropriate monthly catastrophic coverage premium amount under this subsection";

(d) FUTURE ADJUSTMENT OF PREMIUMS.—The Secretary of Health and Human Services shall report to Congress within 120 days after the date of enactment of this Act with regard to the effect of the amendments made by this section on the financing mechanism for catastrophic coverage benefits established under the Medicare Catastrophic Coverage Act of 1988.

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective with respect to elections under section 1893 of the Social Security Act (as added by subsection (a) of this section) made on or after the date of enactment of this Act.●

By Mr. HELMS (for himself, Mr. ARMSTRONG, Mr. GARN, Mr. GRAMM, Mr. HATCH, Mr. HUMPHREY, Mr. LOTT, Mr. MACK, Mr. MCCLURE, Mr. NICKLES, Mr. SHELBY, and Mr. SYMMS):

S. 609. A bill to provide nonlethal assistance to the Nicaraguan democratic resistance; to the Committee on Foreign Relations.

ASSISTANCE TO NICARAGUAN DEMOCRATIC RESISTANCE

Mr. HELMS. Mr. President, I am today introducing, on behalf of myself and 11 distinguished colleagues, a bill to provide $75 million in nonlethal assistance for the Nicaraguan freedom fighters. This bill might more appropriately be called the Congressional Credibility Restoration Act of 1989. It is the last chance for this body to put some semblance of substance behind the hundreds of hours of debate that we have heard in this Chamber about the importance of democracy in Nicaragua. The 11 cosponsors are Senators ARMSTRONG, GARN, GRAMM, HATCH, HUMPHREY, LOTT, MACK, MCCLURE, NICKLES, SHELBY, and SYMMS.

Mr. President, time is not running out on the Nicaraguan freedom fighters—it has run out. In 16 days the last paltry amounts of U.S. humanitarian assistance for the freedom fighters will expire. Once again, the freedom fighters will be left high and dry, their very livelihood dependent upon this body, which has walked away from them time and again in recent years.

This legislation is a very modest effort—when one considers that the fate of Central America and the security of this hemisphere hang in the balance. It provides the President with the authority to transfer from the unobligated funds of the Department of Defense, not less than $75 million in nonlethal assistance to the Nicaraguan democratic resistance. And we define nonlethal as economic assistance, fuel, spare parts, telecommunications, clothing and boots, and appropriate political, military science, and civic actions programs.

None of these categories would allow the freedom fighters to mount military operations against the Sandinistas; but it is unreasonable to expect to maintain military forces in readiness for an indefinite period of up to 1 year without basic nonlethal supplies. No one could oppose these items in good faith unless he believes that we should immediately capitulate to the oppression of the Sandinista regime. Indeed Mr. President, I believe that readiness for the defense of freedom is itself a humanitarian mission.

This bill also contains a sense of the Congress section that "at the appropriate time" the Congress will consider authorizing the President to transfer not more than $50 million in military assistance to the freedom fighters. However, the bill also states that no military assistance should go to the freedom fighters if the Sandinistas stick to their much touted pledge to hold free elections in February 1990, and meet their decade-old commitments to the Organization of American States. Mr. President, I cannot imagine a more reasonable proposal.

This bill is based on the very basic premise that the Nicaraguan democratic resistance must be sustained as the last opportunity to promote peace and democracy in Nicaragua, and indeed Central America. Frankly, it is embarrassing that while Mikhail Gorbachev sends hundreds of millions in economic and military aid to his friends in Managua, we sit here in the Senate and quibble over whether or not boots, fatigues, radios, and gasoline constitute "nonlethal" assistance.

It must be remembered that the prime obstacle to democratic reform in Nicaragua is not the suppression of political discussion and practice, but the total identification of the Sandinistas political party with the massive power of the Sandinista military forces. No democratic system can develop in such an environment. The only hope of counterbalancing this Marxist despotism, supported so strongly by the Soviet Union, is to maintain a military option for the resistance in reserve throughout the period allotted for the installation of political reforms.

It is incomprehensible to me, that there are some Senators who feel that by disarming the freedom fighters, we will promote democracy in Nicaragua. Yet, every time another so-called "peace plan" emerges, many Senators want to abandon the freedom fighters and "give peace a chance." Mr. President, we have given peace a chance—again and again, and again. While

we're busy here "giving peace a chance," Daniel Ortega is working overtime to consolidate his grip on Nicaragua.

This June 23 marks the 10th anniversary of the Sandinista commitments to the Organization of American States to old "free elections as soon as possible, that will lead to the establishment of a truly democratic government that guarantees peace, freedom, and justice." Ten years, Mr. President—10 years the Nicaraguan people have been waiting for freedom.

The U.S. Congress in 1985 even wrote those commitments into the foreign aid bill as acceptable criteria for resolving the conflict. And even today, Mr. President, we aren't proposing new ideas for solving the crisis in Nicragua. We are just asking the Sandinistas to live up to their promises.

Two years ago this month, the Senate voted on a resolution supporting the thrust of Arias peace plan. I urge Members to review the debate on that resolution, because there was much grand talk about how the Arias plan was the "last best hope" of achieving peace in Central America. Eleven months later when the Congress defeated another request from the President for assistance to the freedom fighters, one Senator stated:

> Finally, I want to say something about the "myth" around this town these days—that Contra aid is the "pressure" which is needed to keep the Sandinistas at the peace table. Those who think this way believe that as soon as we stop funding the Contras, the Sandinistas will walk away from peace and toward greater militarization, repression, and export of revolution to their neighbors. That conclusion just isn't logical.

Mr. President, it is obvious that what that Senator said would not happen, is precisely what has happened.

Well Mr. President, we've had plenty of time to observe how the Sandinistas react once we end military aid to the freedom fighters. Throughout all of 1988, the Congress did not appropriate 1 cent in military aid for the resistance. And what were the gains for peace and stability in Central America? The generosity of the U.S. Congress was rewarded by the expulsion of the U.S. Ambassador, the jailing of hundreds of dissidents, the closing of Radio Catolica.

Violence throughout Central America is on the rise, as the Communist guerrillas in El Salvador are gaining strength and terrorizing and killing hundreds of elected mayors and other political figures. And last January, in the streets of Honduras, Marxist terrorists gunned down the former Honduran Commander of the Armed Forces, General Alvarez. Terrorists have also shot and killed two key Nicaraguan freedom fighters in Honduras.

In 1988 the Soviets supplied more than half a billion dollars in military aid to the Sandinista government. And there are those who still argue that United States aid to the Contras is the source of Soviet militarization in Central America.

Lately, I have heard disturbing suggestions that we should appropriate "relocation" aid for the freedom fighters of Nicaragua. Well, Mr. President, there is no greater gift that we could deliver Daniel Ortega than a package of "relocation aid"—or more appropriately "sell out" aid for our friends in Nicaragua. I have talked with the resistance leaders. They don't want to be "resettled" in Miami or any other country. They want to be resettled in a free Nicaragua.

Mr. President, this bill is the very least we can do. Despite the terrible economic conditions in Nicaragua, and despite the deep discontent among the people, the Sandinistas have one aim: To finish off the Nicaraguan resistance so that it is no longer a threat to the Sandinista power. They will continue to seek this disintegration by intervention in the U.S. political process.

Therefore, any plan for aid to the resistance should have as its goal a concerted effort to support and sustain the military forces of the resistance as a credible power until the Sandinistas have kept their promise for free and fair elections, and a transition to the new government has been made. If the military forces are disbanded, there is no leverage at all to make sure that the Marxist Sandinistas fulfill their promises.

Mr. President, that is why the Congress must immediately vote to renew vital assistance for the Nicaraguan freedom fighters, and in doing so, send a clear message to the Marxist government in Managua.

By Mr. HEFLIN:

S. 610. A bill to amend the Internal Revenue Code of 1986 to restore income averaging for farmers, to restore the investment tax credit and accelerated cost recovery for property used in the trade or business of farming, and for other purposes; to the Committee on Finance.

FARMERS RECOVERY TAX ACT

● Mr. HEFLIN. Mr. President, I rise to introduce a vital piece of legislation for our Nation's farmers. No one needs to be reminded of the terrible drought that this country suffered last year. As I travelled through the State talking with Alabama farmers, they all told me of the problems caused by this drought. The second thing they were concerned about was not a natural disaster, however, it was a situation which Congress has created. The simple truth is that the changes wrought by the Tax Reform Act of 1986 have been a financial disaster for our Nation's farmers.

Farming is unique: Farmers face risks that other businesses do not. Not only do farmers have to contend with the vagaries of the market in setting the prices for which they can sell their crops, they also must contend with the weather, with pests, and with disease. These are all factors beyond their control. A farmer's life was hard enough before the passage of the 1986 Tax Reform Act. Now Congress has added to the farmers' burdens by stripping away any help that the Government had provided farmers in the Tax Code. The provisions of the law that were eliminated were not boondoggles or tax shelters for the rich; they were provisions designed to help hardworking farmers weather the bad times and encourage them to keep going in the face of economic obstacles.

As I am sure many Senators will remember, we were successful in correcting some of the problems of the original version of the Tax Reform Act passed by the Senate. Unfortunately, these vital provisions were deleted at conference. The end result was a bill that was a body blow to America's farms. For that reason, I voted against the final version of the Tax Reform Act. Since then I have worked to correct the mistakes that were made in the act. We have had some successes: the notorious "Heifer Tax" was eliminated last year, as was the requirement that farmers pay tax on diesel fuel and then apply for a refund. These changes help, but more help is needed. For that reason, I am reintroducing a bill I introduced in the last session of Congress. This bill is the Farmers Recovery Tax Act.

The Farmers Recovery Tax Act will restore income averaging for farmers, the investment tax credit for the purchase of farm equipment, and the accelerated cost recovery system of depreciation for qualified farm property. In addition, this act will reinstate a capital gains differential for farmers, including individual timber growers.

A farmer cannot be guaranteed a steady, even income, year in and year out. Farmers have good years and bad years. It makes no sense for the Tax Code not to take this fact into account. A farmer who has one good year on the heels of a string of bad years should not be penalized for having a good year. But that is exactly what happens under the law today. Before the Tax Reform Act, the pain of this cycle of good and bad years was helped by income averaging. With income averaging, farmers with good and bad years can even out the volatility in income caused by weather, pests, disease, and other factors beyond their control.

The weather last year should remind us all that a farmer's income is dependent upon things beyond his control. For example, parts of my State have experienced drought for the last 4 years. Last year was one of the driest

years on record in north Alabama. Much of the cotton in north Alabama that should have been harvested last year was literally too low to the ground to pick. Likewise in south Alabama, where early double-cropping is common, most of the first crop was worthless because the drought hit immediately after planting. Other farmers in Alabama found the soil too dry to even get a crop in the ground. There is no question that these farmers desperately need income averaging to survive disasters like this drought.

The Tax Reform Act of 1986 also repealed the investment tax credit for qualifying capital investments. Most farm machinery and equipment, some farm structures, and certain livestock qualified for the 10-percent credit. This bill will reinstate this credit to provide the incentive needed for farmers to continue to make the investments necessary to continue operations. The investment tax credit helps more than just farmers, of course. Farm equipment dealers and other agricultural businesses were all hurt when the credit was repealed in the 1986 Tax Reform Act. Economic growth in the farm belt is dependent upon the purchases made by farmers. Without the added incentive of the investment tax credit, the rural economy cannot recover.

The Tax Reform Act of 1986 also repealed the accelerated cost recovery system. The Farmers Recovery Tax Act will restore ACRS for qualified farm property. The depreciation schedules that farmers must now use are only hindering the recovery in the farm economy.

Finally, Mr. President, I propose to reinstate a capital gains differential for farmers, including individual timber growers. The maximum tax rate on capital gains will be 20 percent.

Capital gains deduction are certainly needed in the risky industries and businesses which involve the natural biological cycles and reproductive processes. Farmers that raise cattle, for instance, cannot expect immediate income from the purchase of brood cows. Income that results from the sale of such livestock is the product of several years of hard work.

Mr. President, I urge my colleagues to consider the natural hardships which farmers face in trying to feed America and most of the world three times a day and then consider the inequity and injury which the Tax Reform Act of 1986 inflicted upon them. America's farms are truly one of this country's natural treasures. We must do all we can to encourage and preserve this treasure. I therefore urge my colleagues to support the Farmers Recovery Tax Act.●

By Mr. INOUYE (for himself, Mr. BREAUX, Mr. D'AMATO, Mr. DODD, Mr. HATFIELD, Mr. JOHNSTON, Mr. LEVIN, Mr. PACKWOOD, Mr. PELL, Mr. RIEGLE, Mr. SANFORD, and Mr. SHELBY):

S. 611. A bill to establish administrative procedures to determine the status of certain Indian groups; to the Select Committee on Indian Affairs.

INDIAN FEDERAL ACKNOWLEDGMENT ADMINISTRATIVE PROCEDURES ACT

● Mr. INOUYE. Mr. President, I am pleased to introduce today, along with my colleagues, Senators BREAUX, D'AMATO, DODD, HATFIELD, JOHNSTON, LEVIN, PACKWOOD, PELL, RIEGLE, SANFORD, and SHELBY, the Indian Federal Acknowledgment Administrative Procedures Act of 1989. This bill is intended to provide statutory guidelines for the administrative process of extending Federal acknowledgment to petitioning Indian tribes.

The 95th Congress established the American Indian Policy Review Commission which conducted extensive research on unrecognized and unacknowledged Indian groups. It was the Commission that first expressed the need for an independent office to review petitions for acknowledgment under a consistent set of standards without prejudicing those Indian groups which have had a history of dealing with the United States on a government-to-government basis. But the Congress has never authorized the creation of an administrative procedure and office to review, evaluate, and grant Federal acknowledgment to Indian tribes.

In 1978, the Department of the Interior, acting in response to proposed legislation but without statutory guidance, promulgated regulations to establish formal administrative procedures to extend acknowledgment.

Subsequently, an office entitled "Branch of Acknowledgment and Research" has created within the Bureau of Indian Affairs which has extended acknowledgment to 8 petitioners and has denied acknowledgment to 11 petitioners. Before and since 1978, other tribes have been recognized through judicial action. Alternatively, the Congress itself has extended Federal recognition to various tribes by enacting special legislation. This approach of having separate and basically uncoordinated actions by the three branches of government has necessarily resulted in inconsistent standards and a lack of attention to basic considerations of due process.

In May 1988, the Select Committee on Indian Affairs held an oversight hearing on the BIA's current acknowledgment process where it reported that over 100 petitions for acknowledgment are now pending before the Department of the Interior. The Bureau of Indian Affairs has completed its review of an average of two petitions per year. The BIA Office responsible for handling these petitions is overburdened and understaffed. The consensus of testimony before the committee was that the BIA's criteria for acknowledgment needs reexamination by experts in the various fields, particularly history and anthropology. As a result of the present unexamined procedures, deserving Indian groups have apparently been denied acknowledgment without recourse to any other process and sometimes without justification. Following the most recent oversight hearing, I requested that several national Indian organizations prepare materials for drafting objective legislation.

This proposed legislation is intended to establish a process that will be fair, efficient, and reliable. It will create an independent review board and an efficient timeframe for processing petitions. Most importantly this bill will provide clear standards for reviewing petitions consistently.

This bill is not intended to affect in any degree the relationship between the United States and any tribe that is presently federally recognized. Likewise, the Federal acknowledgment that this bill will extend to tribes that petition sucessfully, will be equal in every way to that enjoyed by tribes that are currently acknowledged. The relationship between the Federal Government and newly acknowledged tribes will correspond to that between the Federal Government and currently acknowledged tribes. An Indian tribe acknowledged pursuant to this bill will not receive any greater rights than that tribe would receive under the existing acknowledgment process.

This bill also provides an additional opportunity to petition to a small number of tribes that have been denied acknowledgment under the currrent process. In my view it would be abhorrent to prohibit tribes who have been denied under such standards, another opportunity to petition under a process which will be fair and consistent.

Mr. President, this bill would create a presumption of acknowledgment in petitioners that have had specific treaty or statutory recognition as a tribe in the past. For political and moral reasons, the United States recognized the signatories of treaties as sovereign entities with autonomous governmental powers so that these entities could dispose on their possessions. Clearly, it would be indefensible to recognize a tribe in order to acquire its sources of livelihood and resources and then to abandon any further obligation to that tribal government. However, if the Department can prove that the petitioner has not existed as a tribe, continually exercising governmental autonomy since the time of recognition, or does not now exist as a contemporary community, that peti-

tioner will be denied Federal acknowledgment.

This legislation is not intended to supplant the Congress' power to legislatively recognize specific tribes with unique circumstances if the situation should arise again. Further, this legislation is not intended to preclude subsequent legislation which may address the unique circumstances of certain regions of the country such as California where the history of some tribes is less accommodating to scientific, social, and historical documentation.

Mr. President, I look forward to conducting field hearings in the near future on this bill and the issue of tribal acknowledgment. This bill represents an attempt to treat with justice and fairness, groups that have persisted for many years in their efforts to assert their tribal identities. It is important that the Congress exercise its constitutional responsibility to legislate standards, criteria, and procedures on this issue which is fundamental to the Federal Indian relationship.

Mr. President, I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1 provides that the act may be cited as the "Indian Federal Acknowledgment Administrative Procedure Act of 1989".

Section 2 sets forth the findings of the Congress.

Section 3 sets forth the purposes of the Act.

Section 4 provides the definitions of terms as used in the Act.

Section 5 provides for the establishment within the Department of Interior of an "Office of Federal Acknowledgment".

Section 6 provides for a list of candidates from which will be chosen a panel to review administrative rulings.

Section 7 sets out the guidelines for determining to whom the Act will apply, the standards to which a petition must conform, and two separate sets of criteria by which petitions will be reviewed.

The criteria under subsection 7(c) applies to those petitioners with no substantial history of government-to-government dealings with the United States.

The criteria under section 7(d) applies to those petitioners with a substantial history of government-to-government dealings with the United States, including treaties, specific statutory references, and administrative approval of tribal constitutions.

Any petitioner who meets the threshold standard under subsection 7(d) may elect to have its petition reviewed under either subsection 7(c) or 7(d), since the criteria for review under 7(d) are in some respects more difficult to meet.

Those petitioners that meet the threshold criteria for proceeding under subsection 7(d) are presumed to have met the criteria for acknowledgment, the burden of proving otherwise shifting to the Department. In order to deter frivolous attempts to petition under subsection 7(d), those petitioners that choose to petition under subsection 7(d) and subsequently fail to meet the threshold criteria will be placed at the bottom of the list to petition under subsection 7(c).

Section 8 sets out time deadlines for rulings, other administrative actions, and for the petitioner's responses, and provides enforcement mechanisms which apply to the review of petitions submitted under section 7(c).

Section 9 sets out time deadlines for rulings, other administrative actions, and for the petitioner's responses, and provides enforcement mechanisms which apply to the review of petitions submitted under section 7(d).

Section 10 sets out the procedures and standards for reviewing appeals made by the petitioner.

Section 11 requires the Director to submit to the Congress a report on the status of all petitions currently on file, and an annual report listing all currently acknowledged tribes, all submitted petitions, and an explanatory progress report on all petitions upon which actions have been taken.

Section 12 provides general provisions on the relationship between tribes acknowledged under this Act and the United States and other tribes, and other provisions.

Section 13 authorizes a grant within the Administration for Native Americans to support petitioners in their research and tribal functions while their petitions are under review.

Section 14 transfers all pending petitions to the new office, allows for petitioners denied under the previous process to reapply, and provides for a transitional period of two years with some modified time deadlines.

Section 15 authorizes appropriations necessary to carry out the provisions of this bill.●

By Mr. SARBANES (for himself, Ms. MIKULSKI, Mr. ROBB, Mr. WARNER, and Mr. SASSER):

S. 612. A bill to amend the National Capital Transportation Act of 1969 relating to the Washington Metrorail System; to the Committee on Governmental Affairs.

NATIONAL CAPITAL TRANSPORTATION AMENDMENTS ACT OF 1989

● Mr. SARBANES. Mr. President, today, along with my colleagues from Virginia and Maryland, Senators JOHN WARNER and CHARLES ROBB, and Senator BARBARA MIKULSKI, and the chairman of the Subcommittee on Government Efficiency, Federalism, and the District of Columbia, Senator JIM SASSER, I am introducing legislation to reauthorize completion of the Washington Metrorail System.

The current Federal authorization for Metrorail construction, Public Law 96-184, referred to as Stark-Harris, provides funding sufficient only to compete 89.5 miles of the 103-mile adopted regional system. WMATA's fiscal year 1990 request for an appropriation of $193 million would exhaust the funds available under the Stark-Harris authorization. The bill being introduced today will enable Congress' vision of completing the full 103-mile system to become reality. The National Capital Transportation Amendments of 1989 reaffirm the Federal commitment to serving the vital transportation needs of the Nation's Capital with its large Federal work force, 17 million visitors annually from across the Nation and around the world, and residents of the region.

The legislation authorizes the $2.16 billion Federal share of the estimated costs of completing the Adopted Regional System. In introducing this authorizing legislation we are cognizant that its implementation is subject to annual appropriations and budget review. These funds are envisioned to be appropriated in $200 million increments over an 11-year period. Estimates of the cost to complete the system are mindful of Federal fiscal constraints, yet assure an orderly and cost-effective construction program. If annual appropriation levels contemplated in the cost estimates are not achieved, as with any capital construction project, cost increases will inevitably result from a stretched-out construction schedule.

The participating local jurisdictions will provide a matching share of 25 percent of the Federal share—or 20 percent of the total cost. The Federal/local cost-sharing set forth in this bill is identical to that established in the Stark-Harris legislation. At that time it was recognized that the participating local jurisdictions would meet the remainder of the capital costs and establish a stable and reliable funding source to meet operating expenses. The jurisdictions in this region have always met their commitment to provide subsidies to meet Metro's operating costs, as well as the local share of construction costs, and will continue to do so.

Since its inception, construction of the Metrorail system has proceeded with the understanding among the participating jurisdictions and the Federal Government that the entire system would be built. Many jurisdictions in the region have contributed to the construction of the system which is operating today in the expectation that lines in their area would be completed. This understanding has formed the basis for a unique Federal/local partnership, enabling Metrorail to be constructed crossing through many local subdivisions, States, the District, and on parcels of Federal land. This region, including local government, business, and community representatives, has put aside parochial concerns and come together in an unprecedented fashion to support this system. Congress has demonstrated its support time and again, not only through the efforts of the regional delegation, but with the active bipartisan support of Members from geographic regions across the country.

I would like to take this opportunity to describe for my colleagues what is included in the 13.5 miles to be constructed. This legislation will enable

the final portion of the long-delayed Inner Green Line, which will serve the most transit-dependent population of the region, to be completed. Also on the Green Line U Street and Fort Totten Stations will be connected with intermediate stops at Columbia Heights and Georgia Avenue. The southern leg of the Green Line will extend from the Anacostia Station in Southeast Washington to Branch Avenue near the beltway, providing a vital intercept for traffic in rapidly developing southern Prince Georges County. The Branch Avenue Station will permit convenient access to Andrews Air Force Base and add a valuable maintenance yard to the system. This line will also have stations at Congress Heights, Southern Avenue, Naylor Road, and Suitland, serving two hospitals and the major U.S. Government complex in this area.

In addition, the Red Line will be extended from Wheaton to Glenmont, providing access to a vital service and inspection yard, thus enhancing operational efficiency. It will also relieve substantial traffic congestion at Wheaton, the temporary terminus, which was not originally designed to be a terminal point.

Finally, the Yellow Line will be extended to Franconia/Springfield where parking facilities and highway intercepts will draw traffic from I-95, I-395, and I-495, increasing capacity, reducing traffic, and enhancing safety in that overburdened corridor. As in the case of the Red Line at Wheaton, the temporary terminus at Van Dorn is not suitable for operating for an extended period of time, due to local traffic conditions. The $2.16 billion Federal share includes basic construction costs, as well as additional railcars; power, computerized train control, communications, and fare collection systems; start-up management; and all other expenses associated with bringing the final 13.5 miles into revenue operation.

Over 20 years ago, Congress embarked on a vital mission to address the problems posed by the enormous growth forecasts for the National Capital region. Ensuring orderly commercial and residential development, enhancing critical mobility for the millions of visitors and the massive Federal work force scattered about the region, and providing residents of many transit-dependent neighborhoods a means to travel to their jobs or to visit with family and friends were all important considerations when Congress first addressed the transportation needs of the region.

These goals remain important national priorities today, and Metrorail is a shining example of what a Federal/local partnership can achieve. But while ridership is exceeding all projections, and by every conceivable indicator Metrorail is an outstanding success, much remains to be done. Gridlock still threatens our roadways today as the planners' growth forecasts become a reality, and many of the most transit-dependent neighborhoods continue to wait patiently for Metrorail's long-promised arrival.

Congress has long maintained its commitment to completion of the entire Metrorail system. Today we merely seek reaffirmation of that commitment. I ask my colleagues to join me in supporting this critical legislation which will provide optimal operational efficiency of our transit network and ease the region's traffic congestion. These have been and should remain important national priorities.●

● Mr. WARNER. Mr. President, I am pleased to join my colleagues from across the Potomac, the Senators from Maryland, Senators SARBANES and MIKULSKI, and my own Virginia partner, Senator ROBB, in introducing legislation to authorize the completion of the full Metrorail system.

The Federal commitment to the Metrorail construction program has spanned some 25 years and 6 administrations. Ever since President Kennedy first called the plan for Metro "both sound and necessary," Presidents of both parties have sought Federal funds to support the Metrorail construction program. Similarly, Members of both Houses of Congress of both parties, and representing constituencies across this great Nation, have underscored time and again the need for sustaining the Federal commitment to completion of Metrorail—America's Subway.

The rail system is the product of more than 30 years of discussion, planning, and construction. Extraordinary efforts from citizens and local elected officials alike helped shape the adopted regional plan for a 103-mile rapid transit system to relieve traffic congestion and its attendant pollution, and to improve the physical character; economic growth and well-being of the national capital region.

As early as 1960, Congress recognized in the National Capital Transportation Act:

> That an improved transportation system of the National Capital Region is essential to the continued growth and effective performance of the functions of the government of the United States, for the welfare of the District of Columbia, for the orderly growth and development of the national capital region, and for the preservation of the beauty and dignity of the Nation's capital . . .

In correspondence to Congress in 1963, then-President Kennedy said that any such

> . . . improved transportation system must include a major rapid transit system. The alternatives would be steadily-worsening congestion with what all that congestion means in losses in time and money, or an enlarged highway and freeway system program entailing additional expense, major disruptions of persons and businesses, and substantial impairment of the appearance and attractiveness of the city.

The political consensus forged among the eight local governments in Maryland, Virginia, and the District of Columbia to support a coherent and orderly plan for construction of such a rapid transit system has remained intact. This local jurisdictional compact formed a partnership with the Federal Government to advance a cost-shared construction program—a partnership that has now built 70 miles of Metrorail. Recognized by the American Public Transit Association this year as "the outstanding transit system in North America," Metrorail has proven itself a safe, reliable, and clean system. With ridership exceeding half a million daily it now is second only to New York MTA in ridership.

The Federal-local partnership that has yielded this fine system must be sustained to fully realize the dreams of those pioneering and visionary planners some 30 years ago. With this year's appropriations request by WMATA of $193 million, funds available under the current, so-called Stark-Harris authorization will be depleted. With the agreement and support of Congress and the Urban Mass Transit Administration, these remaining funds will permit the authority to bring 89.5 miles into full-revenue service.

The adopted regional system, however, provides for a 103-mile system. This will require adoption of new authorizing legislation. One of the great champions of Metro has been former Senator Charles Mathias of Maryland. During the 1979 floor debate on the Stark-Harris legislation, Senator Mathias said:

> It would . . . be a tragic breach of promise were the Federal government to renege . . . on its share of the Metrorail dream for those not yet served by the system.

And indeed, that is the sentiment today of hundreds of thousands of residents throughout the region, many of whom reside in the most transit-dependent neighborhoods which have long been the targets for improved access to mass transit.

For residents of Prince Georges County, MD, along the outer green line, those living in the District's urban core along the inner green line, and yet others who must compete with traffic gridlock in Glenmont along the red line or Springfield-Franconia on the yellow line—for all these residents who have waited patiently for so long to receive Metrorail service, we must keep our promise. Each of the eight jurisdictions in the regional compact have dutifully extended their share of construction funds over the last 20 years to ensure that those segments

planned for their areas would indeed be built.

I urge my colleagues to join us in supporting this authorization bill so that we may underscore our commitment to the Federal-local partnership necessary to complete the entire Metrorail system. It is our responsibility to fulfill the hopes and promises of those visionaries who conceived and now have nearly completed this landmark rapid transit system. We owe this to the millions of future riders that will enjoy enhanced access to Government offices, businesses, family, friends, and the many fine attractions of the National Capital area.●

● Mr. SASSER. Mr. President, I am pleased today to join my distinguished colleagues, Senators SARBANES, MIKULSKI, ROBB, and WARNER, in sponsoring the National Capital Transportation Amendments Act of 1989. This legislation carries through on Congress' commitment to the completion of a first-class Metrorail transportation system for the Nation's Capital.

Our bill extends authorization for funding of the remaining 13.5 miles of the Metro system as it was originally designed. It provides for substantial matching of Federal funds by local jurisdictions. The importance of completing the Washington Metro, not only to the thousands of members of the Federal work force who are local residents but to the millions of visitors to our Nation's Capital, can hardly be overstated. Let me briefly point out some additional reasons why this legislation deserves the support of our colleagues.

First, I think it is crucial that there be no lapse in authorization for Metro planning and design. Although funding remains authorized under the Stark-Harris Act of 1980, for which I voted, this will suffice for completion of only 89.5 miles of the projected 103-mile system.

That would leave significant gaps in the system which will place continued strain on existing Metrorail and surface transportation in the Washington region. Undue delay would, I believe, only increase the ultimate cost of completing the Metro system. Indeed, a hiatus in planning could lead to needlessly redundant start-up costs when construction is resumed.

Moreover, the areas which will be served by completion of the Metro under our bill include some of the more transit-dependent, and predominantly moderate-income segments of the local population. They too, in many cases, are members of or contribute to the support of the Federal Establishment. Fairness and good faith suggest that their transit needs should be met as provided for under the original Metro system design.

Finally, let me point out that Metro authorization is not competitive with funding for other urban jurisdictions. On the contrary, because of Congress' constitutional jurisdiction over the District of Columbia, and the special importance of Metro to the Federal Government and our constituents who visit Washington for business or pleasure, its funding authorization has always been considered an object of special legislation. Indeed, to the extent that special authorizations were not available, the Washington Metropolitan Transit Authority actually would be competing with other municipalities for funding, under section 3 of the Urban Mass Transportation Assistance Act.

Mr. President, as chairman of the Subcommittee on General Services, Federalism, and the District of Columbia, of the Committee of Governmental Affairs, I commend this legislation to my colleagues and I look forward to working with them to secure its timely passage.●

● Ms. MIKULSKI. Mr. President, 2 months ago, on January 20, President Bush stood on the Capitol steps to take his oath of office. Here to witness that oath were hundreds of thousands of Americans crowded on to the Mall as far as you could see. How did they get here? Metro. Metro carried over 600,000 passengers by rail on Inauguration Day. Just imagine what gridlock we would have had that day without Metro.

Metro now has trains running on 70 miles of track and stopping at 64 stations. Metro carries the Federal work force to work everyday—from the flight controller at National Airport to the nuclear regulator in White Flint, from the defense expert at the Pentagon to the Commerce Department trade analyst at Federal Triangle—the way to work is Metro.

Metro is also how millions of visitors get to the museums, monuments and places of interest around their Nation's Capital—from Arlington Cemetery to the National Zoo.

Metro has become so much a part of the capital that it is an attraction in its own right. Visitors do not want to leave Washington without riding Metro, even if they just get on for one stop. In a sense, Metro is a monument.

It is a monument to the cooperation of Federal, State, and local government in meeting the transportation needs of the Nation's capital. But it is an unfinished monument, and I caution my colleagues that unless Congress acts Metro could remain unfinished, much like the Capital's first Washington Monument.

Mr. President, undoubtedly all of my colleagues have seen the two distinct colors of stone in the Washington Monument. The stone changes color about one forth of the way up. Visitors to the monument have learned that, after 6 years, construction stopped at 150 feet because they ran out of money. For 22 years the monument was an unfinished stump, until Congress voted in 1876 to complete it. Now we all enjoy the majesty of the Washington Monument; it's spectacular. But the line where the stone changes color is a permanent reminder.

The Metro monument is in danger of the same fate. But the mark that will be left will not be the color of its stone. Its mark will be the people of color left out of the system.

The long-delayed Green Line has two vital sections that have not yet been authorized by Congress—the inner line from U Street to Ft. Totten, and the Branch Avenue line to Anacostia. We wil hear that the people who live in these areas are "the most transit dependent population in the region." We will hear that these areas are "some of the most socioeconomically disadvantaged sections of the District." The 1980 census tells us that this is true, but what does that mean? I'm a former social worker, but you don't have to have a masters degree to know that we are talking about the poor. We are talking about minorities. We are talking about people who don't have cars, but who have to get to work. These are the people that will be left out if Metro is not completed. This is the mark that would be left on the Metro monument.

For 20 years the surrounding jurisdictions—Prince Georges County, Montgomery County, Arlington and Fairfax Counties, Alexandria, the District of Columbia, Maryland, and Virginia—have met their obligations. They have paid their share of construction costs with the understanding that their link to Metro would be built.

Today we have introduced legislation to fulfill Congress' commitment to Metro. The bill we have introduced authorizes Federal funds to complete the final 13½ miles of the system. I urge my colleagues to support this bill, to reaffirm Congress' commitment to finish America's subway—to finish the monument.●

By Mr. CRANSTON (by request):

S. 613. A bill to amend title 38, United States Code, to index rates of veterans' disability compensation and surviving spouses' and children's dependency and indemnity compensation to automatically increase to keep pace with the cost of living; to the Committee on Veterans' Affairs.

VETERANS' AND SURVIVORS' COMPEANSATION INDEXING ACT

Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee, I have today introduced, by request, S. 613, the proposed "Veterans' and Survivors' Compensation Indexing Act." The then-Acting Administrator of Veterans' Affairs sub-

mitted this legislation by letter dated March 2, 1989, to the President of the Senate.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all administration-proposed draft legislation referred to the Veterans' Affairs Committee. Thus, I reserve the right to support or oppose the provisions of, as well as any amendment to, such legislation. In this case, as I have stated on many occasions, I am totally opposed to the concept in the proposed legislation of providing for automatic compensation COLA's based on consumer price index increases rather than through legislation enacted each year.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point, together with the March 2, 1989, transmittal letter.

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

S. 613

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

SHORT TITLE AND REFERENCES

SECTION 1. (1) This Act may be cited as the "Veterans' and Survivors' Compensation Indexing Act."

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provisions of title 38, United States Code.

DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES

SEC. 2. Section 3112 is amended by redesignating subsection (c) as subsection (d) and inserting the following new subsection:

"(c)(1) Effective December 1 of each year, each rate of disability compensation under sections 314 and 315, dependency and indemnity compensation under sections 411, 413, and 414, and the clothing allowance under section 362 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the immediately preceding year, adjusted to the nearest ⅒ of 1 percent.

"(2) For the purpose of this section—

"(A) "price index" means the Consumer Price Index published monthly by the Bureau of Labor Statistics;

"(B) the term 'base quarter,' as used with respect to a year, means the calendar quarter ending on September 30 of such year; and

"(C) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter."

SEC. 3. The redesignated subsection (d) of section 3112 is amended by redesignating paragraph (2) as paragraph (3) and inserting the following new paragraph:

"(2) Whenever disability compensation, dependency and indemnity compensation, and clothing allowance rates are increased under subsection (c) of this section, the Secretary shall publish such new rates in the Federal Register as soon as practicable."

SEC. 4. The Secretary may, consistent with the increases authorized by this title, administratively adjust the rates of disability compensation payable to persons within the purview of section 10 of Public Law No. 85-857 who are not in receipt of compensation payable under chapter 11 of title 38, United States Code. Notice of any adjustments made under this section will be published in accordance with section 3, above.

VETERANS' ADMINISTRATION,
Washington, DC, March 2, 1989.

HON. DAN QUAYLE,
President of the Senate, Washington DC.

DEAR MR. PRESIDENT: I am pleased to forward a draft bill to provide automatic increases in the rates of disability compensation to veterans, and dependency and indemnity compensation (DIC) to surviving spouses and children. The bill's short title is the "Veterans' and Survivors' Compensation Indexing Act."

The substantive provisions of the bill are, with minor technical changes, identical to those contained in title I of the draft bill submitted on March 31, 1987, entitled the "Veterans' Compensation and Benefits Improvement Act of 1987", introduced as S. 940 and H.R. 2011, and the draft bill submitted on April 1, 1988, entitled the "Veterans' Compensation and Benefits Improvement Act of 1988," introduced as S. 2267 and H.R. 4672. I respectfully request that this bill be referred to the appropriate committee and enacted promptly.

The draft bill would authorize automatic annual increases in the rates of disability compensation for veterans (including clothing allowances for certain disabled veterans) and DIC for surviving spouses and children, based upon changes in the Consumer Price Index (CPI). As you are aware, automatic adjustments have, since 1979, been provided under 38 U.S.C. § 3112 for disability and death pension and for DIC for dependent parents, based upon cost-of-living increases in Social Security benefits. Increases in Social Security benefits are based upon the Consumer Price Index under section 215 of the Social Security Act, codified in 42 U.S.C. § 415.

Disability compensation benefits are payable under chapter 11 of title 38, United States Code, to provide monetary relief from impairments in earning capacity suffered by veterans disabled during, or as a result of, military service. Rates of compensation vary with the degrees of disability demonstrated, and additional compensation is payable for dependents if the veteran's disability is rated 30 percent or more disabling. Section 362 of title 38, also appearing in chapter 11, authorizes a clothing allowance to be paid to each veteran receiving disability compensation who wears or uses a prosthetic or orthopedic appliance which tends to wear out or tear the veteran's clothing.

Dependency and indemnity compensation benefits are payable under chapter 13 of title 38 to the surviving spouses and children of veterans whose deaths were service-connected. Payments at DIC rates may also be made if a veteran's death was not service-connected but the veteran was rated totally disabled for a specified period prior to death. Surviving spouses' DIC rates are based on the veterans' military pay grades. A surviving spouse may receive additional payments for the veteran's children under the age of 18, or if the surviving spouse is disabled. Children over the age of 18 who become helpless before reaching that age may receive DIC, as may those ages 18 to 23 attending approved educational institutions. If there is no surviving spouse, a child under the age of 18 may also receive DIC.

The administration of the disability compensation and DIC programs is one of the VA's most important missions. We recognize a duty to recommend periodic adjustments in monthly rates as economic conditions change. In recent years, compensation adjustments have generally been keyed to indexed cost-of-living allowances (COLA's) in Social Security and VA pension. However, these adjustments have not been automatic. Rather, they have been accomplished by the enactment of separate public laws designed for that purpose, the last being Public Law No. 100-687, approved by the President on November 18, 1988, and effective December 1, 1988. Since 1973, annual legislation has been enacted granting increases in these benefits to compensate for increases in the cost of living, with the exception of 1983, for which legislation was enacted the following year. The Administration consistently supported these adjustments.

Tying compensation and DIC rates to the Consumer Price Index would remove the computation of rate increases from the political arena and the pressures of the annual budget process. Thus, it would save Congress the difficulty of regularly considering new veterans' COLA legislation, as it has been required to do virtually every year for over a decade and twice in the same year in one instance. It would also eliminate COLA delays such as have been experienced in the past, and would ensure full and timely benefit adjustments to veterans and their survivors.

Based on the 3.6 percent COLA estimated for fiscal year 1990, which is needed to carry out the President's FY 1990 budget plan, and the projected changes in the CPI for fiscal years 1991 through 1994, and taking into consideration the compensation/DIC increase of 4.1 percent effective December 1, 1988, it is estimated that automatic increases in compensation and DIC rates under this proposal would result in the following additional costs. The first-year costs are included in the President's 1990 Budget.

Fiscal year	Cost
1990	$318,100,000
1991	740,200,000
1992	1,115,500,000
1993	1,429,200,000
1994	1,683,100,000
Total (5 years)	5,286,100,000

There could be a small administrative savings associated with the proposal, since VA could process benefit checks with the COLA adjustment in a timely and orderly way.

The Office of Management and Budget advises that there is no objection to the presentation of this proposal to Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

THOMAS E. HARVEY,
Acting Administrator.

By Mr. DECONCINI:

S. 615. A bill providing for a 14-year extension of the patent for the badge

of the American Legion; to the Committee on the Judiciary.

S. 616. A bill providing for a 14-year extension of the patent for the badge of the American Legion Auxiliary; to the Committee on the Judiciary.

S. 617. A bill providing for a 14-year extension of the patent for the badge of the Sons of the American Legion; to the Committee on the Judiciary.

AMERICAN LEGION DESIGN PATENT EXTENSION

● Mr. DECONCINI. Mr. President, the American Legion and its related organizations, the American Legion Auxiliary and the Sons of the American Legion, have design patents on their emblems which give them exclusive rights over the emblems. These patents were first issued in 1919 and over the past 70 years the American Legion sought and received congressional support in enacting private laws to renew and extend the patents. This last occurred in the 94th Congess when Private Laws 94-38, 94-39, and 94-40 were enacted, extending for 14 years patents for the American Legion, the American Legion Auxiliary, and the Sons of the American Legion.

Collectively, the three bills I introduce today extend the design patents on the badges of the American Legion, the American Legion Auxiliary, and the Sons of the American Legion. By granting 14 year extensions on these design patents the bills will prevent the patents from expiring in April 1990.

While I have this opportunity, I would like to acknowledge the Legion's tremendous contribution to America. The American Legion consists of nearly 3 million veterans who served their country honorably during wartime. Another 1 million spouses of Legionnaires belong to the American Legion Auxiliary. This year the American Legion is celebrating its 70th anniversary. Over the last 70 years the Legion has been invaluable as a representative and advocate for veterans. One example of this representation is the landmark GI bill of rights which the Legion drafted and Congress passed after World War II.

Yet the American Legion does much more than just represent veterans. This nonprofit organization sponsors American Legion baseball, operates highly successful blood drives and is involved in various other community programs. The American Legion also helps our Nation's youth by sponsoring Boy Scout troops and donating several million dollars annually in college scholarships.

Because the American Legion has done so much for America, I am proud to introduce these bills to extend the design patents for the Legion and its related organizations. I ask unanimous consent that the full text of the bills be printed at this point in the RECORD.

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

S. 615

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce, acting through the Commission of Patents and Trademarks, shall, when a certain design patent numbered 54,296 (for the badge of the American Legion) expires, extend such patent for a period of 14 years after such date, with all the rights and privileges pertaining thereto.

S. 616

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce, acting through the Commission of Patents and Trademarks, shall, when a certain design patent numbered 55,398 (for the badge of the American Legion Auxiliary) expires, extend such patent for a period of 14 years after such date, with all the rights and privileges pertaining thereto.

S. 617

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce, acting through the Commission of Patents and Trademarks, shall, when a certain design patent numbered 92,187 (for the badge of the American Legion) expires, extend such patent for a period of 14 years after such date, with all the rights and privileges pertaining thereto.●

By Mr. SARBANES (for himself, Mr. KERRY, Mr. INOUYE, Ms. MIKULSKI, Mr. PRESSLER, Mr. PELL, Mr. BURDICK, Mr. LIEBERMAN, and Mr. LAUTENBERG):

S. 618. A bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia; to the Committee on Rules and Administration.

MEMORIAL TO MAHATMA GANDHI

● Mr. SARBANES. Mr. President, I am reintroducing a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia. Senators KERRY, INOUYE, MIKULSKI, PRESSLER, PELL, BURDICK, LIEBERMAN, and LAUTENBERG are joining me in introducing this bill.

Forty years after his tragic death, Mahatma Gandhi remains one of the most revered world leaders of this century. He spent his life as a relentless champion of human rights and human dignity everywhere. He helped sow the seeds of freedom following World War II. Through his unshakeable faith in the power of nonviolent struggle, he inspired the civil rights movement in this country under the leadership of Dr. Martin Luther King, Jr. I think it is important to establish a memorial to Gandhi as a symbol of the importance of human rights, human dignity, and nonviolence.

My bill would authorize the Indian American Forum for Political Education to establish the memorial to Gandhi in the District of Columbia. The forum is a nonpartisan educational organization established in 1982 with membership throughout the United States. It is the only national organization solely designed for the political education of Americans of Asian-Indian origin. The forum has now taken on the major project of placing a statue of Mahatma Gandhi in Washington, DC. The statue will be entirely funded by private contributions.

In 1949, the 81th Congress passed a resolution memorializing Gandhi which cited his "selfless devotion to peace" and stated that Gandhi's life should "awaken and keep alive in people everywhere the sense of their individual dignity and independence, as well as an abhorrence for civil, religious, and communal strife anywhere." This memorial will be a simple but powerful tribute to the extraordinary life and achievements of Gandhi. I urge my colleagues to join me in supporting this legislation.●

By Mr. SARBANES (for himself, Mr. RIEGLE, Mr. INOUYE, Ms. MIKULSKI, Mr. HATCH, Mr. BRADLEY, Mr. DODD, Mr. HOLLINGS, Mr. BURDICK, and Mr. LAUTENBERG):

S. 619. A bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr. in the District of Columbia; to the Committee on Rules and Administration.

ESTABLISHMENT OF MARTIN LUTHER KING, JR. MEMORIAL

● Mr. SARBANES. Mr. President, I am again introducing legislation to authorize Alpha Phi Alpha, the oldest black fraternity in the United States, to establish a monument to Martin Luther King, Jr. on Federal land in the District of Columbia. Senators RIEGLE, INOUYE, MIKULSKI, HATCH, BRADLEY, DODD, HOLLINGS, BURDICK, and LAUTENBERG are joining with me to introduce this legislation. This bill passed the Senate by unanimous consent during the 100th Congress, but failed to see action in the House.

The Alpha Phi Alpha Fraternity, of which Dr. King was a member, having joined on June 22, 1952, at Sigma chapter in Boston, MA, will coordinate the design and funding of the monument. The bill provides that the monument be established at no cost to the United States. The Department of the Interior, in consultation with the National Capital Park and Planning Commission and the Commission on Fine Arts, shall select the site and approve the design.

Alpha Phi Alpha was founded in 1906 at Cornell University. It now has

700 chapters across the country, and counts among its 125,000 members many prominent citizens, including Supreme Court Justice Thurgood Marshall and a number of our Nation's mayors. Alpha Phi Alpha has formally endorsed the Martin Luther King, Jr. Memorial project and has committed its considerable human resources to the project's development.

Twenty-four years ago, Dr. Martin Luther King, Jr. led freedom marchers from Selma to Montgomery, AL, seeking voting rights long denied. Through the long efforts to achieve equal treatment for all Americans, Martin Luther King, Jr., remained devoted to nonviolent means of achieving his goals; and he inspired thousands to conform to the principles of nonviolence.

A memorial to Dr. King erected in the Nation's Capital will provide continuing inspiration to all who visit it, particularly to the thousands of students and young people visiting Washington, DC, every year. These young people have no personal memory of the condition of civil rights in America before Dr. King, nor of the struggle in which he was the major figure. They do understand, however, that there is still more to be done.

Coretta Scott King said:

Young people in particular need nonviolent role models like him. In many ways, the Civil Rights movement was a youth movement. Young people of all races, many of whom were jailed, were involved in the struggle, and some gave their lives for the cause. Yet none of the youth trained by Martin and his associates retaliated in violence, including members of some of the toughest gangs of urban ghettos in cities like Chicago and Birmingham. This was a remarkable achievement. It had never been done before; it has not been duplicated since.

Mr. President, what we hope is that the young people who visit the monument will come to understand that it recognizes not only the enormous contribution of this great leader, but also two very basic principles for the healthy functioning of our society. One is that change, even very fundamental change, is to be achieved through nonviolent means; that this is the path down which we should go as a nation in resolving some of our most difficult problems. And the other basic principle is that the reconciliation of the races, the inclusion into the mainstream of American life of all its people, is essential to the fundamental health of this Nation. Dr. King preached, taught, and practiced these essential principles. I urge my colleagues to support this legislation.●

By Mr. STEVENS:

S. 620. A bill for the relief of Leroy W. Shebal of North Pole, AK; to the Committee on Energy and Natural Resources.

RELIEF OF LEROY W. SHEBAL

● Mr. STEVENS. Mr. President, this bill would direct the Secretary of the Interior to sell a parcel of Federal land along Beaver Creek to Leroy Shebal of North Pole, AK.

Leroy filed on this land under the Small Tract Act of 1958—a year before Alaska became a State. He was given a lease on the land in 1960. Five years later, the Bureau of Land Management offered to sell the land to Leroy for $650. Leroy was unable to accept the offer at the time because of an illness in his family. He was given assurances that the offer to sell would remain open until his financial situation improved.

In September 1971 Leroy accepted the BLM's offer to sell the land. The BLM failed to process Leroy's application in a timely fashion. As a result, before the BLM took any action to reclassify the land and sell it to Leroy, a public land order prohibiting land sales in the Beaver Creek area was promulgated. A year and a half after he had written to BLM to accept its offer, Leroy received a letter from the agency rejecting his acceptance.

The public land order that prevented the BLM from selling the Beaver Creek parcel is no longer in effect. The Alaska National Interest Lands Conservation Act of 1980, however, included the Beaver Creek in the National Wild and Scenic Rivers System. The Wild and Scenic Rivers Act prohibits the sale of any land within the System.

Mr. President, for more than two decades, Leroy Shebal has operated an environmentally sound guiding operation on Beaver Creek. He has made substantial improvements to the property he leased from the Federal Government in reliance on the assurance of the Bureau of Land Management that he would eventually be able to purchase the property. He has done everything possible to meet the terms of the BLM's offer of sale. It would be a grave injustice if Congress did not authorize the sale of the Beaver Creek property to him.

I ask unanimous consent to print the bill in the RECORD.

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

S. 620

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

SECTION 1. (a) notwithstanding section 8 of the Wild and Scenic Rivers Act (16 U.S.C. 1279), or any provision of the public land laws of the United States, the Secretary of the Interior, as soon as practicable after the conditions of paragraphs (1) and (2) are met, shall sell the property described pursuant to section 2 and transfer title to such property in fee simple to Leroy W. Shebal of North Pole, Alaska, upon receipt of—

(1) notification made pursuant to subsection (b) within one year after the date of enactment of this Act; and

(2) the sum of $650 in consideration of the purchase of such property.

(b) Within one year after the date of enactment of this Act, the said Leroy W. Shebal may notify the Secretary of the Interior of his intention to purchase the property described pursuant to section 2.

SEC. 2. The property referred to in the first section of this Act is the real property located at township 8 north, range 1 west, section 36, west half of southwest quarter, Fairbanks meridian.●

By Mr. CONRAD (for himself, Mr. BOND, Mr. BURDICK, Mr. DASCHLE, Mr. HARKIN, Mr. GLENN, Mr. KENNEDY, Mr. BOSCHWITZ, Mr. FOWLER, and Mr. SIMON):

S. 621. A bill to provide financial assistance for the commercialization of agricultural research, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

AGRICULTURAL RESEARCH COMMERCIALIZATION ACT

● Mr. CONRAD. Mr. President, I am pleased to introduce today the Agricultural Research Commercialization Act of 1989. It is intended to bridge a serious gap that impedes the ability of American industries to develop and commercialize our farm and forest products.

The version that I am introducing today represents the compromise reached by Senate Agriculture Committee members during committee consideration of S. 1729, the Rural Economy Act of 1988. A similar measure passed the House last year.

I would particularly like to thank Senator HARKIN for his leadership and vision in the area of new uses—the development of new products using agricultural commodities as feedstocks. His bill, S. 970, which would increase research funding for the development of new uses, overwhelmingly passed the Senate three times last year. Senator HARKIN was an original cosponsor of ARCC last year, and sees ARCC as the logical extension of his research effort, which will ensure that these products are brought to the market. I look forward to working with him to achieve passage of both of our new uses initiatives this year.

I would also like to thank Senator KIT BOND and his staff for their tireless efforts to shape the bill to accommodate the Members' suggestions and concerns. In addition, I want to recognize Senator GLENN for his efforts to promote the development of new uses.

Mr. President, I stood on the floor of the Senate last year to introduce this bill, and I talked about the efficiency of our U.S. farmers. I said that the United States has a tremendous capacity to produce renewable resources. Our highly sophisticated farming methods have increased productivity

by 938 percent since the end of World War II. I said that U.S. farmers produce 41 percent of the world's corn supply, and 11 percent of the world's wheat. In total, over one-fifth of the world's wheat and coarse grains is produced in the United States.

I talked about how little U.S. consumers pay for food in comparison to other countries. The American farmers' efficiency means that Americans spend only 11 percent of their consumer dollar on food—12 percent if farm program costs are included—less than any country in the world.

Mr. President, as we all know, last year we experienced the worst drought since the 1930's. However, a return to normal weather means that our farmers will continue to produce far more than world demand can absorb.

Our productivity and efficiency are indisputable. Unfortunately, this efficiency does not necessarily translate into profits for the farm economy. Until the 1988 drought caused an increase in commodity prices, cash receipts from the market for feed grain, food grain and oilseed producers were at a 25-year low in real dollars.

I hope that the tragic drought of last year does not distract my colleagues from addressing the need to find new markets for our incredibly productive agricultural industries, which are the envy of many other countries.

Mr. President, back on June 24, 1987, I held a hearing in the Subcommittee on Agricultural Research and General Legislation to hear the report of the new farm and forest products task force of the U.S. Department of Agriculture. The testimony I heard was exciting. The witnesses discussed the dramatic opportunities presented by the development of new industrial uses for agricultural products. These ideas developed by our productive agricultural research system can make agricultural commodities, which we normally think of only as food stocks, into industrial feedstocks.

I asked why these new products were not already in the marketplace. The witnesses said that while our country has done a tremendous job in developing new uses through research, it has often failed to commercialize these products. Why, I asked?

Witnesses described numerous difficulties that companies experience in trying to develop, produce and market these new industrial products. The commercialization process requires the expertise of scientists, engineers, market developers, financiers and business managers. Most companies simply do not have all the needed expertise. In addition, the costs and risks associated with commercializing new products are very high. Few companies or entrepreneurs have the resources, and few financial institutions will take the risks involved in commercializing these new industrial products. Investors are reluctant because they are not able to precisely predict the market for new products. The future of such ventures is inherently unpredictable.

The task force also said that our country lacks a national commitment to develop and commercialize these new industrial products. In contrast, our competitors in Japan and elsewhere, supported by their governments, are very successful in commercializing new technologies.

To resolve these problems, the task force recommended that the Federal Government establish an independent, nonprofit corporate entity to facilitate the commercialization of new farm and forest products.

I acted on that report by introducing legislation to establish the Agricultural Research Commercialization Corporation—ARCC. ARCC will provide bridge financing and technical assistance to small businesses to speed new nonfood, nonfeed agricultural and forestry products and processes into production and sales. It also represents the establishment of a national policy to promote and assist in the commercialization of the products developed through our agricultural research.

As I have worked with my colleagues, particularly the eight cosponsors, over the last year to pass this legislation, we have grown even more convinced of the need for it. ARCC provides targeted assistance to overcome two serious national problems—the economic decline of our final communities and the failure to commercialize the fruits of our agricultural research.

Our ability to create new jobs will be the primary determinant of our success in providing opportunity to our citizens, particularly in rural areas.

One of the most promising opportunities for creating jobs is the development, production, and marketing of new industrial products derived from agricultural and forestry commodities. Many of our traditional agricultural commodities—corn, soybeans, sunflowers, and rapeseed—and new crops—kenaf, meadowfoam, crambe, and guayule, for example, can be used to produce substances which replace chemicals and other industrial products currently derived from nonrenewable resources, much of which we import.

The expansion of new uses of agricultural commodities will have a strong multiplier effect on our economy. First, commercialization will create new jobs in manufacturing, processing, and management. Second, it will increase the demand for agricultural and forestry crops, benefiting rural businesses and communities. Third, it will make us more competitive in the world economy, reducing our trade deficit.

How will ARCC work?

ARCC will establish a vital partnership between the Federal Government, private industry, universities, and State and local governments to overcome the financial and technical barriers to commercialization of new uses. It will establish the Agricultural Research Commercialization Corporation within the U.S. Department of Agriculture. ARCC will have regional centers around the country which will: First, develop a network of experts who must play a role in the commercialization of agricultural research and, second, provide financial assistance and business and technical guidance to companies seeking to commercialize new industrial products.

One question I am often asked is: Why do we propose to establish a corporation rather than a traditional government agency? The answer is rather straightforward. A bureaucratic government agency is not conducive to making the tough business decisions that are at the heart of ARCC's activities.

This is not a bill to increase agricultural research. It is designed to move the products of that research into the market by assisting smaller businesses to commercialize new nonfood products.

ARCC will assume part of the initial risk of these commercialization ventures. It will help finance commercialization projects through low-interest loans, loan guarantees, convertible debentures, repayable grants matched by other funds, and umbrella bonding.

ARCC will be comprised of four to nine regional centers around the country serving diverse agricultural regions, and will be responsible for providing financial assistance to carefully screened projects. This assistance can be used for all aspects of the commercialization process, from prototype testing and market development to factory construction and worker training.

Each regional center will accept applications from companies seeking to commercialize new industrial products and processes using agricultural and forestry commodities. Applications will be evaluated for scientific soundness, technical feasibility and market potential. Applicants must also demonstrate that they have committed their own resources to the project. They must show that adequate private sector funding is not available without ARCC participation. Proposals demonstrating that matching funds are available from the public or private sector will receive priority.

Finally, each applicant must show that once started, the business project can be self-sustaining. ARCC is designed to provide short-term assistance to get a company off the ground—not perpetual aid.

Regional centers will develop a network of experts from the scientific, financial, managerial, engineering, agricultural, and marketing sectors. This network will review proposals and provide expert advice and information on all aspects of product commercialization to assist applicants with their projects. In addition, the regional centers can help coordinate commercialization and research projects around the country to help prevent duplication and to identify market needs.

The regional director of each regional center, in consultation with an advisory council and other expert project reviewers, shall make recommendations on the applications. The Board of Directors of the Corporation, appointed by the Secretary of Agriculture, shall review the recommendations and shall vote on whether and how to assist the applicants.

After an initial appropriation over several years, ARCC is designed to be self-financing through a revolving fund. Successful companies are required to repay ARCC for the financial assistance it provides. These repayments, in addition to other contributions from State and private sources, are to be used solely for the continuation of ARCC's activities.

The need for Federal assistance to provide a boost to entrepreneurs seeking to commercialize new products and processes is clear. This financing does not compete with private financial institutions. Instead, it fills a financing gap in the early growth period of innovative firms. In fact, I have learned that such early public financing actually attracts private venture capital which would not be available otherwise.

We met with considerable success last year in moving this important legislation. My colleagues on the Senate Agriculture Committee agreed to include it in S. 1729, the Rural Economy Act. Unfortunately, that bill was not reported out of committee.

In the House, Congressman TIM PENNY introduced ARCC, and we succeeded in passing it in the House as part of H.R. 5056, the Agricultural Research Act of 1988.

ARCC has earned the support of the National Governors Association, the National Association of State Departments of Agriculture, the National Association of Development Organizations, the National Farmers Union, the National Farmers Organization, American Agriculture Movement, the National Corn Growers Association, the National Sunflower Association, and Communicating for Agriculture. It is also supported by universities and researchers around the country. Mr. President, I ask unanimous consent that some of their letters of support be inserted in the RECORD at the end of my statement.

I am gratified by the growing support for ARCC. We are convinced that one of the most promising opportunities for strengthening the Nation's economy is through the development, production and marketing of new industrial products made from agricultural commodities. ARCC will turn this opportunity into a reality.

I look forward to working with ARCC's supporters to achieve passage of this vital legislation during the 101st Congress. I urge my colleagues to join me in supporting ARCC.

I ask unanimous consent that a summary of the legislation and the legislative language and other supporting material be printed in the RECORD.

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

S. 621

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Agricultural Research Commercialization Act of 1989".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) many of the emerging new ideas, products, and processes resulting from agricultural research have never been commercialized because of the high initial financing costs and high risk; and

(2) the careful targeting of financial assistance to entrepreneurs for the commercialization of new industrial uses of agricultural and forestry products will be a cost effective means of stabilizing the agricultural sector and redeveloping the rural economy.

(b) PURPOSE.—It is the purpose of this Act through the Corporation established pursuant to section 4—

(1) to commercialize new nonfood, nonfeed uses for traditional and new agricultural crops in order to create jobs, to enhance the economic development of the rural economy, and to diversify markets for raw agricultural and forestry products;

(2) to encourage cooperative development and marketing efforts among manufacturers, financiers, universities, and private and government laboratories in order to accelerate the commercialization of new industrial uses for agricultural and forestry products; and

(3) to direct, to the maximum extent possible, commercialization efforts toward the development of new products from crops that can be raised by family-sized agricultural producers.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) ASSISTANT SECRETARY.—The term "Assistant Secretary" means the Assistant Secretary of Agriculture for Science and Education.

(2) BOARD.—The term "Board" means the Board of Directors established pursuant to section 8.

(3) COMMERCIALIZATION.—The term "commercialization" or "commercialize" includes—

(A) activities associated with the development of prototype products or manufacturing plants;

(B) the application of technology and techniques to the development of industrial production; and

(C) the market development of new industrial uses of new and traditional agricultural and forestry products and processes that will lead to the creation of goods and services that may be marketed for profit.

(4) CORPORATION.—The term "Corporation" means the Agricultural Research Commercialization Corporation established in section 4.

(5) HOST INSTITUTION.—The term "host institution" means an entity that is located in the region that is—

(A) a university or other institution of higher education;

(B) an Agricultural Research Service laboratory;

(C) a State Agricultural Experiment Station;

(D) an Extension Service facility; or

(E) another organization that is involved in the development or commercialization of new industrial uses for agricultural commodities, or is involved in rural economic development.

(6) REGIONAL CENTER.—The term "Regional Center" means a Center established pursuant to section 6.

(7) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 4. ESTABLISHMENT OF CORPORATION.

(a) IN GENERAL.—There is established within the Department of Agriculture a body corporate to be known as the "Agricultural Research Commercialization Corporation".

(b) CENTRAL OFFICE.—The Secretary shall provide facilities for the principal office of the Corporation within the National Agricultural Library located in Beltsville, Maryland.

(c) ESTABLISHMENT OF REGIONAL CENTERS.—The Corporation shall establish a minimum of four and a maximum of nine Regional Centers in the United States, as provided for in section 6.

SEC. 5. POWERS OF THE CORPORATION.

(a) *NONPROFIT* CORPORATE POWERS.—To carry out this Act, the Corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act.

(b) GENERAL POWERS.—In addition to any specific power granted to the Corporation elsewhere in this Act, the Corporation shall have the power—

(1) to adopt, alter, and rescind bylaws and to adopt and alter a corporate seal, which shall be judicially noticed;

(2) to make agreements and contracts with persons and private or governmental agencies, except that the Corporation shall not provide any financial assistance unless specifically permitted under this Act;

(3) to lease, purchase, accept gifts or donation of, or otherwise to acquire, and to use, own, hold, improve, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein;

(4) to sue and to be sued in its corporate name and to complain and defend in any court of a competent jurisdiction;

(5) to represent itself, or to contract for representation, in all judicial, legal, and other proceedings, except actions cognizable under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.), in which actions it will be represented by the Attorney General;

(6) subject to this Act, to select, employ, and fix the compensation of any such officers, employees, attorneys and agents as

shall be necessary for the transaction of the business of the Corporation;

(7) to make provision for and designate such committees, and the functions thereof, as the Board of Directors may consider necessary or desirable;

(8) to indemnify Directors and officers of the Corporation, as the Board of Directors may consider necessary or desirable;

(9) with the approval of the agency concerned, to make use of services, facilities, and property of any board, commission, independent establishment, or executive agency or department of the executive branch in carrying out this Act and to pay for such use, such payments to be credited to the applicable appropriation that incurred the expense;

(10) to obtain the services and fix the compensation of consultants;

(11) to use the United States mails on the same terms and conditions as the executive departments of the United States Government; and

(12) to exercise all other lawful powers necessarily or reasonably related to the establishment of the Corporation, to carry out this section, and to the exercise of its powers, purposes, functions, duties, and authorized activities.

(c) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Corporation is authorized to accept and utilize voluntary and uncompensated services.

(d) GOVERNMENT CORPORATE CONTROL ACT.—The Corporation shall be considered a wholly-owned corporation for the purposes of the Government Corporate Control Act.

SEC. 6. REGIONAL CENTERS.

(a) LOCATION.—

(1) IN GENERAL.—Each Regional Center established by the Corporation pursuant to section 4 shall be located in a different State, reflective of regional climatic conditions, rural economic stress, and the qualifications of the applicant to serve as the host institution for a Regional Center and to carry out the duties of the Corporation.

(2) COMPETITIVE AWARDING.—Host institutions desiring to have a Regional Center located in their region shall submit a proposal for such location to the Board. The Board shall determine the location of such centers based on a competitive review of the contents of such proposals.

(3) HOST INSTITUTIONS.—Each Regional Center shall be located at a host institution in the region.

(4) MATCHING OF FUNDS.—

(A) IN GENERAL.—Each candidate host institution submitting a proposal for a Regional Center under this section shall provide assurances—

(i) that adequate funds or in-kind support (including office space, equipment and staff support) shall be provided to match the amount of funds used for administrative costs that are provided by the Federal government under this Act;

(ii) that it is qualified to carry out the activities required of a Regional Center;

(iii) concerning such other factors as the Corporation shall determine appropriate.

(B) APPLICANTS.—The matching funds required under subparagraph (A) may be provided by a consortia that may include the host institution and other public or private entities existing within various regions of the United States, including State and local governments, entities created by State and local governments, charitable organizations, public and private universities and other institutions of higher education, cooperatives, and economic development organizations.

(b) ACTIVITIES.—Each Regional Center shall carry on activities provided for in this Act and such other activities as the Board shall from time to time delegate to such Centers.

(c) REGIONAL DIRECTOR.—Each Regional Center shall be headed by a full-time Regional Director who shall—

(1) be selected by the Board;

(2)(A) have a scientific or engineering background; or

(B) have experience in the development of new products or processes in the public or private sector.

(d) ADVISORY COUNCILS.—

(1) APPOINTMENT.—The Board shall appoint an Advisory Council for each Regional Center. Such Council shall advise the Regional Director concerning all applications for assistance as described in section 15.

(2) COMPOSITION.—An Advisory Council shall be comprised of representatives of the public sector, the financial sector, the private business community, State and local governments, educational institutions, private and Federal laboratories, the agricultural sector, scientists, and engineers. An Advisory Council shall be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

(3) DUTIES.—

(A) PRIMARY DUTY.—The primary duty of the members of an Advisory Council shall be to review or coordinate the review of the technical, engineering, financial, and managerial soundness and marketing potential of the applications for assistance received under this Act.

(B) MONITORING ACTIVITIES.—An Advisory Council may assist a Regional Director in monitoring the progress of ongoing projects by providing technical and business counseling when needed.

(C) TECHNICAL AND BUSINESS COUNSELING.—An Advisory Council may provide technical and business counseling to entities not seeking financial assistance from the Corporation, but that are engaged in commercializing nonfood, nonfeed uses of agricultural and forestry commodities.

SEC. 7. ACTIVITIES OF THE REGIONAL CENTERS.

A Regional Center shall—

(1) encourage interaction among private and Federal laboratories, National Science Foundation centers, Department of Agriculture research programs, and other Federal resources, State and local regional economic development programs, universities, colleges, the private sector and the financial community, for the purpose of evaluating and commercializing new, nonfood, nonfeed uses of agricultural and forestry products;

(2) identify broad areas where commercialization of new products and processes can contribute to the economic growth in rural areas of the United States, through the development of new, nonfood, nonfeed uses for farm and forest products by private companies and businesses;

(3) provide technical assistance and related business and financial counseling for small American businesses to commercialize new, nonfood, nonfeed uses of agricultural and forestry products;

(4) identify new nonfood, nonfeed products and processes that are worthy of financial assistance;

(5) make use of existing programs in scientific, engineering, technical and management education that will support the accelerated commercialization of new, nonfood, nonfeed products and processes using farm and forest products;

(6) advise the Corporation on the viability of specific proposals submitted for financial assistance and on the type of assistance, if any, to be provided; and

(7) coordinate their activities with the Small Business Development Centers authorized by section 21 of the Small Business Act (15 U.S.C. 648).

SEC. 8. CORPORATE BOARD OF DIRECTORS.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Board shall consist of nine members, who shall be citizens of the United States, of which—

(A) one member shall be the Assistant Secretary;

(B) one member shall be the Under Secretary of Agriculture for Small Community and Rural Development; and

(C) seven members shall be appointed by the Secretary.

(2) EXPERIENCE.—In appointing the members to the Board under paragraph (1), the Secretary shall assure that the members appointed under subparagraph (C) are representative of the agricultural, scientific, financial, and managerial community.

(3) CHAIRPERSON.—The Board shall elect a Chairperson from among the members of the Board referred to in paragraph (1).

(4) OTHER EMPLOYMENT.—A Director may hold a position in the private sector at the same time as such director is serving on the Board.

(b) TERM OF OFFICE.—

(1) IN GENERAL.—A member of the Board appointed under subsection (a)(1)(C) shall be appointed for a term of 5 years.

(2) INITIAL MEMBERS.—The initial members of the Board appointed under subsection (a)(1)(C) shall serve as follows:

(A) Three members shall serve a term of 4 years.

(B) Three members shall serve a term of 3 years.

(C) One member shall serve a term of 2 years.

(c) OATH.—Before assuming office, each member of the Board shall take an oath to faithfully discharge the duties of the individual's position as a member of such Board.

(d) MEETINGS, QUORUM, ACTIONS.—

(1) MEETINGS.—The Board shall meet in accordance with the bylaws of the Corporation, and at any time pursuant to the call of the Chairperson, but the Board shall not meet less than twice annually to review financial applications. For the purpose of section 552b of title 5, United States Code, the Board shall be considered to be an agency.

(2) QUORUM AND ACTIONS.—A majority of the Board members shall constitute a quorum. Any action by such Board shall require a majority vote of all members of the Board.

SEC. 9. POWERS AND DUTIES OF CORPORATE BOARD.

(a) POWERS.—

(1) VESTING.—The powers of the Corporation shall be vested in the Board.

(2) OFFICERS.—The Board shall establish the offices and appoint the officers of the Corporation (which may include a General Counsel, Treasurer, and an Executive Director) and define the duties of such offices.

(b) DELEGATION OF AUTHORITY.—

(1) CORPORATE BOARD.—The Board may, by resolution, delegate to the Chairperson and any other director any function, power, or duty assigned to the Corporation under this section other than those expressly vested in the Board.

(2) CHAIRPERSON.—The Chairperson may, by written instrument, delegate such function, power, or duty as is assigned to the Chairperson pursuant to this section, to such other director, officer, or employee of the Corporation as the Chairperson considers appropriate.

(c) DELEGATION NOT PERMITTED.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary and any other officer or employee of the United States shall not make any delegation to the Board, the Chairperson, or the Corporation of any power, function, or authority not expressly authorized by this Act, except where such delegation is pursuant to an authority in law that expressly makes reference to this Act.

(2) REORGANIZATION ACT.—Notwithstanding any other provision of law, chapter 9 of title 5, United States Code, shall not apply to authorize the transfer to the Corporation of any power, function, or duty.

(d) BYLAWS.—The Board shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Corporation.

(e) ORGANIZATION.—The Board shall provide a system of organization to fix responsibility and promote efficiency within the Corporation.

(f) GOVERNMENT EMPLOYMENT LAWS.—Directors, officers, and employees of the Corporation shall be subject to all laws of the United States relating to governmental employment, including the provisions of title 5, United States Code, relating to compensation.

(g) POLITICAL QUALIFICATIONS.—No political test or qualifications shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Corporation.

SEC. 10. COMPENSATION.

(a) CORPORATE BOARD.—Members who serve on the Board, except for the Under Secretary identified in section 8(a)(1)(B) and the Assistant Secretary, shall receive compensation at a rate equivalent to the daily rate paid under Level II of the Executive Schedule under section 5312 of title 5, United States Code, as well as reasonable expenses incurred in carrying out the business of the Corporation, as approved by the Board.

(b) OFFICERS AND EMPLOYEES.—The Board may, if determined necessary and approved by the Secretary, fix the rate of compensation of no more than one officer position or other position at a rate or rates in excess of that prescribed for Level II of the Executive Schedule under section 5312 of title 5, United States Code.

SEC. 11. FINANCIAL DISCLOSURE AND CONFLICTS OF INTEREST.

(a) FINANCIAL DISCLOSURE.—The Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.) shall apply to the Directors and all of the other officers and employees of the Corporation as if such individuals were Federal employees.

(b) CONFLICTS OF INTEREST.—

(1) IN GENERAL.—Except as permitted in paragraph (3), no member of the Board shall vote on any matter respecting any application, contract, claim, or other particular matter pending before the Corporation, in which, to the knowledge of the member, such member, spouse or minor child of such member, partner or organization (other than the Corporation) in which such member is serving as officer, director, trustee, partner, or employee, or any person or organization with whom such member is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(2) REMOVAL.—Action by a member of the Board that is contrary to the prohibition contained in paragraph (1) shall be cause for removal of such member pursuant to the powers of the Corporation in section 5, but shall not impair or otherwise affect the validity of any otherwise lawful action by the Corporation in which the member or officer participated.

(3) INFORMED CONSENT.—The prohibition contained in paragraph (1) shall not apply if—

(A) the member of the Board—

(i) advises the Board of the nature of the particular matter in which such member proposes to participate in; and

(ii) makes a full disclosure of such financial interest, prior to any participation; and

(B) the Board determines, by majority vote, that the financial interest is too remote or too inconsequential to affect the integrity of such member's services to the Corporation in that matter.

The member involved shall not participate in such determination.

SEC. 12. AUTHORIZATION OF ADMINISTRATIVE EXPENDITURES.

(a) CORPORATE EXPENDITURES.—In each fiscal year the Corporation is authorized to expend amounts for—

(1) reasonable and necessary administrative expenses, not to exceed 5 percent of amounts made available in any fiscal year; and

(2) generic studies and specific reviews of individual proposals for financial assistance, which shall not exceed 3 percent of amounts made available in any fiscal year.

(b) ADMINISTRATIVE EXPENDITURES.—For purposes of this section, administrative expenditures shall include—

(1) all ordinary and necessary expenses (including all compensation for personnel and consultants, expenses for computer usage, or space needs of the Corporation and similar expenses); and

(2) reimbursement to members of the Board for reasonable expenses that are incurred in connection with the service of the Corporation.

(c) LIMITATION.—Expenditures authorized under subsection (a)(2) shall not be available—

(1) for administrative expenses;

(2) for the reimbursement of governmental agencies for the salaries of personnel of such agencies detailed to the Corporation; or

(3) for operating expenses.

(d) REAL PROPERTY.—Funds authorized for administrative expenditures shall not be available for the acquisition of real property.

SEC. 13. CRIMINAL SANCTIONS.

Section 1905 of title 18, United States Code, shall apply—

(1) to Directors, officers, and employees of the Corporation as if they were officers or employees of the United States; and

(2) to the Corporation as if it were a Federal agency.

SEC. 14. FINANCIAL ASSISTANCE.

(a) IN GENERAL.—The Corporation, through the Regional Directors, in accordance with the criteria provided for in section 15, may provide, to projects for the commercialization of new, nonfood, nonfeed products using agricultural and forestry commodities, financial assistance in the form of—

(1) loans made or insured by the Corporation (backed by the full faith and credit of the United States);

(2) interest subsidy payments made by the Corporation to the lender equal to an amount determined pursuant to and agreement between the Corporation, the lender, and the borrower;

(3) venture capital invested by the Corporation in the form of a convertible debenture;

(4) repayable grants that are matched by private, State or local public funds and that are repaid as agreed in a contract between the Corporation and entity; and

(5) umbrella bonding.

(b) DISCRETIONARY FUNDS.—The Board may establish a discretionary fund for each Regional Center of not more than 1 percent of the amounts made available to carry out this section. Such funds shall be used for activities related to financial assistance described under this section and section 15. Each 6 months, a regional Director shall prepare and submit to the Board a report that accounts for expenditures made from this fund.

(c) OVERSIGHT OF PROJECTS.—

(1) IN GENERAL.—The Corporation shall monitor the progress of the projects that receive financial assistance under this Act.

(2) TYPE OF OVERSIGHT.—Such oversight may include on-site reviews, written reports, and supportive business and technical counseling, as needed. The Director may call on the Advisory Council to assist in such monitoring.

(3) DEMONSTRATION BY APPLICANTS.—The Corporation may require that applicants demonstrate that the use of financial assistance is in compliance with the contractual agreement.

SEC. 15. ELIGIBILITY CRITERIA FOR FINANCIAL ASSISTANCE.

(a) ELIGIBLE ENTITIES.—

(1) IN GENERAL.—To obtain financial assistance from the Corporation, an entity shall—

(A) be a university or other institution of higher education, a nonprofit organization, a cooperative, or a small business concern; and

(B) file an application with the Regional Director of a Regional Center.

(2) DEFINITIONS.—As used in paragraph (1):

(A) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means an organization that is—

(i) described in section 501(c) of the Internal Revenue Code of 1986; and

(ii) exempt from taxation under section 501(a) of such Code.

(B) SMALL BUSINESS CONCERN.—The term "small business concern" shall have the same meaning given such term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and in implementing rules issued by the Administrator of the Small Business Administration under such section.

(b) APPLICATION.—An application submitted to the Regional Director under subsection (a) shall—

(1) describe the proposal of the entity for the commercialization of a new product consistent with this section, including documentation that such proposal is—

(A) scientifically sound;

(B) technologically feasible; and

(C) marketable;

(2) provide documentation that adequate private sector funding is not available, but that the applicant has the ability to obtain

matching funds from the public or private sectors;

(3) provide documentation that the applicant's own resources, including time and money, have been invested in the project;

(4) provide documentation that the product or process has broad application and has the potential to be commercially viable without continual assistance;

(5) provide documentation that the proposal will be carried out with broad participation by representatives of the sectors described in section 6(d)(2);

(6) provide documentation that the managerial ability or established relationship exists between the applicant and other entities to give the applicant access to private business assistance;

(7) provide assurances of legal compliance by the applicant with the terms and conditions for the receipt of assistance under this Act; and

(8) provide assurances that the proposal will result in the creation of new jobs in rural areas.

(c) SELECTION CRITERIA.—

(1) IN GENERAL.—The Board shall give priority to—

(A) applications that create jobs in economically distressed rural areas;

(B) applications that have State or local government financial participation; and

(C) applications that have private financial participation.

(2) ADDITIONAL CRITERIA.—The Board shall establish additional criteria for use in selecting among equivalent applications. Such criteria shall emphasize—

(A) the quantity and quality of jobs that shall be created;

(B) the amount of the financial participation by State or local governments or private entities;

(C) the qualifications of the management to be used in the project;

(D) the level of market demand for the product to be marketed; and

(E) the level of returns to the revolving fund established under section 17.

(d) APPLICATION REVIEW PROCESS.—

(1) IN GENERAL.—A Regional Director shall work in consultation with an Advisory Council to review and evaluate the proposals submitted to the Regional Center.

(2) ADVISORY COUNCIL.—The Advisory Council shall review proposals submitted to the Regional Centers. The Advisory Council shall, by majority vote, make a nonbinding recommendation on the proposal to the Regional Director.

(3) REGIONAL DIRECTOR.—The Regional Director, on consideration of the Advisory Council's recommendation and any other comments received from interested parties, shall make and submit the Director's recommendation to the Board along with the recommendation of the Advisory Council.

(4) CORPORATE BOARD.—The Board shall, by majority vote, make the final decision on whether and how to provide assistance to the applicant.

(5) CONFIDENTIALITY.—The Board shall establish procedures that shall ensure the confidentiality of applications submitted under this section.

(e) NOTICE OF APPLICATIONS.—The Board shall publish in the Federal Register a notice that it is receiving applications for assistance under this Act not later that 30 days prior to the period established for receipt of such applications.

SEC. 16. REPAYMENT OF FINANCIAL ASSISTANCE.

(a) REPAYMENT.—An entity receiving financial assistance under this Act shall repay the Corporation in accordance with the contract between the Corporation and the entity.

(b) WAIVERS.—The Board may waive the repayment of financial assistance for such reasonable grounds as the Board may from time to time determine.

(c) MAXIMUM REPAYMENT TIME LIMIT.—Financial assistance made available under this Act shall have a maximum repayment period that is not in excess of 12 years.

SEC. 17. REVOLVING FUND.

(a) ESTABLISHMENT.—There is established a revolving fund to be administered by the Board as provided for in this section.

(b) CONTENTS.—Funds received by the Regional Centers under section 16 as a result of any financial assistance made pursuant to this Act, shall be converted into and become a part of the revolving fund established under subsection (a).

(c) USE OF FUND.—The revolving fund established under subsection (a) shall be available, as provided in appropriation Acts, to provide financial assistance under sections 14 and 15, and to pay for the costs of operation as provided for in section 5.

(d) CONTRIBUTIONS.—Amounts received from contributions from State tax check-off programs, or other independent sources, may also become part of the revolving fund established under this section. Such amounts may be specified by the donor for any form of financial assistance for a project in a particular region or State.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act for each of the fiscal years 1990 through 1999.

AGRICULTURAL RESEARCH COMMERCIALIZATION CORPORATION EXECUTIVE SUMMARY, MARCH 16, 1989

Section 1: Short Title.—This Act is entitled the "Agricultural Research Commercialization Corporation Act of 1989".

Section 2: Findings and Purpose.—Congress finds that many of the emerging new ideas, products and processes resulting from agricultural research have never been commercialized because of the high initial financing costs and high risk. Congress believes that the careful targeting of financial assistance to entrepreneurs for the commercialization of new industrial uses of agricultural and forestry products will be a cost effective means of redeveloping the rural economy and stabilizing the agricultural sector.

It is the purpose of this Act to lend a hand in the difficult process of commercializing nonfood, nonfeed products and processes using agricultural and forestry crops. It will provide the vital coordination of cooperative development efforts among manufacturers, financiers, universities and private and public laboratories to speed the commercialization of these products and processes. The goals are to strengthen the rural economy; to create jobs, to expand the market for traditional crops and new crops which are suitable for production on family-sized farms; and to enhance U.S. competitiveness in international markets.

Section 3: Definitions.—This section defines terms used in this bill, including the term "commercialization" which means all activities related to product commercialization from the development of prototype products or industrial plants to the market development on new industrial uses.

Section 4: Establishment of Corporation.—an nonprofit corporation is established within the United States Department of Agriculture, entitled the "Agricultural Research Commercialization Corporation" (ARCC). The Corporation shall serve as the hub for 4 to 9 Regional Centers, where its main activities shall be carried out.

Section 5: Powers of the Corporation.—ARCC shall have general corporate powers. As a wholly-owned government corporation, ARCC shall be subject to the more stringent standards of auditing and oversight under the Government Corporate Control Act.

Section 6: Regional Centers.—Each Regional Center shall be located in a different state, which reflects to the extent possible the regional climatic conditions and rural economic stress. States which apply for a Center must demonstrate the ability to develop a partnership between private and public sector and universities to commercialize new industrial products made from agricultural commodities. The location of regional centers shall be competitively awarded based on proposals submitted to the Board of Directors of ARCC.

Regional centers must be located at host institutions, which include universities or other institutions of higher education, Agricultural Research Service laboratories, State Agricultural Experiment Stations, Extension Service facilities, or other organizations which are involved in the development or commercialization of new industrial uses for agricultural commodities, or in rural economic development. In addition, states must provide for the matching of funds provided by the Federal government for administrative costs, which may include in-kind support such as office space, equipment and staff support.

Each Regional Center shall be headed by a Regional Director, selected by the Board, to carry out the activities of the Corporation, who will work in consultation with an Advisory Council appointed by the Board of Directors and a broad network of volunteers available for project review. Each Regional Director shall have a small support staff.

Section 7: Activities of the Regional Center.—The Regional Centers shall (1) develop a network of scientists, engineers, financiers, business managers, and other specialists to assist in project review; (2) provide business and technical counseling to small businesses to commercialize new industrial uses of agriculture and forestry products; (3) seek out new, nonfood, nonfeed agricultural product ideas which can contribute to rural economic growth; and (4) evaluate and recommend applicants for assistance. The Regional Centers shall coordinate their activities with the Small Business Development Centers.

Section 8: Corporate Board of Directors.—The Board of Directors shall be composed of nine members appointed by the Secretary, including the Assistant Secretary for Science and Education and the Undersecretary of Agriculture for Small Community and Rural Development. The other Directors shall be members of the community holding full-time jobs in the agricultural, scientific, financial, and managerial sectors and shall serve staggered five-year terms. The Board of Directors shall elect a Chairman.

The Board of Directors shall make the final evaluation of project proposals and determine the type and amount of assistance.

Section 9: Powers and Duties of the Corporate Board.—The Board has the authority to delegate to the Regional Centers the bulk of the activities of the Corporation. The

Corporation shall adopt bylaws, develop an organizational structure, and hire a limited number of staff members, which may include a General Counsel, Treasurer, and Executive Director, who shall be considered federal employees. The choice of officers and employees shall be nonpartisan.

Section 10: Compensation.—Board members, except for the Assistant Secretary and the Administrator, shall receive compensation equivalent to the daily prorated amount of Level II of the Executive Schedule, plus reimbursement for reasonable expenses. If absolutely necessary, the Board may, with the Secretary's approval, pay one officer or employee above the federal pay scale.

Section 11: Financial Disclosure and Conflicts of Interest.—Members of the Board of Directors and all other officers and employees are subject to the Ethics in Government Act.

A Director is precluded from voting on any matter in which such individual has a financial interest. Directors who violate this rule shall be removed from the Board.

Section 12: Authorization of Administrative Expenditures.—Administrative expenses are required to be kept to a minimum in order to make available more money for financial assistance for commercialization projects.

Section 13: Criminal Sanctions.—The Corporation and its Directors, officers and employees are subject to criminal sanctions for releasing proprietary information.

Section 14: Financial Assistance.—The Corporation is authorized to provide low-interest loans, loan guarantees, interest subsidies, repayable grants matched by private, State or local public funds, umbrella bonding and debentures to eligible applicants to commercialize industrial products using agricultural and forestry crops.

The Board may establish a discretionary fund for each Regional Center to be used for activities related to the financial assistance described above. The Regional Directors shall account for expenditures from these funds twice a year.

The Corporation, through the Regional Centers, shall monitor the progress of ongoing projects and provide supportive business and technical counseling as needed, assisted by the Advisory Council.

Section 15: Eligibility Criteria for Financial Assistance.—An applicant may be eligible for financial assistance if such applicant's proposal to commercialize a new, nonfood, nonfeed agricultural product or process is scientifically sound, technologically feasible and marketable. Priority shall be given to proposals which create jobs in economically distressed rural areas, and have financial participation by state or local government or the private sector.

The entities eligible for assistance shall be small businesses as defined under the Small Business Act, universities or other institutions of higher education, nonprofit organizations and cooperatives.

The applicant must show that the proposal has broad application, will create new jobs in rural areas, and that the applicant's own resources are invested in the project, but that adequate public or private sector funding is not available without ARCC participation. The Corporation shall ensure the confidentiality of proposals.

The Corporation shall establish additional criteria for use when choosing among equivalent applications. These criteria shall emphasize the quantity and quality of jobs created, the level of financial participation by state or local government or private entities, the qualifications of the management, and the level of market demand for the product.

Section 16: Repayment of Financial Assistance.—A business entity shall repay the financial assistance it receives from the Corporation according to its contract with the Corporation. The Corporation is given great flexibility in negotiating the amount and type of this repayment. The maximum repayment period for financial assistance shall be 12 years. The Board may waive the repayment of financial assistance if necessary.

Section 17: Revolving Fund.—The Corporation is designed to be self-funding. A revolving fund is established to receive sums from the repayment of financial assistance and contributions to the Corporation. Administered by the Board, the fund shall be used to provide financial assistance authorized by this section and pay operational costs.

Section 18: Authorization of Appropriations.—The Corporation is authorized to receive such sums as may be appropriated through fiscal year 1999.

EXCERPT OF TESTIMONY PRESENTED BY SCOTT SHEARER, EXECUTIVE DIRECTOR, NATIONAL CORN GROWERS ASSOCIATION BEFORE THE SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

New product development and market introduction is a long, arduous, and expensive process. It requires commitment, discipline, and persistence. The "Agricultural Research Commercialization Act of 1988" is a major step forward in this effort.

This legislation provides for a long term and consistent national commitment in the development of new agricultural products for industrial uses. It provides for a means to take our research and technology from the laboratory to the market place. The revolving fund provides a long term source of funding for cooperative private and public programs.

The development of new industrial uses and markets for our renewable resources, agricultural products, will provide for a viable agricultural economy in the future. It will also help establish new industries, employment and economic activity for our communities. And it will also help us to be competitive in the world market place.

Senator Conrad, the National Corn Growers Association commends you and the other co-sponsors of this legislation. We support this legislation and are willing to assist in your efforts.

THE NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE,
Washington, DC, November 29, 1988.

Hon. KENT CONRAD,
Chairman, Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: The National Association of State Departments of Agriculture supports legislation you introduced in the 100th Congress, the Agricultural Research Commercialization Act of 1988, and would favor its reintroduction in the 101st Congress. We believe that this legislation, which would provide bridge financing and technical assistance to small companies to commercialize new industrial uses for agricultural and forestry commodities, is vital to American agriculture.

On September 28, 1988, the NASDA membership adopted a resolution, MAD-23, which urges increased emphasis on the development of non-food uses of farm and forest products. A copy of the resolution is enclosed. Your bill could be the vehicle to accomplish the goals set forth in our resolution.

We look forward to working with you and your staff toward passage of this legislation in 1989.

Sincerely,

ROBERT AMATO,
Assistant Executive Secretary.

Enclosure.

[From the National Association of State Departments of Agriculture, Washington, DC, 1988]

POLICY NO. MAD-23—NEW FARM, NONFOOD PRODUCTS

The importance of new uses for farm products is recognized as becoming a national priority, and that significant opportunities exist for farm and forest products to meet market needs, particularly in industrial, non-food application areas.

Resolved, That the National Association of State Departments of Agriculture, meeting in Reno, Nevada on September 28, 1988, urges increased emphasis of the development of non-food uses of farm and forest products, establish increased public/private cooperation in the development of these products, establish and facilitate agricultural technology transfer between public and private industrial sectors, expand biotechnological development in agricultural application, and establish a program to identify the development of new farm and forest programs. NASDA will facilitate such action by cooperating and making available assistance on state, regional and national levels with expertise from member states.

NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS,
Washington, DC, January 24, 1988.

Hon. KENT CONRAD,
Chairman, Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the members of the National Association of Development Organizations (NADO), I am writing in support of legislation to establish the Agricultural Research Commercialization Corporation (ARCC).

NADO was founded in 1967 by a group of economic development districts to encourage the creation and retention of jobs in rural America. Today, our members are multi-county planning and development organizations which help local governments and the private sector work together on business, community and economic development programs.

Natural resource industries continue to be the economic foundation for most rural areas. Unfortunately, all of these industries, in various degrees, display the symptoms of mature industries: slow growing markets, limit product differentiation, and stiff competition from foreign producers. Under these circumstances, rural America's economic base faces a continuing and protracted decline. However, research into new industrial products and processes using agricultural and forestry crops provide great promise. Our members believe that this research proves that innovative alternatives exist for expanding economic opportunities in the natural resources of rural areas.

The Agricultural Research Commercialization Corporation would help serve as the

catalyst for this economic growth. There remains a significant need for bridge financing in rural economic development. All too frequently, we have been unable to attain equity capital or private financing because of the embryonic stage of the venture; yet, the research has been completed. What remains to be done is the commercialization. Currently, only local revolving loan funds have attempted to solve this serious problem.

NADO members look forward to working with you to enact the Agricultural Research Commercialization Act during the 101st Congress.

Sincerely,

GEORGE F. ALFORD,
President.

NATIONAL FARMERS UNION
January 19, 1989.

Hon. KENT CONRAD,
U.S. Senate, 361 Dirksen Senate Office Building, Washington, DC.

Dear Senator Conrad: I am writing to express the National Farmers Union's wholehearted support for the concept underlying your proposal for an Agricultural Research Commercialization Corporation (ARCC). The proposal represents a coordinated national approach to the problem of rural economic development, without sacrificing local control of development initiatives and without abandoning the traditional source of wealth in rural America—agricultural commodities.

There is little doubt that the bountiful resources in this country can supply more food and fiber products than we currently need. But, too often in recent years, government has tried to tackle an imbalance between supply of farmers. History has demonstrated that driving farmers out of business with depressed market prices does not reduce commodity surpluses. However, it does create havoc in rural communities as families lose their livelihoods and their homes. Your proposal could address both problems by fostering new demand for agricultural products.

The structure and purposes of the ARCC allow the government to take a positive role in rural development that does not overwhelm the issue with regulation, but rather facilitates American ingenuity. Giving priority consideration to projects which can secure matching funds will keep costs down and provide an extra level of screening to protect taxpayers' investments.

The long-term future of family sized farming operations well may rest on our ability to develop new uses for our agricultural commodities, though many great ideas are still "on the drawing board" for lack of start up capital. I and my staff would be happy to offer whatever assistance you may feel is necessary.

Sincerely,

LELAND H. SWENSON,
President.

NATIONAL FARMERS ORGANIZATIONS,
Washington, DC, January 25, 1989.

Hon. KENT CONRAD,
Chairman, Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR CHAIRMAN CONRAD: We appreciate the opportunity to review the current version of S. 2143, the Agricultural Research Commercialization Act. Your efforts, and those of your colleagues who joined you in 1988 in development of this bill, have resulted in a commendable approach to a difficult problem.

In our organization, as you know, we must be concerned with the challenge to bargain successfully for our members in the marketing of their production. We are pressed continuously to turn a profit in order to survive in farming. The economic experience of the 1980s for farm producers has often been reflected in the profit and loss statements of the business houses with whom we deal. Stated very briefly, funds for venturesome endeavors in recent years have been severely limited. Consequently, the effective use of technology developed in our research stations has not been fully utilized.

In the same period of time, some of our competitors in other countries have been able to push into the food markets at our expense. We have production capabilities that may well be converted to non-food uses. The American people will benefit by such developments in many ways.

It is absolutely necessary to ensure a continuing stable and ample supply of high quality food while reducing the drag on the public treasury for farm program assistance. That will be most readily accomplished by providing for the survival of the mid-range independent owner-operators in farming and the small business houses with whom they deal in rural communities. We need expanding markets for our production.

As an example, the major sources of energy to operate our productive enterprises are finite in character. The condition of our total environment has deteriorated steadily in recent years. The portent of increasing populations around the globe may not have been intentionally ignored, but one may conclude that only a few authorities are undertaking to plan for the food, shelter and well being of those generations soon to come. National boundaries no longer serve to isolate one group of people from the problems of others.

In our best judgment, the results of some valuable research efforts really need to be put into operation in the best interest of all our people. Let's get these efforts moving in rural America. If they are not all successful, so be it. The survival of the better propositions will be ample reward for the effort. We support the thrust of S. 2413 and urge that it be moved early in this session of congress.

Sincerely,

CHARLES L. FRAZIER,
Director, Washington Office.

AMERICAN AGRICULTURE MOVEMENT, INC.,
Washington, DC, January 23, 1989.

Senator KENT CONRAD,
Chairman, Subcommittee on Agricultural Research and General Legislation, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the American Agriculture Movement, Inc., I am writing in support of your proposal to establish the Agricultural Research Commercialization Corporation within the U.S. Department of Agriculture. AAM believes ARCC could serve an important role in providing financial and technical assistance necessary for the development of new commercial uses for agriculture products.

This proposal would help address the deteriorating economic condition in many rural sections of our country. Reflecting the plight of many of our family farmers, our small towns and rural communities continue to see more and more of their store fronts boarded up and their small businesses closed. Rural job opportunities are fewer each year, contributing to the decline in rural population as more rural citizens are forced to move to urban centers to seek employment. As the local tax base shrinks, our small towns and rural communities are finding it more and more difficult to maintain decent schools, hospitals, roads, and other services necessary to provide an acceptable quality of life. In short, many of our rural communities are dying.

While no single governmental initiative can be expected to turn this situation around, it's urgent that Congress begin to address this problem in a number of ways. Your initiative should be an important part of an overall program aimed at revitalizing the economy in rural America. Every project which qualifies for financial and technical assistance under your proposal will provide new jobs in the community, and will offer the possibility of local economic growth and development which otherwise would not exist. The cumulative effect of these grants over several years should contribute in a meaningful way to the economic recovery that is necessary if our small town are going to survive.

We applaud your plan to establish several regional centers in various states to carry out the principal activities of the corporation. This will assure better availability to those who might benefit from the services offered and greater sensitivity to the local and regional needs and conditions which may be relevant.

As farmers, we are naturally supportive of efforts to create new uses for agricultural products. Despite the lowered production resulting from the drought of 1988, in most years we continue to produce far more agricultural products in this country than we can sell. This results in excessive costs to the government and hurts farmers by driving down prices. By making a modest investment in the necessary long range goal of creating new markets from new uses, your proposal addresses this problem. We must fully utilize our federal research dollars—and the results of that research should be seen in new marketable products, expanding sales and more profitable agriculture.

AAM appreciates your efforts to stimulate new commercial uses for agricultural products and is pleased to support this legislative proposal.

Sincerely,

HARVEY JOE SANNER,
National President.

EXCERPT OF TESTIMONY PRESENTED BY SCOTT SHEARER, EXECUTIVE DIRECTOR, NATIONAL CORN GROWERS ASSOCIATION BEFORE THE SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

New product development and market introduction is a long, arduous, and expensive process. It requires commitment, discipline, and persistence. The "Agricultural Research Commercialization Act of 1988" is a major step forward in this effort.

This legislation provides for a long term and consistent national commitment in the development of new agricultural products for industrial uses. It provides for a means to take our research and technology from the laboratory to the market place. The revolving fund provides a long term source of funding for cooperative private and public programs.

The development of new industrial uses and markets for our renewable resources,

agricultural products, will provide for a viable agricultural economy in the future. It will also help establish new industries, employment and economic activity for our communities. And it will also help us to be competitive in the world market place.

Mr. Chairman, the National Corn Growers Association commends you and the other co-sponsors of this legislation. We support this legislation and are willing to assist in your efforts.

NATIONAL SUNFLOWER ASSOCIATION,
Bismarck, ND, January 24, 1989.

Hon. KENT CONRAD,
Chairman, Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: I understand you are preparing to reintroduce your legislation to establish an Agricultural Research Commercialization Corporation, or "ARCC". As in the case of S. 2413, introduced last year, the purpose of ARCC would be to stimulate the development of "new uses" for U.S. agricultural commodities, principally in non-food and non-feed applications.

As you know, the National Sunflower Association strongly endorsed the ARCC proposal in June 1988, and recommended that a "maximum content" level be established to enable products, used as food ingredients, to be eligible for assistance. I understand this broader definition was to be included in the report language to last year's bill, and hope that your new version of ARCC will also reflect consideration of additive-type agricultural products.

The ARCC proposal would be a cost-effective method for stimulating the development and commercialization of new products derived from agricultural commodities, in sunflower areas as well as nationwide. With prospects for increased farm production in 1989 and future years, ARCC would make a major contribution to the effort to find profitable ways to use our abundant agricultural resources, and prevent the rebuilding of price-depressing surpluses. As before, the National Sunflower Association warmly applauds your initiative in reintroducing the ARCC proposal, and will assist in efforts to enact this legislation during the 101st Congress.

Sincerely,

LARRY KLEINGARTNER,
Executive Director.

COMMUNICATING FOR AGRICULTURE,
Bloomington, MN, January 27, 1989.

Hon. KENT CONRAD,
Chairman, Subcommittee on Agricultural Research and General Legislation, Senate Agriculture Committee, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: On behalf of the members of Communicating for Agriculture, I want to commend you for reintroducing the legislation to create the Agricultural Research Commercialization Corporation (ARCC) early in the new session, and to express our strongest encouragement that Congress move forward quickly to approve this measure.

This bill would create a new program that is specifically designed to encourage commercialization of new ag research processes, particularly industrial uses of agricultural commodities. CA supports this bill so strongly because we believe industrial uses of agricultural products hold tremendous promise for improving agricultural markets over the long-term and yielding lasting economic benefits for the overall rural economy.

We have learned from researchers, including top people with USDA's Agricultural Research Service, about many promising ag utilization research efforts underway. Biodegradable plastics made from corn starch are causing a great deal of excitement. Paper produced from Kenaf, a new annual crop; printers ink made from soybean oil; and other products that often use farm-produced renewable resources in place of finite petroleum products, are among a host of promising new applications that have the potential to be commercial successes.

Yet, we've also learned that there often is a built-in intertia on the part of American business when it comes to investing in research and development of innovative new products. We've told that while Japanese companies regularly visit our research centers seeking new ideas, our own American companies all too often have a common response when presented with an entirely new product concept—"Fine, let a small company develop it. If it works, we'll buy them out."

Throughout most of the 1980s, America's farm families and agribusinesses have been buffeted by powerful and damaging economic forces. Many have left their occupation and their rural communities. Congress has responded to these challenges with many initiatives and unquestionably has helped to stem the negative tide. But most of government's efforts have been akin to plugging fingers in the dike—actions taken to cut the losses. Efforts that would yield real ongoing progress in improving the farm economy have been few and far between.

The ARCC bill seeks to prime the pump of ag product commercial development in new markets. Provisions which would target its benefits to small and medium-sized businesses, and create regional offices to make its financial assistance and information programs more accessible to rural businesses, in our judgment, are particularly welcome.

In a 1988 survey of Communicating for Agriculture's membership, an overwhelming 97 percent said that encouraging research and development of new uses of existing ag products should be a priority for our organization. The ARCC bill is one of the most promising proposals we have seen come forward. It will spur creativity and market responsiveness in agriculture, exactly what the rural economy needs.

We thank you again for your work and urge Congress to give it prompt approval.

Sincerely.

BRUCE ABBE,
Vice President of Legislative Affairs.

COMMISSIONER OF AGRICULTURE,
Austin, TX, January 20, 1989.

Hon. KENT CONRAD,
U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: Thank you for your leadership in legislation to commercialize new agricultural products. Over the last five years, the Texas Department of Agriculture (TDA) has been working in Texas to encourage production and processing of new crops and products. This experience has persuaded me that federal legislation is required to overcome the obstacles in the way of commercial development for new crops, and I would like to indicate my strong support for the Agricultural Research Commercialization Act.

TDA's experience in Texas also suggests, that the Agricultural Research Commercialization Act could be strengthened by incorporating new language that targets the Act's resources to the needs of sustainable agriculture and family farmers.

Specifically, I suggest four priorities for your consideration:

1. research that will have a positive impact on crop diversity, soil fertility and regeneration, and the use of crop rotation to reduce chemical inputs;

2. creation of jobs or new self-employment opportunities specifically in distressed rural areas;

3. utilization of crops which can be purchased from family-sized farms; and

4. development of financial partnerships with existing non-profit loan programs such as state finance authorities and community development loan funds.

I believe these four priorities will provide additional encouragement for the kind of economic growth that we will desire for rural America—based on family farms, strong communities, and a healthy, sustainable agricultural system.

If you care to discuss these recommendations at greater length, please feel free to contact me at your convenience.

Best regards,

JIM HIGHTOWER.

STATE OF MINNESOTA,
DEPARTMENT OF AGRICULTURE,
Saint Paul, MN, January 20, 1989.

Hon. KENT CONRAD,
Chairman, Subcommittee on Agricultural Research and General Legislation, Washington, DC.

DEAR CHAIRMAN CONRAD: I am writing to give my strong support to your proposal to establish the Agricultural Research Commercialization Corporation within the U.S. Department of Agriculture (ARCC). ARCC will serve as an important way to provide financial and technical assistance necessary for the development of new commercial uses for agricultural products.

This proposal would help address the economic crisis facing the rural areas of our state. Rural job opportunities are shrinking, forcing rural citizens to move to the city to seek employment, making it more difficult to maintain our schools, hospitals, roads and other services.

It is urgent that Congress begin to address these issues. Your initiative will be a critical element of an overall plan to revitalize rural America. Your proposal will provide new jobs in our rural community, and will offer the possibility of real long-term growth. As you know, our own state government has initiated a small effort of a similar nature, but we need federal leadership.

I appreciate all of your efforts to aid rural America. Your bill to credit the ARCC will be very important to all of us in rural America.

Sincerely,

JIM NICHOLS,
Commissioner.

NORTH DAKOTA STATE UNIVERSITY,
Fargo, ND, March 15, 1989.

Senator KENT CONRAD,
Dirksen Building, Washington, DC.

DEAR SENATOR CONRAD: I am personally very pleased that you are reintroducing the bill, "Agricultural Research Commercialization" this March 16, 1989.

The State of North Dakota, and indeed this region, have long needed this major emphasis to promote the public/private linkages for research and development of end user products that have added value.

Too often, we in North Dakota, produce the finest raw commodities and turn them over, in time, for someone else to "add value."

The concepts in this bill have been promoted by me for many years, as I felt that publically funded universities and agricultural experiment stations have a vested interest in what you propose.

Please find enclosed several statements and brochures that you may find helpful to "sell" this concept.

We need your leadership on this one! Your staffers, especially Suzette Dittrich, have been super to help to keep me informed on this topic.

Sincerely,

H. RONALD LUND,
Dean and Director.●

● Mr. GLENN. Mr. President, it is with great pleasure that I join with Senator CONRAD in introducing the Agricultural Research Commercialization Corporation Act of 1989. This is a forward-looking initiative which addresses what is in my judgment the single most important issue facing American agriculture today—the development of new nonfood uses for our Nation's agricultural commodities.

I have long supported the need to expand our research effort into new uses. The research this country has conducted in the agricultural field has been the envy of the world. It is time that we build upon our past success and redirect our research efforts to discover new markets for our agricultural commodities.

Significantly expanded research into new nonfood uses is one option to meet this goal. Nonfood uses for farm products are not far-off fantasies that will take years to develop. Right now, cornstarch is used not just in producing alcohol, but also in manufacturing paper and plastic products, building materials, textiles, and adhesives. In fact, earlier this year I introduced and my colleague Senator CONRAD cosponsored, the Agricultural Commodities Based Plastics Development Act to promote and expand the market for some of these products.

I know that research is being done on new nonfood uses at the Agricultural Research Service. Unfortunately, it amounts to only about $13 million out of a total ARS research budget of about $540 million in fiscal year 1988. Scattered research on new product development is also being done in the land grant system. Nevertheless, expenditures on new nonfood uses of agricultural products still lag far behind the money being spent on production research.

The Agricultural Research Commercialization Corporation Act of 1989 complements the need to expand our research efforts into new uses. This bill will provide financial assistance to help selected new-uses projects move from the laboratory to the marketplace. This, along with other efforts to place greater emphasis on new nonfood uses research and products, will further our effort to establish a cohesive framework to fully utilize one of our Nation's greatest natural resources—American agriculture.

The problems facing American agriculture are complex. They will not be solved quickly; rather they require a comprehensive strategy which addresses market development as well as research into new nonfood uses of our agricultural commodities. I believe that this legislation is a vital part of that solution and I look forward to working with Senator CONRAD to help ensure its passage.●

● Mr. SIMON. Mr. President, I am pleased today to join Senator CONRAD and several of my colleagues in introducing the Agricultural Research Commercialization Corporation Act.

For years, the United States has been a leader in agricultural research. We are creating many new uses for agricultural products, and the development of these uses has the potential to increase demand for the crops produced by our farmers. Unfortunately, commercialization of these new products has not kept pace with our research advances.

This bill will create the Research Commercialization Corporation within the U.S. Department of Agriculture. Its purpose will be to provide financial and technical assistance to small, mostly rural companies seeking to commercialize new farm products. Not only will this help bridge the gap between research and commercial use, it will give our rural areas an economic boost and create jobs.

In addition, we will be increasing demand for our agricultural products and commodity prices will go up. Finally, as we develop markets for these new products, we will become more competitive in the world market.

I have long supported agricultural research. Last year, I became the first Member of Congress to publish a newsletter printed with soy-based ink. I have also been a strong supporter of ethanol use. These are just two examples of new uses for our agricultural products. I will continue to support agricultural research and am pleased today to support this bill to bring our research developments into the marketplace. I believe the Agriculture Research Commercialization Corporation is not only good for the agricultural industry—it's good for America.●

By Mr. DECONCINI:

S. 622. A bill to amend title 35 of the United States Code to clarify the Drug Price Competition and Patent Term Restoration Act of 1984 with respect to medical devices, to promote increased competition and innovation in lifesaving medical technologies and to improve patient and physician access to advanced experimental therapeutical alternatives; to the Committee on the Judiciary.

MEDICAL TECHNOLOGY COMPETITIVENESS ACT

● Mr. DECONCINI. Mr. President, I rise today along with my colleagues Senators DURENBERGER, ADAMS, and GORTON to introduce the Medical Technology Competition Act of 1989. This bill clarifies the Drug Price Competition and Patent Term Restoration Act of 1984 with respect to medical devices; it promotes increased competition and innovation in life-saving medical technologies; and it improves the access of physicians and patients to advanced experimental therapeutical alternatives.

My bill addresses what has become a point of some controversy with Public Law 98-417, the Drug Price Competition and Patent Term Restoration Act of 1984. This law authorized the extension of certain patents in order to restore the patent time lost due to the period of FDA regulatory review for the patented inventions; and it also provided an experimental use or research exemption from infringement under which competitors can test experimental products. That is, the law permits competitors to engage in noncommercial research and development during the term of a patent so that commercial competition can proceed as soon as the patent expires. The law reversed the holding of *Roche Products* v. *Bolar Pharmaceutical Co.*, 221 U.S.P.Q.937 (1984) by means of 35 U.S.C. 271(e)(1), which provides

It shall not be an act of infringement to make, use, or sell a patent invention (other than a new animal drug or veterinary biological product) * * * solely for uses reasonably related to the development and submission of information under a Federal law which regulates the manufacture, use, or sale of drugs.

The 1984 law was explicit with respect to human drug products and, with the enactment of Public Law 100-670, is now explicit with respect to animal drug products. The law is not explicit with respect to medical devices and this must be clarified. The American Bar Association Section of Patent, Trademark and Copyright Law stated in its 1988 committee report:

In summary, the [ABA] subcommittee wishes to state its conviction that such an experimental or research exemption either does exist or should exist. Such a research exemption should apply to all products, not just to generic drugs.

My bill provides the necessary statutory clarification for medical devices and reaffirms the purpose behind the 1984 law—to balance the rights of patent holders—who were provided with the ability to secure patent extensions—with the public good of immediate increased competition once the patent expires.

Even more alarming than the evident legal unfairness with the state of the law at this point is its apparent effect of prohibiting physicians from conducting clinical evaluations of

state-of-the-art experimental medical devices that are desperately needed to treat serious heart conditions. A number of well-respected physicians at this country's leading hospitals and medical institutions have told me of seriously ill patients in need of an experimental medical device that cannot be used because it infringes the patent of a device already on the market. These physicians are, in effect, being blocked from practicing medicine to the best of their ability. The patients are immediate losers in this situation. We should also realize that, to a degree, we all are losers—because technological innovation is hampered, because medical progress is slowed, and because free competition and the ability to experiment are obstructed.

It is not often that one has the opportunity to take an action that will have as great an impact on patients' lives as will the passage of this bill. I am mindful of the rights of patent holders, and I value the need to protect intellectual property rights. This bill will not change the term of the patent. However, it will ensure that there is not a de facto extension which occurs when competitors are forced to wait until after the patent expires before even beginning the experimental use required for FDA approval.

While this issue came to my attention as a result of a current legal controversy, my motivation in introducing this bill is not to side with one patent holder over another; and it is not to choose one course of medical treatment or medical device over another. My purpose is to restore the proper balance in our patent laws and to do it as quickly as possible in light of the immediate patient care situation. I am pleased that several of my colleagues upon learning of the importance of this issue have joined me in sponsoring this legislation and I urge my other colleagues to support this much-needed legislation. Mr. President, I ask unanimous consent that the bill be printed in the RECORD following my statement.

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

S. 622

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medical Technology Competitiveness Act of 1989".

SEC. 2. INFRINGEMENT OF PATENT.

Section 271(e) of title 35, United States Code, is amended)

(1) in paragraph (1) by inserting ", medical devices" before "or veterinary biological products";

(2) in paragraph (2) by—

(A) striking out "or" at the end of subparagraph (A);

(B) adding "or" at the end of subparagraph (B);

(C) inserting between subparagraph (B) and the matter that follows such subparagraph, the following:

"(C) an application under section 515(c) of such Act (21 U.S.C. 360e(c)) for a medical device which is claimed in a patent or the use of which is claimed in a patent,"; and

(D) inserting ", medical device" before "or veterinary biological products"; and

(3) in paragraph (4) by inserting ", medical device" before "or veterinary biological product" each place it appears in subparagraphs (A), (B), and (C).●

By Mr. HARKIN:

S. 623. A bill to amend the Federal Food, Drug, and Cosmetic Act to prescribe labeling requirements for foods which contain vegetable oils, and for other purposes; to the Committee on Labor and Human Resources.

LOW CHOLESTEROL CONSUMER EDUCATION ACT

● Mr. HARKIN. Mr. President, I am today introducing the Low Cholesterol Consumer Education Act of 1989. An identical bill is being introduced in the House by Congressman DAN GLICKMAN (D-Kansas). This bill is the result of extensive research by public and private groups and agencies. It is the result of much effort, discussion and even debate among health and nutrition groups, public interest groups, commodity groups and trade groups.

Changes have been made in last year's bill to maximize the available nutrition information provided to the consumer, avoid potential trade problems and minimize the economic impact on the food industry.

I want to thank each of these groups for their cooperation and patience in working to put together a useful and meaningful piece of legislation.

Heart disease is the No. 1 killer in America today. It is a slowly progressive disease that begins early in life but rarely produces symptoms until middle age. It is responsible for more than a million deaths annually and costs Americans more than $60 billion annually. Millions of Americans suffer from symptomatic heart disease and millions more suffer from undiagnosed coronary heart disease. That's the bad news.

The good news is that appropriate changes in our diet will reduce blood cholesterol levels and lower the risk of heart disease. More than one out of every two Americans has a cholesterol count in the danger zone, or in other words, associated with increased likelihood of coronary heart disease.

Many researchers and associations have warned against the continued high dietary intake of fat—particularly saturated fat.

According to NIH studies, one out of four Americans ought to be on some form of treatment in order to reduce their serum cholesterol levels. Yet many consumers—under doctor's orders to reduce their consumption of cholesterol, saturated fat and total fat—have found it impossible to determine the actual ingredients in some food products because of vague, misleading, or imprecise labeling of foods on their grocer's shelves.

This is not a trivial matter. For many this is truly a matter of life and death. According to a recent survey by the American Association of Retired Persons, one of the many groups that supports this bill, 89 percent of its 30 million members read food labels and purchase food products accordingly. Three out of four surveyed said they had changed their dietary habits due to nutrition and ingredient labeling. This is a significant change from just a few years ago.

In my office I have two pictures of arteries provided by the National Institutes of Health, that show the difference between the artery of a person with a high cholesterol level and a person with a low cholesterol level. The one shows the plaque buildup associated with a high cholesterol level. There is a severe restriction in the size of this artery. A relatively small blood clot could not pass through the artery of the person with the high cholesterol buildup but it could easily have passed through the artery of the person with the lower cholesterol level.

For the person with the high cholesterol and resulting plaque buildup proper diet was probably a life and death situation. My legislation is designed to aid consumers, so they can have the information they need for healthy diets and productive lives.

It mandates that more accurate consumer information be published relative to the appropriate amounts of total fat, saturated fat and cholesterol that can safely be consumed. It mandates standards for comparing nutrition information currently found on food labels. It requires nutrition labeling for food products that make a claim about vegetable oil or cholesterol content.

A problem that has vexed consumers in recent years and has been the object of much discussion in medical, nutrition, and public interest circles, is the labeling of vegetable oils and fats with saturated fat levels ranging from 9 to 92 percent.

Advertisements highlighting that a product "Contains 100 percent vegetable oil—no cholesterol" create expectations of a healthy product—perhaps even healthier than alternative products. Upon seeing such a claim on the product's label, a consumer might assume that the product would have lower saturated fat than a product made with lard or beef tallow.

As you can see from this chart however, that is not necessarily the case. All vegetable oils are not equal in saturated fat content, especially after processing occurs; and all vegetable

oils and not lower in saturated fat content than lard or beef tallow.

Finally, my bill requires that disjunctive labeling be done away with—this is the practice of stating on the ingredient label "may contain one or more of the following vegetable oils * * *" or alternatively—that accurate nutrition labeling relative to total fat, saturated fat and cholesterol be displayed on the product's package or label.

With growing evidence of a strong link between good nutrition and good health, this bill is an important step in providing consumers with the information they need to reduce their saturated fat intake.

All of us as consumers have a right to know this kind of information. As a society, we must do all we can to reduce spiraling medical costs—and replace treatment with prevention in any way we can.

This bill moves us in that direction. I urge my colleagues to join me in cosponsoring this legislation.

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

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

S. 623

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Low Cholesterol Consumer Education Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Surgeon General has warned Americans that they should reduce consumption of fat, especially saturated fat and cholesterol,

(2) the "Dietary guidelines for Americans" published by the Secrtary of Agriculture and the Secretary of Health and Human Services has warned that consumers should avoid too much fat, saturated fat, and cholesterol,

(3) the National Institutes of Health have advised that the blood cholesterol level of most Americans is undesirably high, in large part because of high dietary intake of saturated fat and cholesterol, and that the treatment of high blood cholesterol levels requires the lowering of total fat, saturated fat, and cholesterol consumption,

(4) private and public studies by experts in the fields of medicine and nutrition unanimously support the conclusion that Americans should know how much fat, particularly saturated fat, they consume and should guard against too much consumption of fat in general and saturated fat in particular,

(5) the American Heart Association has indicated that too much saturated fat consumption can lead to increased serum cholesterol levels which can lead to coronary heart disease, the number one killer in America,

(6) the American Medical Association has indicated that the risk of developing coronary heart disease is directly related to the amount of cholesterol in a person's blood and that most people can lower their cholesterol levels into the desirable range by reducing their intake of saturated fats, and

(7) the National Academy of Sciences has recommended providing consumers with more information on the fat and cholesterol content of foods through improved labeling, particularly the saturated fat levels of some vegetable oils.

SEC. 3. STANDARDS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish and publish in the Federal Register in proposed form—

(1) standards for the recommended maximum daily levels of total fat, total saturated fat, and cholesterol in total dietary intake, expressed as a percentage of calories from fat and total grams of fat, and

(2) relevant and appropriate standards for determining serving sizes of foods for purposes of enabling consumers to make comparisons of fat content contained in similar or like products.

SEC. 4. LABELING REQUIREMENTS.

Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

"(q) If its labeling (in a place separate from its list of ingredients) includes a statement that the food contains a vegetable oil or a statement about cholesterol content unless the labeling of the food—

"(1) complies with the nutrition labeling requirements of the secretary (21 C.F.R. 101.9),

"(2) identifies the total amount of saturated fat and cholesterol included in the food, and

"(3) highlights for the purchaser, in accordance with regulations of the Secretary, the nutrition labeling required by the secretary and this paragraph.

"(r) If it contains a vegetable oil unless (1) the labeling of the food specifically identifies which vegetable oil is in the food, or (2) the labeling of the food—

"(A) complies with the nutrition labeling requirements of the Secretary (21 C.F.R. 101.9), and

"(B) identifies the total amount of saturated fat and cholesterol included in the food.".

FATTY ACID COMPOSITION OF OILS AND FATS, PERCENTAGE OF TOTAL FATTY ACIDS, NEWS CONFERENCE CHART INFORMATION

[In percent]

Oil/fat	Saturated	Monounsaturated	Polyunsaturated
Safflower oil	9	13	78
Sunflower oil	11	20	69
Corn oil	13	25	62
Olive oil	14	77	9
Soybean oil	15	24	61
Soybean oil (lightly hydrogenated)	16	46	38
Peanut oil	18	48	34
Vegetable shortening (hydrogenated)	26	48	26
Cottonseed oil	27	19	54
Lard	41	47	12
Palm oil	51	39	10
Butterfat	66	30	4
Palm kernel oil	86	12	2
Coconut oil	92	6	2

Source: Handbook No. 8-4 and Human Nutrition Information Services USDA, American Heart Association (lightly hydrogenated soybean oil hydrogenated vegetable shortening).

By Mr. REID (for himself and Mr. BRYAN):

S. 624. A bill to provide for the sale of certain Federal lands to Clark County, Nevada, for national defense and other purposes; to the Committee on Energy and Natural Resources.

SALE OF CERTAIN FEDERAL LANDS TO CLARK COUNTY, NEVADA

● Mr. REID. Mr. President, on May 4, 1988, an explosion destroyed the Pacific Engineering and Production Co. [Pepcon] facility in Henderson, NV. The blast which resulted in two deaths and over $75 million worth of damage to surrounding private property, was caused by the highly explosive chemical ammonium perchlorate.

Ammonium perchlorate [AP] is a strong oxidizer chemical compound and is a major component of the solid propellant used by NASA in the Space Shuttle Program and by DOD in numerous rocket and missile programs. Pepcon was one of two domestic ammonium perchlorate producers in America a product vital to the Nation's space program and defense readiness. The other is the Kerr-McGee Corp. which is located in the middle of Henderson, NV, the town that endured the last AP blast.

Mr. President let me give you an example of the importance of this substance. The propellant in the space shuttle booster rockets contain about 70-percent AP, 16-percent aluminum powder and 14-percent polymer. Similar amounts of AP are used in the propellant for military rockets and missiles. Today there is no substitutes for AP that can provide comparable performance.

The Department of Defense and the National Aeronautics and Space Administration desire to see the production of AP increased to cover the current product shortage as well as to meet long-term product needs once lost production capacity has been rebuilt. However, Kerr-McGee as a good corporate citizen understands that the residents of Henderson and surrounding Clark County are nervous about having another tragic explosion in their community. That is why Kerr-McGee is interested in relocating their plant to a safer area. We in Nevada are also interested in keeping this vital industry in our State and have the work force to help rebuild the productive capability.

DOD and NASA must replace the capacity destroyed by the Pepcon explosion and stabilize the overall AP supply situation. Thus, DOD and NASA want Pepcon and Kerr-McGee to get their new plants underway as soon as possible. Pepcon's new plant is under construction in Utah. Kerr-McGee is proceeding with engineering and will start construction as soon as a site is available.

Today I am introducing a bill to transfer public land for the relocation of the Kerr-McGee plant operations for the production of AP. This is consistent with the Governor's task force

recommendations and Clark County. About 90 percent of Clark County is owned by the Federal Government and land available from State or private land is severely limited. This area of Federal land, known as the "Apex Site" is administered by the Bureau of Land Management [BLM] within Clark County. The county is willing to purchase, at fair market value, the necessary land for an industrial park in which Kerry-McGee could safely resume production of AP away from any populated area. After such transaction the county intends to sell the land to Kerr-McGee.

Mr. President, passage of this bill is required to replace the productive capacity of ammonium perchlorate in this Nation and to provide for National Defense and reliability in the space program.

Thank you, Mr. President, and I ask unanimous consent that the complete text of this bill be printed in the RECORD.

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

S. 624

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

SEC. 101. CONGRESSIONAL FINDINGS—

Congress finds that:

(a) Clark County, Nevada ("Clark County") has long served the Nation's defense program by hosting Nellis Air Force Base, Indian Springs Air Force Base, the operational headquarters for the Nevada Atomic Test Site, and the Basic Management Industrial Complex near Henderson which was established during World War II.

(b) The only two domestic producers of ammonium perchlorate, a principal component of solid rocket fuel essential to the Nation's defense and space programs, are Pacific Engineering and Production Co., Inc. ("Pepcon") and Kerr-McGee Chemical Corporation ("Kerr-McGee"), which have long maintained their production facilities near the City of Henderson in Clark County. On May 4, 1988, an explosion destroyed the Pepcon plant, thereby substantially reducing the Nation's capacity to produce solid rocket fuel.

(c) A commission subsequently appointed by the Governor of Nevada to examine the adequacy of existing policies and regulations pertaining to the manufacture and storage of certain industrial materials has recommended new policies which imply the desirability of relocating a part of Kerr McGee's plant and other industries to a less densely populated part of Clark County, but within reasonable distance of the present work force.

(d) The Department of Defense and the National Aeronautics and Space Administration strongly desire to replace the domestic ammonium perchlorate production capacity lost in the Pepcon accident and to firm up existing production capabilities in order to meet current shortages and long-term requirements.

(e) Kerr-McGee may be unable to maintain its existing operations for the production, storage and blending of ammonium perchlorate because of population densities and constraints on land availability.

(f) Approximately 84 percent of the State of Nevada and over 90 percent of Clark County is owned by the United States; this severely limits the availability of state or privately owned land for the Kerr-McGee plant.

(g) The optimum site for the relocation of the Kerr-McGee plant operations described above, consistent with the State's and Kerr-McGee's desires, is some 3,840 acres of land ("Kerr-McGee Site"), which is part of an area of federal lands, known as the Apex Site", administered by the Bureau of Land Management ("BLM"). Clark County has advised the BLM it would like to purchase the Apex Site for an industrial park under section 203 of the Federal Land Policy and Management Act ("FLPMA"), 90 Stat. 2750, which contains acreage limitations on the amount of land that may be transferred under its provisions without further congressional approval.

(h) Clark County and Kerr-McGee have identified the location of potential utility and transportation rights-of-way needed to support the Kerr-McGee plant.

(i) The rapid growth of Clark County and the restraining impact of Federal land ownership make it appropriate to accommodate Clark County's request for a reasonable block of Federal lands, together with supporting transportation and utility rights-of-way, for use as a heavy industrial park removed from the high population densities in the County.

(j) Clark County and Kerr-McGee have prepared an environmental assessment on the proposed transfer of the Kerr-McGee Site and supporting utility and transportation rights-of-way, entitled "Apex Nevada Land Transfer Proposal and Proposed Kerr-McGee Ammonium Perchlorate Facility", dated March 1989. That document reflects review of and comments on the proposed land transfer by the BLM and interested State agencies and environmental organizations in Nevada. It does not identify any substantial environmental impacts likely to result from the transfer of the site and supporting rights-of-way to the county that cannot be avoided or satisfactorily mitigated with appropriate control measures. Clark County and Kerr-McGee have agreed with BLM to provide those measures necessary to prevent or mitigate adverse environmental impacts identified in the environmental assessment.

(k) The Federal lands comprising the Apex Site are presently classified for retention and multiple use by the applicable BLM land use plan. At the time the current land use plan was developed, disposal of large parcels of land immediately outside the Las Vegas Valley was not identified as a possibility. However, the transfer of the Kerr-McGee Site and rights-of-way to Clark County will serve a critical national need which cannot be achieved prudently or feasibly on non-Federal land in Clark County and which outweighs other existing and potential public uses of the lands which would be served by maintaining them in Federal ownership.

(l) It is essential to accomplish the transfer of the Kerr-McGee Site and the supporting utility and transportation rights-of-way to Clark County as expeditiously as possible. The rest of the county's proposal should proceed in accordance with the provisions of the Federal Land Policy and Management Act and implementing regulations, except as modified by section 103 of this Act. The Secretary should expedite such processing to the maximum extent possible.

(m) The BLM, recognizing that the desert tortoise habitat found in Nevada, and elsewhere, is being significantly affected, especially within the Mojave Desert, by the rapid development associated with industrial growth and by other human activities, has prepared a rangewide plan for desert tortoise habitat management on the public lands. The goal of this plan is to ensure that viable desert tortoise populations will continue to exist through cooperative resource management aimed at protecting the species and its habitat. The BLM's schedule to implement this plan should be accelerated.

SEC. 102. APEX PROJECT LAND TRANSFER.—

(a) Subject to all valid existing rights, the Secretary of the Interior ("Secretary") is directed to convey by a standard form general warranty deed the lands, comprising approximately 3,840 acres, depicted as the "Kerr-McGee Site" on a map entitled "Apex Heavy Industrial Use Zone" dated March 1989, on file with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, to Clark County, solely for sale to Kerr-McGee, in return for payment of the land's appraised fair market value, as determined by the Secretary in accordance with established appraisal practices.

(b) Subject to all valid existing rights, the Secretary is directed to grant the following described utility and transportation rights-of-way to Clark County for subsequent grant by Clark County of easement rights to Kerr-McGee or others designated by Kerr-McGee for the Kerr-McGee Site:

(1) a road and telephone line from State Highway 93, (2) a railroad and utility corridor from the Union Pacific Railroad tracks near Highway I-15, (3) electric transmission lines and (4) a water distribution line from the proposed facilities of Las Vegas Valley Water District, all as generally described and located on the map designated Figure 3.6-1 in the environmental assessment referred to in subsection 101(j) of this Act.

Each right-of-way shall not exceed 200 feet in width and shall be subject to the standard rental payments and other conditions provided for in the Secretary's regulations implementing title V of FLPMA, 43 U.S.C. §§ 1761-71.

(c) Subject to sections (a) and (b) above, the Secretary shall offer to sell the lands described in subsection (a) of this section at the lands' appraised fair market value and shall offer to grant the rights-of-way described in subsection (b) of this section to Clark County within 30 days of the effective date of this Act, but the Secretary's duty to transfer such lands and rights-of-way shall not lapse if they are not offered to the County within the prescribed time. If Clark County fails to purchase such lands within 60 days of receiving the Secretary's offer, the lands shall become subject to the authorization provided for in section 103 of this Act, and the total acreage authorized for disposition shall be increased by the amount of such acreage.

SEC. 103. AUTHORIZATION FOR ADDITIONAL TRANSFERS UNDER SECTION 203 AND TITLE V OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT.—

(a) Notwithstanding the existing BLM land use plan for the Apex Site and the acreage limitations and competitive bidding requirements of section 203 of FLPMA, the Secretary is authorized, subject to the other conditions of that section, to transfer to Clark County up to 17,000 acres of the lands

within the "Apex Site", depicted on the map referred to in Section 102(a), that lie outside the boundaries of the Kerr-McGee Site at the property's appraised fair market value as determined by the Secretary in accordance with established appraisal procedures.

(b) The Secretary is authorized to enter into a land sales agreement with Clark County which provides for the transfer to be made in amounts and at times requested by Clark County over a period not to exceed 10 years. The purchase price for each parcel shall reflect its appraised fair market value at the time of the agreement, adjusted for inflation up to the date of transfer as measured by the annual Consumer Price Index published by the Department of Labor.

(c) Consistent with Title V of FLPMA, the Secretary may grant Clark County such rights-of-way as may be reasonably necessary to support the development of an industrial park on the lands that may be transferred pursuant to this section.

(d) Nothing in this section shall relieve the Secretary from compliance with all laws applicable to the proposed transfer, including, but not limited to, the National Environmental Policy Act; provided that any environmental studies prepared shall be on the total acreage proposed for purchase by Clark County even though portions may be transferred over a period of years as authorized in subsection (b) of this section.

(e) Subject to valid existing rights, the lands authorized for transfer under this section are hereby withdrawn from all forms of entry and appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal leasing laws. This withdrawal shall continue in effect until the land transfers are completed pursuant to this section.

SEC. 104. RESERVATION OF RIGHT-OF-WAY CORRIDORS.—

The transfer of lands pursuant to Sections 102(a) and 103 of this Act shall be subject to the reservation to the United States of the right-of-way corridors depicted on a map entitled "Right-of-Way Corridors Across the Apex Heavy Industrial Use Zone" dated March 1989, on file with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. These corridors shall be administered by the Secretary who may grant rights-of-way over, upon, under and through the corridors consistent with Title V of FLPMA. The Secretary, in the administration of such corridors, shall to the maximum extent feasible locate rights of way so as to impact to the least extent possible, the heavy industrial uses being carried out on the site.

SEC. 105. ENVIRONMENTALLY SENSITIVE LAND ACQUISITION FUND.—

(a) Funds received from the sale of lands under this Act shall be used by the Secretary to acquire environmentally-sensitive lands, or interests in such lands, in the State of Nevada which can be managed as part of an existing federal land management unit. Funds shall be deposited into an account within the Treasury of the United States for the purpose of carrying out land exchanges or purchasing environmentally-sensitive lands in the State to mitigate for the loss of public lands at the Apex Site. In determining the lands to be acquired, the Secretary shall consult with appropriate state and local officials and interested environmental organizations.

(b) Until appropriated, the funds deposited in the Treasury pursuant to this section may not be obligated.

SEC. 106. LEGAL DESCRIPTIONS.—

As soon as practicable after the date of enactment of this Act, the Secretary shall file legal descriptions of the lands to be transferred pursuant to this Act with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Such legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal descriptions. The legal descriptions shall be on file and available for public inspection in the offices of the Director of the BLM.

SEC. 107. SHORT TITLE OF ACT.—

This Act may be cited as the Apex Project, Nevada Land Transfer and Authorization Act of 1989.●

● Mr. BRYAN. Mr. President, I rise in support of the legislation that is offered by my friend and colleague, Senator REID. An identical measure is to be introduced in the House of Representatives today by Nevada's Representatives Mrs. VUCANOVICH and Mr. BILBRAY.

On May 4, 1988, the Las Vegas Valley was rocked by an explosion which destroyed one of the Nation's two producers of ammonium perchlorate, a critical fuel component for both civilian and military solid rocket systems. The force of the explosion was so intense it has been compared to that of a small nuclear weapon. The property damage estimate was in excess of $75 million.

As Nevada's Governor, I commissioned a panel of experts to examine the causes of the disaster and to propose solutions that would protect the citizens of Clark County from similar accidents in the future. The legislation before you was engendered from the commission's recommendations.

The Nation's only remaining producer of ammonium perchlorate, Kerr-McGee, operates a plant about a mile from the location of the May 4, 1988 explosion. It is estimated that over a quarter of a million citizens live within a 10-mile radius of the plant. A similar explosion at the Kerr-McGee plant would be even more destructive.

This legislation is critical to both my State and the Nation. It will allow the Interior Secretary to sell to Clark County 3,800 acres of land at Apex immediately and allow the expeditious relocation, consistent with the recommendations of the task force I commissioned as Governor. The country will also receive authority to acquire additional land over a 10-year period to create a heavy industry development site so that other dangerous but necessary industrial activities can be relocated outside the increasingly urban areas of Clark County.

The legislation is critical to the Nation because ammonium perchlorate is a major component of the fuel used by NASA in the space shuttle program and by the Department of Defense in its numerous rocket and missile programs. The remaining production capacity is insufficient to meet the Nation's need and the planned 40-million-pound-per-year facility proposed will be an essential part of the Nation's strategic resources as soon as production is commenced.

The Apex site is ideal for this purpose since it is close to Las Vegas which has the infrastructure and labor pool necessary for economic operation of the facility, and yet is far enough removed from the population center to protect the citizens. I therefore, urge my colleagues to support prompt enactment of this important legislation.●

By Mr. NICKLES (for himself and Mr. FORD):

S. 625. A bill to eliminate artificial distortions in the natural gas marketplace, to promote competition in the natural gas industry, and for other purposes; to the Committee on Energy and Natural Resources.

NATURAL GAS REGULATORY REFORM ACT

Mr. NICKLES. Mr. President, Senator FORD and I, along with Senators WALLOP, GARN, BREAUX, and BOREN are pleased to introduce the Natural Gas Regulatory Reform Act of 1989. This bill is a compromise among the many complex interests in the natural gas industry. It is a bipartisan, "clean" bill, free from special interest provisions that would hinder or block legislation to repeal natural gas price controls.

Natural gas decontrol will increase the efficiency of the natural gas industry, promote domestic natural gas use and benefit consumers. We believe that the prolonged abundance of natural gas and the increasing influence of free market forces in the natural gas industry create an excellent opportunity for the Congress to end its 35-year legacy of controls on natural gas production.

Natural gas is the key to Oklahoma's successful future in energy and decontrol will stimulate the operation of efficient market mechanisms in the natural gas industry. Decontrol of natural gas is needed to help producers meet tomorrow's demands for natural gas by allowing the proper price signals to reach those who explore for an produce new reserves.

Natural gas is today the only commodity over which the Federal Government still has price controls at its source. Congress has already decontrolled the majority of the domestic natural gas, and the time is ripe to decontrol the remainder.

Today, less than 30 percent of domestic natural gas remains subject to Federal price ceilings. The vast majority of even the remaining controlled gas is effectively decontrolled, because

the wellhead price for that gas is far below the maximum ceiling price. Only 7 percent of domestic natural gas is controlled below $2 per Mcf.

It is, therefore, easy to see why these Federal price ceilings no longer protect the consumer from prevailing market prices. Irrespective of the presence of these price ceilings, the gas prices consumers pay today are determined by the laws of supply and demand, which includes such factors as the cost of imported gas and energy alternatives such as coal and oil.

If price controls were merely useless and without negative impact, there might not be the need to pass legislation to repeal them. Unfortunately, Federal price controls have been causing enormous economic inefficiencies in the natural gas market. The Congress encouraged the production of higher cost gas as opposed to letting industry select the most cost-effective gas resources to produce.

Maintaining natural gas price controls has an administrative cost as well. Pipelines and producers have to maintain complex tracking procedures to follow the many categories of gas and their ceiling prices. And these costs are also passed on to the gas consumer.

Our Nation's energy security has been adversely affected by the gas price ceilings. As we discovered with oil decontrol, industry is better than the Federal Government at efficient allocation of investment capital. The rapid rise in oil imports in the late 1970's and the gasoline shortage that hit U.S. cities in 1979 were wrought by the inefficiencies of the Federal oil price and allocation controls. Fortunately, these controls were finally terminated in 1981.

Removal of Federal controls which interfere with the exploration for and production of natural gas paves the way for a market responsive natural gas industry and is able to quickly and efficiently match supply and demand. As the current excess deliverability begins to decline, there will be an increase in the need for additional gas reserves. Decontrol will allow new supplies of natural gas to be brought forth at prices based on market signals, not Federal controls.

Clearly, the economy, the Nation's energy security, the natural gas industry, and natural gas consumers will all be better off by completing the decontrol of natural gas. We hope that you can join us by cosponsoring this legislation.

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

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

S. 625

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "National Gas Regulatory Reform Act of 1989".

TITLE I—DECONTROL OF NATURAL GAS

SEC. 101. ELIMINATION OF WELLHEAD PRICE CONTROLS.

Title I of the Natural Gas Policy Act of 1978 (15 U.S.C. 3311-3333) is repealed.

SEC. 102. COORDINATION WITH THE NATURAL GAS ACT.

Section 601(a)(1)(A) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3431(a)(1)(A)) is amended to read as follows:

"(A) APPLICATION TO FIRST SALES.—For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to natural gas solely by reason of any first sale of such natural gas.".

SEC. 103. TECHNICAL AND CONFORMING AMENDMENTS.

The Natural Gas Policy Act of 1978 is amended as follows:

(1) The table of contents in section 1(b) (15 U.S.C. 3301 note) is amended by striking the items relating to title I and section 503 and 507.

(2) Section 312(c) (15 U.S.C. 3372(c)) is amended by striking "any natural gas" and all that follows through "(3)" and inserting in lieu thereof "any natural gas".

(3) Section 315(a)(1) (15 U.S.C. 3375(a)(1)) is amended by striking "or (B)".

(4) Section 501(c) (15 U.S.C. 3411(c)) is repealed.

(5) Section 502(d) (15 U.S.C. 3412(d)) is repealed.

(6) Section 503 (15 U.S.C. 3413) is repealed.

(7) Section 504 (15 U.S.C. 3414) is amended—

(A) in subsection (a), by striking "person" and all that follows through "to otherwise" and inserting in lieu thereof "person to";

(B) in paragraph (b)(1), by striking "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph (2)";

(C) by striking paragraph (b)(3); and

(D) in paragraph (b)(4), by striking "paragraph (1), (2) or (3)" and inserting in lieu thereof "paragraph (1) or (2)", and by redesignating paragraph (b)(4) as (b)(3).

(8) Section 506(d) (15 U.S.C. 3416)) is repealed.

(9) Section 507 (15 U.S.C. 3417)) is repealed.

(10) Section 601 (15 U.S.C. 3431) is amended—

(A) by striking subparagraphs (B) and (E) of paragraph (a)(1);

(B) by redesignating subparagraphs (C) and (D) of paragraph (a)(1) as subparagraphs (B) and (C), respectively;

(C) in subparagraph (a)(1)(C) (as redesignated by subparagraph (B) of this paragraph), by striking "subparagraph (A), (B), or (C)" and inserting in lieu thereof "subparagraph (A) or (B)";

(D) by amending subparagraph (b)(1)(A) to read as follows:

"(A) FIRST SALES.—Except as otherwise provided in this subsection, for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid at any first sales of natural gas shall be deemed to be just and reasonable.";

(E) in subparagraph (b)(1)(D), by striking "if such amount does not exceed the applicable maximum lawful price established under title I of this Act"; and

(F) in paragraph (c)(2), by striking "purchase of natural gas" and all that follows through "under section 202)," and inserting in lieu thereof "purchase of natural gas if, under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act.".

(11) Section 602 (15 U.S.C. 3432) is amended by striking "(a) AUTHORITY TO PRESCRIBE" and all that follows through "(b) COMMON CARRIERS.—".

SEC. 104. EFFECTIVE DATE OF TITLE I.

The provisions of Title I become effective January 1, 1993.

TITLE II—TRANSITIONAL PROVISIONS

SEC. 201. DECONTROL OF NATURAL GAS SUBJECT TO A NEWLY EXECUTED CONTRACT, A RENEGOTIATED CONTRACT, A TERMINATED CONTRACT, OR TO A CONTRACT WHICH EXPIRES.

Section 121 of the Natural Gas Policy Act of 1978 (15 U.S.C. 3331) is amended by the deletion of the words "Subject to the reimposition of price controls as provided in section 122, the" and inserting in lieu thereof "The", and by the addition of a new subsection (f) to read as follows:

"(f) SPECIAL RULE.—The provisions of subtitle A shall not apply to—

"(1) gas subject to any contract for the first sale of natural gas that is executed after the date of enactment of this subsection, or

"(2) gas subject to any contract for the first sale of natural gas that is renegotiated after the date of enactment of this subsection if such renegotiated contract expressly provides that the provisions of subtitle A shall not apply, or

"(3) gas subject to any contract for the first sale of natural gas that will expire, lapse, or terminate after the date of enactment of this subsection at such time as that contract expires, lapses, or terminates, or

"(4) gas previously subject to any contract for the first sale of natural gas that has expired, lapsed, or was terminated on or before the date of enactment of this subsection.".

SEC. 202. COORDINATION WITH THE NATURAL GAS ACT.

Section 601(a)(1)(B) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3431(a)(1)(B)) is amended by striking "or" at the end of clause (ii), by replacing the period at the end of clause (iii) with "; or" and by the addition of a new clause (iv) to read as follows:

"(iv) natural gas exempted from the operation of subtitle A of title I pursuant to section 121(f).".

SEC. 203. EFFECTIVE DATE OF TITLE II.

The provisions of Title II are effective on the date of enactment of this Act.

SUMMARY OF THE NATURAL GAS REGULATORY REFORM ACT OF 1989

TITLE I. DECONTROLS ALL NATURAL GAS ON JANUARY 1, 1993

SEC. 101. Repeals on January 1, 1993, all remaining Natural Gas Policy Act of 1978 wellhead price controls on natural gas.

SEC. 102. Repeals Natural Gas Act jurisdiction over deregulated natural gas.

SEC. 103. Technical amendments to conform the NGPA to sections 101 and 102, above.

SEC. 104. Effective date of full decontrol is January 1, 1993.

TITLE II. TRANSITIONAL PROVISIONS

SEC. 201. Between the date of enactment and January 1, 1993, certain volumes of natural gas will be decontrolled. Gas will be decontrolled if the contract it is subject to is:

Entered into after date of enactment;

Renegotiated by the parties after date of enactment;

Terminated or expires after the date of enactment; or

Already expired or terminated before date of enactment but not subject to a new contract between the same parties before the date of enactment.

Sec. 202. Repeals Natural Gas Act jurisdiction with respect to gas decontrolled during the transition period.

Mr. FORD. Mr. President, today, I am sponsoring Senator NICKLES' bill for the phased decontrol of natural gas prices.

Natural gas is the only commodity that the Federal Government still price controls, at least in part, at its source. Pursuant to the complex scheme of partial wellhead price decontrol established by the Natural Gas Policy Act of 1978 [NGPA], a majority of the Nation's gas supply is already decontrolled as to price. Despite fears to the contrary, including my own, the average price paid at the wellhead has dropped following partial decontrol in 1985 and 1987.

The gas that remains controlled as to price is effectively decontrolled in the marketplace, since most of that gas is subject to maximum lawful prices in excess of current market prices. That small volume of the Nation's gas supply which remains subject to maximum lawful prices below spot market levels may be renegotiated up to market prices pursuant to Federal Energy Regulatory Commission [FERC] Order No. 451.

Thus, elimination of the remaining Federal price controls for natural gas will not result in higher prices for consumers. Gas prices are already being determined by the economics of supply and demand rather than by the existence of price ceilings. Elimination of the remaining price controls will reduce the administrative cost of maintaining wellhead price controls to producers, pipelines, the FERC and, ultimately, the consumer. Elimination of Federal price controls at a date certain will also halt the unnecessary automatic escalation of prices tied to Federal price controls, some of which rise at an annual rate which exceeds inflation by 4 percent.

There are, however, certain pipeline systems which purchase more low cost price controlled gas than other systems. Immediate complete decontrol might result in inequities causing unnecessary price increases to consumers served by those pipelines. Delaying final removal of wellhead price controls until January 1, 1993, should prevent this result by permitting these reserves to be depleted under the terms of their existing contracts, unless the parties mutually agree to renegotiate, and preserve the benefits of those contracts for consumers.

The transition period in the bill will also permit the gradual and orderly transition to complete price decontrol. Decontrol of gas subject to new contracts, renegotiated contracts or expired contracts will permit a smooth adjustment to complete decontrol without disturbing the sanctity of contracts.

All segments of the natural gas industry—producers, pipelines and local distribution companies—agree today that it is in the long term best interest of the Nation's energy supply that wellhead price controls should be eliminated; the only major issue in dispute is when. This bill strikes a reasonable compromise between those who advocate immediate decontrol and those who prefer decontrol in 5 years or later. The transition features of this bill will permit an orderly transition to the benefits of decontrol, while protecting consumers from any adverse consequences that might result from a more hasty movement to decontrol.

By Mr. HATCH (for himself and Mr. DECONCINI, Mr. BRADLEY, Ms. MIKULSKI, and Mr. JEFFORDS):

S. 626. A bill to amend the Lanham Trademark Act regarding gray market goods; to the Committee on the Judiciary.

TRADEMARK PROTECTION ACT OF 1989

● Mr. HATCH. Mr. President, last Congress I introduced S. 2903, the Trademark Protection Act of 1988, to protect trademark owners against gray market goods. That bill was introduced in response to what many consider to be the incorrect interpretation of the law by the U.S. Customs Service, which through regulation has permitted the importation and sale of gray market goods. This situation has resulted in the serious undermining of our intellectual property laws and the infringement of the rights of American trademark owners.

Also during the 100th Congress, the U.S. Supreme Court addressed this issue, in the case of K Mart Corp. versus Cartier, Inc. In that case, the Supreme Court decided to restrict some "gray market" importation, but permit other such imports to continue. Unfortunately, the case was decided on narrow technical grounds. The Court did not address the intellectual property or consumer issues surrounding the gray market and left the gray market situation just as unclear as it had been before its decision.

This problem now involves billions of dollars per year and results not only in serious harm to the American consumer and laborer but also to the American intellectual property system. Clarification of the trademark laws, through legislation, is necessary. We must resolve this situation with respect to both trademark owners and consumers.

In simple terms, resolution for the trademark owners means greater trademark protection, and for the consumers means greater disclosure. Therefore, my colleagues and I are introducing the Trademark Protection Act of 1989, to address the problems not answered by the Supreme Court and to finally resolve these important issues.

In addressing this issue, it is important that all of my colleagues have a clear understanding of what is meant by the gray market and the dangers that it poses to our intellectual property system.

TRADEMARK LAW

The use of trademarks has long been an important part of our system of intellectual property. They serve several useful purposes that are vital to free market enterprise. In his testimony before the Subcommittee on Patents, Copyrights and Trademarks, Guy Blynn, chairman and president of the U.S. Trademark Association, stated that a trademark's purpose is, among other things, to:

(a) Foster competition by enabling particular business entities to identify their goods or services and to distinguish them from those sold by others; (b) facilitate distribution by indicating that particular products or services emanate from a reliable though often anonymous source; (c) aid consumers in the selection process by denoting a level of quality relating to particular goods or services; (d) symbolize the reputation and good will of the owner, thereby motivating consumers to purchase or avoid certain trademarked products or services; and (e) protect the public from confusion or deception by enabling purchasers to identify and obtain desired goods or services. (Statement before Senate Subcommittee on Patents, Copyrights and Trademarks. February 17, 1987).

In 1946, after nearly 5 years of work, Congress passed the Lanham Trademark Act, to organize and simplify our trademark laws. The purpose of the act, as stated in the Senate report, was,

To place all matters relating to trademarks in one statute and to eliminate judicial obscurity, to simplify registration and to make it stronger and more liberal, to dispense with mere technical prohibitions and arbitrary provisions, [and] to make procedure simple.

For over 40 years, the Lanham Act has been surprisingly resilient to changes in the United States and world business practices. The growth and interdependence of the world economy since World War II has resulted in part from the tremendous growth of international trade. While this growth has produced many benefits, it has also produced some unfavorable side effects. One such side effect is growing infringement of the rights of American trademark owners.

In response to this growing problem, the measure that we are introducting today would eliminate the frustration and uncertainty common to this country's trademark owners by addressing

the problems surrounding gray market products.

DEFINITION OF GRAY MARKET GOODS

In an opinion in which it was asked to consider the issue, the U.S. Court of Appeals for the District of Columbia defined gray market goods as follows:

These are goods manufactured abroad bearing legitimate foreign trademarks that are identical to American trademarks. This situation typically arises when a foreign producer creates an American subsidiary that then registers the American trademark. Both the foreign producer and its American subsidiary often wish to be exclusively controlled by the American subsidiary. If, however, the price at which the American subsidiary sells the goods exceeds the price at which the goods are sold abroad, other importers have an obvious incentive to purchase the goods abroad (typically from a third-party who has legitimately purchased directly from the foreign producer) and resell them in the United States—perhaps without certain associated services or warranties—at a price below that charged by the American subsidiary. The same result can occur, however, if the American trademark owner is the parent and the goods are manufactured abroad by a foreign subsidiary. *Copiat v. United States,* 790 F.2d 903, 904 (D.C. Cir. 1986).

THE GRAY MARKET PROBLEM

The gray market problem arises with the importation into the United States of goods bearing a trademark, familiar to the American consumer, but which are made for sale abroad and are brought into this country without the authorization of the U.S. trademark owner. Because gray market goods are not produced for sale in the United States, they often fail to meet the same high quality standards imposed upon merchandise manufactured for sale here. Moreover, gray market goods often are not subject to the same care in shipment and do not carry the usual warranties entitling the consumer to service at an authorized service center. In short, gray market goods present serious problems for American consumers. As the National Consumers' League, one of America's oldest and most respected consumer organizations, has stated.

Gray market products often differ from the American trademarked products manufactured for sale in this country. Gray market imported foods, pharmaceuticals, and cosmetics can pose serious safety hazards. . . .

Gray market products do not carry U.S. manufacturers' or authorized distributors' warranties and frequently do not have English language instructions. Gray market manufacturers frequently conceal this fact from consumers or mislead them by offering a warranty which appears to be the manufacturer's but is not. . . .

Gray market goods are not necessarily cheaper. Gray marketeers argue that discount houses and discounted sales will disappear if the gray market is restricted. Frequently, gray market and domestic health care products are found together in a store and are offered at the same price.

The American consumer is not the only segment of our society that is harmed by the gray market. At a time when we are concerned about a record trade deficit and a sufficiency of meaningful manufacturing jobs for American workers, the gray market substitutes imports for United States goods and exports jobs. As a consequence, the gray market phenomenon has been strongly opposed by the great preponderance, if not all, of organized labor.

This is not to say that all the legitimate goods that gray market sales displace are United States products. The point is not that gray market goods are bad because they are imports. Rather, the point is that gray market goods are unfair competition in violation of the spirit, if not the letter, of our intellectual property laws.

This brings me to my final and perhaps most important point. Gray market goods undermine our intellectual property system. Specifically with respect to trademarks, which are most affected, gray market imports contravene the two basic purposes of the law. First, trademarks serve to prevent consumer deception and confusion. However, gray market goods are inherently confusing. Most often, as noted above, gray market goods are different products from their legitimate counterparts. Even where gray market and authorized goods are essentially identical physically, gray market goods often lack the quality and warranties that the consumer expects to receive in conjunction with the trademarked item. Again, as the National Consumers League has stated:

Consumers assume that an American trademark represents strict and uniform standards for the production of trademarked goods. The current gray market confuses consumers about the reliability of trademarks. There is also clear and mounting evidence that the importation of gray market goods facilitates the manufacture and sale of counterfeit goods in the United States.

The gray market undercuts another important pillar of our trademark laws by depriving the U.S. trademark owner of a fair return on his investment. That is, the gray marketeer is able to sell the gray market good only because of the substantial investment made by the trademark owner that creates consumer acceptance of the brand. Although the gray marketeer profits, often handsomely, from the gray market sale, he does not contribute to help the U.S. trademark owner recoup on his investment.

The gray marketeer misleads the consumer by not telling the consumer that he or she is buying a gray market good rather than an authorized good. And when there is resulting consumer dissatisfaction, this dissatisfaction causes substantial harm to the reputation and goodwill associated with the trademark of the U.S. registered trademark owner, thereby diminishing and infringing the trademark in question.

This free ride that the gray marketeer takes on the back of the U.S. trademark owner is not mitigated by the fact that the trademarked good was initially purchased from the foreign manufacturer even if that foreign entity is related to the U.S. trademark owner. Our trademark laws are territorial in nature. Our laws recognize that the goodwill created in a trademark in one country through the time, effort and money spent in that country may be very different from the goodwill created in another country.

In addition, this recognition by our laws of separate goodwills in the same mark makes sense because the same symbols or words that make up a trademark not only have a separate legal basis but also a different factual significance in each country where the local trademark owner has created independent goodwill in the mark. Put simply, our laws recognize that in a complex world with different legal systems governing goods manufactured and sold in different countries, a brand "X" widget authorized for sale in the United States may be materially different from a brand "X" widget intended for sale in another country, and thus it is necessary to protect U.S. trademarks and U.S. trademark owners from their foreign counterparts.

As a consequence, our laws, most importantly section 526 of the Tariff Act, do in fact contain provisions to protect U.S. trademark owners against the importation and sale in the United States of gray market goods. These laws provide for both a private right of action and Government enforcement. For years these laws were fully enforced by the U.S. Customs Service. Unfortunately, as a result of misplaced and outmoded views about the antitrust laws, the U.S. Customs Service has in recent years failed to enforce these laws as they are written.

Unfortunately too, the Supreme Court decision did not go the whole way in requiring Customs to enforce section 526 to stop all gray market imports. As a consequence, Congress should and must act to effect this result. For this reason, my colleagues and I are introducing this bill to require customs agents to reject gray market goods at our borders.

Finally, it bears emphasis that while I am convinced that gray market goods are bad for America, and that gray market importation should be stopped, the gray market controversy is fundamentally an intellectual property dispute and not an attempt to embargo merchandise. The law does not, and should not, prevent any person from importing goods that otherwise meet our health and safety standards just because the goods were manufactured abroad and may be quite similar, though not identical, to goods sold in

the United States by a U.S. trademark owner, provided that these imports do not bear the U.S. trademark owner's trademark. That is, our intellectual property laws do not prevent a person from importing into the United States noncounterfeit goods even when they bear a trademark identical to a U.S. trademark, provided that before importation the trademark is removed or obliterated. And, it should be further emphasized that this right is not illusory. Many companies, for example, Sears & Roebuck, sell goods made by a U.S. trademark owner or an affiliate of a U.S. trademark owner under their own brand name or as a generic.

Thus in the end, enforcement of the laws to prevent gray market imports will markedly reduce consumer deception, enhance United States employment, and ensure that entrepreneurs earn a sufficient return on their investment so as to continue to bring the maximum number of products and services to the U.S. market. This fully reflects what has been and should continue to be the essence of our intellectual property system.

PROPOSED LEGISLATION

The legislation that my colleagues and I are introducing today meets precisely that goal. Under its provisions, the Lanham Trademark Act is amended to provide that no person may import into or sell within the United States any good that is manufactured outside the United States if that good bears a trademark that is identical to a trademark owned and properly registered by a person, corporation, or other entity, unless the U.S. trademark owner consents to such sale or importation.

This prohibition would apply regardless of whether the foreign manufacturer of the goods or foreign trademark owner whose trademark appears on the goods is related in any way to the owner of the U.S. trademark. The prohibition would also apply regardless of whether the owner of the U.S. trademark owns or has registered the trademark abroad. And, finally, the prohibition would apply regardless of whether the owner of the U.S. trademark has authorized the use of the trademark abroad.

This legislation would empower the Secretary of the Treasury to exclude gray market goods if the U.S. trademark owner has registered that trademark with the Patent and Trademark Office and then files a copy of the certificate of registration with the Secretary of the Treasury. The U.S. trademark owner would also be allowed to bring an action against an importer or seller of gray market goods to enjoin the importation or sale and to obtain monetary damages and lost profits because of any such importation or sale.

By enacting this legislation, we will reduce unjust inroads upon trademark owners' rights, such as disincentives to investments resulting from free riding gray market goods; consumer concerns based on unserviceable and inferior products; and litigation expenses incurred by trademark owners to protect their trademarks against gray market goods.

This simple piece of legislation to the Lanham Trademark Act is one important way we can help our beleaguered American industries to once again perform on the cutting edge of competition.

Mr. President, I ask unanimous consent that a copy of the bill appear in the RECORD immediately following my remarks.

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

S. 626.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Trademark Protection Act of 1989".

(b) The Congress finds that—

(1) the importation and/or sale of gray market goods (which are, for purposes of this Act, goods manufactured abroad to which a foreign trademark is lawfully applied by which are imported into the United States without the authorization of the United States owner of the identical or similar trademark), fundamentally violate United States trademark law;

(2) gray market goods cause confusion to consumers that trademark laws are designed to avoid because such goods, intended for sale abroad, frequently differ in their physical characteristics from goods intended for sale in the United States, such as—

(A) gray market cosmetics may contain ingredients that are either banned in the United States or are otherwise considered less desirable from the perspective of a United States consumer;

(B) gray market vehicles may not include safety devices common in vehicles manufactured for sale in the United States market;

(C) gray market batteries may have shorter lives when sold to a United States consumer simply because of delays and lack of care in transshipment; and

(D) gray market goods are frequently not subject to the same quality control, warranties provided in the United States and other features that consumers may expect from a particular trademarked good;

(3) whether or not consumers are confused by gray market goods, the importation or sale of such goods deprives United States trademark owners of their investment in their trademark;

(4) trademarks foster vigorous competition and increased research and development and such interbrand competition ultimately benefits consumers with lower prices and increased quality and selection;

(5) the loss of goodwill occasioned by gray market goods is in violation of fundamental tenants of our trademark laws; and

(6) the importation and sale of gray market goods in the United States must be prevented to preserve the integrity of our trademark system.

(c) The Act of July 5, 1946, the Lanham Trademark Act (15 U.S.C. 1051 et seq.), is amended by adding at the end thereof the following new section:

"SEC. 52. (a) No person may import into or sell within the United States any good that is manufactured outside the United States if such good, or the label, sign, print, package, wrapper, or receptacle, bears a trademark that is identical to a trademark—

"(1) owned by a person that is a citizen of the United States or by a corporation or other entity created within the United States under the laws thereof or the laws of one of the States, the District of Columbia, one of the territories, or the Commonwealth of Puerto Rico, without regard to the citizenship of its incorporators, shareholders, officers, or directors, and

"(2) registered by such person with the Patent and Trademark Office under the provisions of this Act,

unless such person consents to such importation or sale.

"(b) The prohibitions of subsection (a) apply regardless—

"(1) of whether the foreign manufacturer of the goods or foreign trademark owner whose trademark appears on the goods is related in any way, by corporate affiliation or otherwise, to the owner of the United States trademark;

"(2) of whether the owner of the United States trademark owns or has registered the trademark abroad; or

"(3) of whether the owner of the United States trademark has authorized the use of the trademark abroad.

"(c) The Secretary of the Treasury shall exclude from entry into the United States any good the importation of which is in violation of subsection (a), provided that the person who owns the trademark in question in the United States and who has registered that trademark with the Patent and Trademark Office files a copy of the certificate of registration for such trademark with the Secretary of the Treasury.

"(d) Any owner of a United States trademark may bring an action against the importer or seller of goods that bear identical trademarks in violation of section (a) in any Federal district court to enjoin such importation or sale and to obtain money damages and loss profits for the wrongful use of a trademark by reason of such importation or sale, under the provisions of this Act.

"(e) For purposes of this section, the term—

"(1) 'person' means any individual or entity including but not limited to any corporation or partnership; and

"(2) 'United States' means the territory comprising the 50 States, the District of Columbia, and Puerto Rico.

"(f) The exceptions to the prohibitions of section 526(a) of the Tariff Act of 1930, set forth in section 526(d) of that Act, apply to the prohibitions set forth herein.

"(g) The Secretary may promulgate regulations to implement subsection (b) but such regulations must enforce subsection (b) fully for any owner of a trademark in the United States regardless of whether—

"(1) such trademark owner or its subsidiary or other affiliate manufactures or sells goods bearing an identical or similar trademark abroad;

"(2) such trademark owner owns and/or has registered such trademark abroad; or

"(3) such trademark owner has authorized the use of such trademark abroad.".●

By Mr. BOREN:

S. 627. A bill to provide that congressional newsletters shall not be franked mail, to restrict certain congressional

mass mailings, to require disclosure of certain costs of congressional mailings, and for other purposes; to the Committee on Rules and Administration.

CONGRESSIONAL NEWSLETTERS

● Mr. BOREN. Mr. President, today I send to the desk legislation to curtail the abusive spending of taxpayer dollars for excessive newsletters and mass mailings produced and mailed by congressional offices.

There are several reasons why this legislation is needed. First, competition in congressional elections is stifled when incumbents make excessive use of free printing, production, and postage of newsletters. Second, while citizens have a legitimate right to know about our actions in Washington, they also have a right to know how much we spend on that communication. And finally, we should not allow the growth in mailing costs for what essentially has become campaign propaganda to be paid for by the taxpayer.

Mr. President, there are three basic provisions of this legislation.

First, it disallows the use of the "frank" to send out newsletters to a Member's constituents;

Second, it changes the 60-day prohibition of "mass mailings" to "1 year before an election"; and

Third, it requires that each Member of the House and Senate submit to the Senate Rules and Administration Committee and the House Commission on Congressional Mailing Standards, a disclosure statement which details that office's expenditures for mass mailings for the previous 6 months, and do so on a semiannual basis.

Mr. President, several years ago, I stopped sending newsletters to my constituents. While I sent them previously as a way to elicit their views and ideas as well as report on legislation of interest to Oklahoma, I concluded after reviewing the results that it was not a cost-effective use of taxpayer funds. I, as many of my colleagues do, try to keep in touch with the views of our citizens with direct interaction in our home States as well as through the ample opportunity we have with an interested and aggressive news media. Many of these costs are already paid for through our normal office expenses each year. To continue the additional, costly allowance for newsletters is at least, a questionable use of funds. While I agree that contact with our constituents is imperative, the television age into which the Senate has now entered and our ability to communicate through public meetings and forums and through a free, open and unbiased media, is adequate.

Further, as an advocate for strong, comprehensive campaign finance reform, I could not help but be moved by the comments of the opponents of our bill who last year incorrectly criticized it as "incumbency protection." I would like to suggest with this bill, that we can help balance the scales between challengers and incumbents, and save taxpayer dollars at the same time by restricting mass mailings and banning newsletters. It is not hard to see that more is spent for such expenses in even numbered election years than in odd numbered years. As campaigns approach, newsletters and mass mailings proliferate. In 1987, the cost of such mailings were $137 million and estimates are much more for 1988. A competent challenger to a sitting incumbent is disadvantaged even before he or she decides to run for office, because of this perk of office.

Mr. President, I ask my colleagues to seriously review this bill. It is all too rare that the Congress has an opportunity to vote against its own self interest. The Senate did so just last month overwhelmingly on the pay raise issue, and was saluted for its restraint. We can do one better by restricting this abused privilege. I ask consent that the text of the bill be printed at this point in the RECORD.

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

S. 627

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

CONGRESSIONAL NEWSLETTERS NOT FRANKABLE MAIL

SECTION 1. (a) Section 3210(a) of title 39, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking out subparagraph (B); and

(B) by redesignating subparagraphs (C) through (J) as subparagraphs (B) through (I), respectively;

(2) in paragraph (5)—

(A) in subparagraph (D)—

(i) by redesignating such subparagraph as subparagraph (E); and

(ii) in the second sentence of such subparagraph by striking out "clause (D), the term 'mass mailing' shall mean newsletters and similar mailings" and inserting in lieu thereof "subparagraph, the term 'mass mailing' shall mean mailing";

(B) in subparagraph (C)—

(i) by striking out "or" at the end thereof; and

(ii) by inserting after such subparagraph the following new subparagraph:

"(D) the usual and customary congressional newsletter or press release which may deal with such matters as the impact of laws and decisions on State and local governments and individual citizens, reports on public and official actions taken by Members of Congress, and discussions of proposed or pending legislation or governmental actions and the positions of the Members of Congress on, and arguments for or against, such matters; or";

(3) in paragraph (6)(E) in the first sentence by striking out "newsletters and similar"; and

(4) by inserting at the end thereof the following new paragraph:

"(7) The Senate Committee on Rules and Administration and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses such rules and regulations and shall take such other action, as the Commission or Committee considers necessary and proper for the Members and Members-elect to conform to the provisions of paragraph (5)(D) and applicable rules and regulations. Such rules and regulations shall include, but not be limited to, provisions defining what matter constitutes a newsletter.".

(b) Rule XL of the Standing Rules of the Senate is amended—

(1) in paragraph 1. by striking out "section 3210(a)(5)(D)" and inserting in lieu thereof "section 3210(a)(5)(E)"; and

(2) in paragraph 3. (a) by striking out "section 3210(a)(5)(D)" and inserting in lieu thereof "section 3210(a)(5)(E)".

PROHIBITION OF CONGRESSIONAL MASS MAILINGS WITHIN ONE YEAR BEFORE AN ELECTION

SEC. 2. Section 3210(a)(6) of title 39, United States Code, is further amended—

(1) in subparagraph (A)(i) by striking out "fewer than 60 days" and inserting in lieu thereof "within one year"; and

(2) in subparagraph (A)(ii)(II) by striking out "fewer than 60 days" and inserting in lieu thereof "within one year"; and

(3) in subparagraph (C) by striking out "fewer than 60 days" and inserting in lieu thereof "within one year".

DETAILED AND SEPARATE DISCLOSURE OF FRANKED MAILING COSTS

SEC. 3. Section 3210 of title 39, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) Each Member of Congress, Member-elect to Congress, and other official to whom the provisions of this section apply shall on the first January 1 following the date of the enactment of this subsection and every six months thereafter submit to the Senate Committee on Rules and Administration, or the House Commission on Congressional Mailing Standards, as appropriate, a disclosure statement containing a summary detailing all costs for every mass mailing conducted by such Member of Congress, Member-elect of Congress, or official during the preceding six month period.

"(2) For purposes of paragraph (1), the term 'mass mailing' shall have the same meaning as such term is defined under subsection (a)(5)(E).".●

By Mr. RIEGLE:

S. 628. A bill to amend title 3, United States Code, and the Uniform Time Act of 1966 to establish a single poll closing time in the continental United States for Presidential general elections; to the Committee on Rules and Administration.

UNIFORM POLL CLOSING TIME

● Mr. RIEGLE. Mr. President, I rise today to introduce legislation which, if enacted, would establish a single poll closing time in the continental United States for Presidential elections. This legislation is identical to which has been introduced in the House of Representatives by Congressman SWIFT.

Mr. President, I believe the chilling effect of early projections on voter turnout and voter participation in Presidential elections has been well documented in hearings by both Houses of Congress, and I have sponsored legislation both in the 99th Congress (S. 2080) and in the 100th Congress (S. 182) to establish a uniform

poll closing time to minimize the effect of such projections.

The legislation I am introducing today, which is identical to legislation I sponsored in the 100th Congress, would establish a uniform poll closing time in the continental United States of 9 p.m. eastern standard time [EST]. In addition, daylight saving time [DST] would be extended for 2 weeks in the Pacific time zone [PTZ] allowing polls located in that region of the country to close at 7 p.m.

Earlier this year, I joined with Senator ADAMS and others in sponsoring S. 136 which would also establish a uniform poll closing time for Presidential elections. Unlike the bill I am introducing today, however, polls would close at 10 p.m. e.s.t. and there would be no extensions of daylight saving time.

I believe that introduction of both of these bills underscores the importance of this issue in the Senate and to the American public and demonstrates the need for the House and the Senate to act quickly to resolve the current situation. It is my hope that the Senate will act in the coming months to address this issue, and I urge my colleagues to support uniform poll closing legislation.

Mr. President. I ask unanimous consent that the text of the bill be printed in the RECORD directly following my remarks.

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

S. 628

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

SECTION 1. SINGLE POLL CLOSING TIME FOR PRESIDENTIAL GENERAL ELECTIONS IN THE CONTINENTAL UNITED STATES.

Chapter 1 of title 3, United States Code, is amended by—

(1) redesignating section 21 as section 22; and

(2) inserting after section 20 the following new section:

"§ 21. Single poll closing time in continental United States

"(a) Each polling place in the continental United States shall close, with respect to a Presidential general election, at 9:00 o'clock post meridiem, eastern standard time. Any person who, as determined under the law of the State involved, arrives at a polling place after that time shall not be permitted to vote in the Presidential general election.

"(b) Notwithstanding subsection (a), a polling place shall close, with respect to a Presidential general election, as provided by the law of the State involved, in the case of a polling place at which each person who is eligible to vote has voted.

"(c) As used in this section, the term—

"(1) 'continental United States' means the States of the United States (other than Alaska and Hawaii) and the District of Columbia;

"(2) 'Presidential general election' means the election for electors of President and Vice President; and

"(3) 'State' means a State of the United States and the District of Columbia.".

SEC. 2. EXTENDED DAYLIGHT SAVING TIME IN PACIFIC TIME ZONE IN PRESIDENTIAL ELECTION YEARS.

Section 3 of the Uniform Time Act of 1966 (15 U.S.C. 260a) is amended by adding at the end the following new subsection:

"(d)(1) Notwithstanding subsection (a) of this section, in each year in which a Presidential general election takes place, the period of time during which the standard time shall be advanced with respect to the Pacific time zone shall end at 2:00 o'clock ante meridiem on the first Sunday after the date of that election.

"(2) As used in this subsection, the term 'Presidential general election' means the election for electors of President and Vice President.".

SEC. 3. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 3, UNITED STATES CODE.—The table of sections for chapter 1 of title 3, United States Code, is amended—

(1) by striking out the item relating to section 21 and inserting in lieu thereof the following:

"22. Definitions."; and

(2) by inserting after the item relating to section 20 the following new item:

"21. Single poll closing time in continental United States.".

(b) AMENDMENTS TO UNIFORM TIME ACT OF 1966.—Section 3(a) of the Uniform Time Act of 1966 (15 U.S.C. 260a(a)) is amended by striking out "2 o'clock antemeridian" each place it appears and inserting in lieu thereof "2:00 o'clock ante meridiem".◆

By Mr. CRANSTON (for himself, Mr. HOLLINGS, Mr. GORE, and Mr. WILSON):

S. 629. A bill to amend the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701); to the Committee on Commerce, Science, and Transportation.

EARTHQUAKE HAZARDS REDUCTION ACT OF 1977 AMENDMENTS ACT

Mr. CRANSTON. Mr. President, on behalf of myself and my distinguished colleagues Senator HOLLINGS, Senator GORE, and Senator WILSON, I today introduce for appropriate reference a bill to make structural and management changes in the National Earthquake Hazards Reduction Program.

Twelve years ago the Congress enacted the Earthquake Hazards Reduction Act of 1977—Pub. L. 95-124—which I authored. The NEHRP was designed "to reduce the risks of life and property from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program." I have maintained a keen and steady interest in the progress of the NEHRP since enactment. My own observations and the findings of numerous experts in the field suggest that it is time for a change in both the direction and conduct of this critical Federal Earthquake Program.

When we initiated this program over a decade ago, our science, engineering and policy knowledge of earthquakes and their impact was limited. Limited, too, was the capability of Government and business to act on what we knew. Few individuals were capable of effectively advancing the field of earthquake research and application. So our first goal under the program was to develop knowledge about earthquakes together with a clear capability to use that knowledge. We also needed to bring both knowledge and capability to a point that it accurately reflected the national extent of the earthquake threat and the pressing need to mitigate the impacts of the earthquakes we knew would occur in the future.

Clearly, the first decade of the NEHRP has succeeded in its dual mission. We have created both the expertise and the capability needed to make major reductions in earthquake consequences, and earthquakes are now viewed as a national, not regional, threat. Whereas earthquake preparedness was once focused only in California and Alaska, we can now point to well-mounted preparedness efforts in the Northwest, the Intermountain region, the Midwest, the Southeast, and the Northeast. Whereas engineering and scientific research was previously concentrated in Western universities, with a few expert individuals in other regions, we now have major efforts and centers of expertise in the East. Whereas the public perception in 1977 was of earthquakes as a Western problem, citizens are much more aware of their vulnerability in other areas of the country and they are beginning to seek protection.

These are major shifts in attitude, perception, and expertise, and they are directly attributable to the success of the NEHRP. Now, through what we've learned since 1977, we have what we need to initiate more aggressive, effective actions to prepare for, mitigate, and recover from earthquakes. It is time, based upon the program's success in its original mission, to reorient the NEHRP away from the basic research and capacity-building effort of the first decade and toward a goal-oriented, centrally-managed program of earthquake hazards reduction.

Redirecting the Earthquake Program in an issue of some urgency because the threat of earthquakes in the United States is more clear to us now than ever before. In 1988 the U.S. Geological Survey, in a report prepared by the Working Group of the National Earthquake Prediction Evaluation Council, established a 60-percent probability that a 7.5 or greater earthquake will occur on the San Andreas Fault in southern California in the next 30 years and a 50-percent probability that a magnitude 7.0 earthquake will occur on the San Andreas or Hayward Faults in the San Francisco Bay region in the same period of time. In the Central United States, a recent study by Memphis State University estimates a 40- to 63-percent probabilty of a magnitude 6.0 earthquake occurring on the New Madrid Fault before

the turn of the century—less than 11 years away.

Wherever and whenever these earthquakes occur, the effect on human life and the economy of the Nation will be staggering. The Federal Emergency Management Agency estimates that if a quake measuring 7.6 percent on the Richter scale were to strike the New Madrid Seismic Zone—the site of the biggest quake in U.S. history, in 1811—by day, some 2,523 people would die from structural failure in Memphis. The injured would outnumber the available hospital beds; 460,000 people in the six-city Memphis region would be homeless. Restoration of buildings and facilities would add up to a staggering $51 billion.

A major quake on California's San Andreas Fault, totaling $50 billion or more in damages, could trigger some $62 billion in total insurance claims, wiping out half of the insurance industry's capital, causing insurers to dump stocks and bonds onto the market all at once and gravely depressing the market. If major computer and telecommunications center are hit—as they would be, if either California or New York were hit—the U.S. economic communications labyrinth would be seriously disrupted. Data-transfer failures in one part of the country would rapidly affect banks everywhere. Loss of real estate equity or lack of insurance would spur loan defaults and bankruptcies. This would occur on top of large-scale loss of life, gas pipeline failure, electrical sewer and water line breakage, and release of stored toxic substances. Rail transportation and highways would be seriously disrupted, as would commercial telephone service. Fires would be numerous, dams could break, structural failure would be widespread, and injuries would likely overwhelm medical capabilities.

A 1980 report by the National Security Council—which also concluded that major earthquakes in both the Western and Eastern United States were inevitable—said that local officials were not prepared for an event of a magnitude that could kill thousands of people and cause billions of dollars in property damage. The report concluded that coordinated plans for dealing with major earthquakes could save thousands of lives and prevent large-scale economic losses. Yet to date there has been no serious Federal effort to plan to cope with such a catastrophe in the Eastern United States. And in the Western United States, the effort lags in translating research findings into application.

Simply put, we have lots of knowledge about what to do, but we come up short on application.

NEED FOR REDIRECTING THE NEHRP

Developing a prediction capability was a major intent of the 1977 act, but we have learned in 10 years that the prediction of earthquakes is more difficult than had been expected. We have been more successful in identifying regional hazards, or the degree of activity of individual faults, than we had expected. There has been completed, but not yet implemented, an Executive order for Federal building regulation incorporating current seismic building regulation approaches. We have participated in a number of successful international activities that have benefited the U.S. program. These and other advancements have stemmed from the original basic research and capacity-building mandate and orientation of the NEHRP. The operational strategy of the 1977 act was to stimulate efforts by several Federal agencies to work with their natural constituencies. It was an approach that rested on coordination rather than single agency direction, and it was an approach that was totally appropriate at the time.

But the organizational structure set forth in 1977 is no longer suited for today's needs. In fact, a key problem has emerged in the conduct of the NEHRP because of the organizational structure that now exists. Over the years, each of the five agencies that share NEHRP responsibilities has pursued the program within the context of the agency's dominant assignment. That is, the National Science Foundation [NSF] emphasizes basic research values; the Federal Emergency Management Agency [FEMA] bases its actions within the context of civil defense; The U.S. Geological Survey approaches the NEHRP as an inhouse science development process; the National Institute for Standards and Technology; although minimally involved, looks for staff support for people not otherwise supported. This strategy worked well when there was so much to be done that a focused, tightly managed program would not have worked, but times have changed.

As just partial evidence of this, in 1987 an expert review committee appointed by FEMA—the lead agency for the NEHRP—reviewed the program and made unanimous recommendations both as to program directions and the best structure for accomplishing the mission of the NEHRP. The report raised serious questions about the performance of FEMA as lead agency and, in fact, about the ability of any of the four agencies to provide effective leadership under the current program structure.

Over the years of the NEHRP the programmatic performance by FEMA has not been at issue, nor is it at issue here. The criticisms put forth by the FEMA Commission report and other critiques of the NEHRP do not center as much on the performances of any single agency as they do from an overall review of the program itself.

The role of FEMA is to coordinate the NEHRP, but the leadership capability of the agency has been severely hampered not only by insufficient resources, but by a clear inability to effect the programs of individual agencies—whether expressed as program priorities, budget requests, the allocation of agency resources among competing needs, or details of program management. As a result, the NEHRP stands today as a series of independent programs linked in name only. In fact, most of the NEHRP agencies request program appropriations under their organic legislation, not the NEHRP, and there is little evidence from the record that NEHRP coordination has lead any of the agencies to alter their budget requests in a coordinated manner.

Coordination is not now an effective means to lead the NEHRP. While an advantageous concept in the early years, it is now becoming destructive as the agencies forget why the program was developed and start to direct the NEHRP to their organic interests rather than those of the act.

The Expert Review Commission also concluded that "every part of the NEHRP is now funded at a level well below that required to achieve the primary goal of reducing losses of life and property on a time scale acceptable to society." But in an uncertain budget future, it will likely be even more difficult to persuade either the administration or the Congress to fund adequately a program that lacks a demonstrated coherence, particularly when four agencies and four different appropriations are involved. Moreover, increased appropriations alone would not refocus the mission of the NEHRP, nor would increased appropriations alone provide a more clearly delineated, effective leadership stucture.

Concern for the NEHRP has become widespread, not only among groups that have taken a formal look at the program, but within the community of engineering professionals. Various solutions have been proposed, including the creation of an independent Federal commission that would exercise the NEHRP leadership role currently assigned to FEMA. The proposed commission would have no research or operational roles, but would have the authority to recommend to the President the roles, responsibilities, goals, priorities, target dates, and budgets for Federal agencies involved in the NEHRP. Generally, I have questions about the efficacy of such a commission, and moreover, I doubt seriously the wisdom of undertaking to create a new, additional governmental structure.

In the legislation I introduce today, several significant changes are proposed that I believe can greatly en-

hance the effectiveness of the NEHRP.

First, the bill adds a series of congressional findings drawn from our 10 years' experience with the act, setting forth our concern for the vulnerability of existing buildings and facilities, including federally connected facilities, and our belief that the protection of the infrastructure offers our best hope of reducing future earthquake impacts.

Second, and most importantly, the U.S. Geological Survey is designated as lead agency. Under the bill, USGS is charged with the authority to plan, coordinate, and manage the NEHRP, through an interagency committee comprised of the directors of agencies currently involved in the NEHRP. USGS shall recommend to the President what role and responsibility each agency shall carry with respect to the overall program and shall also recommend goals, priorities, budgets, and target dates for implementation of the program. A plan for the program must be submitted annually to the Congress, setting forth specific tasks and goals, as part of an annual report on program progress.

Third, the goal of research funded under the act is shifted from an emphasis on understanding how and why earthquakes occur to a focus on effectively reducing earthquake hazards and to ways of combining earthquake hazard reduction measures with those of other natural and technological hazards reduction.

Mr. President, the USGS is designated as lead agency for several reasons. It is the only one of the four NEHRP agencies with resident technical staff. It is a field-oriented agency, which is especially important if the NEHRP is to emphasize application. USGS' administration and staff have excellent working relationships in States and regions. Some 60 to 70 percent of current NEHRP appropriations go to USGS. The agency is clearly and demonstrably interested in the future of the NEHRP.

We have been fortunate that the damaging earthquakes of the past decade have not cast doubt on the wisdom of our original decision to build knowledge and capability before we focused on application. Though the earthquakes in California, Idaho, Kentucky, Alaska, and Hawaii have caused damage and life loss, they have not forced the massive soul searching that the Soviets have had to face in Armenia. There, the seismic hazard was well known and the engineering well understood, but the practical, implementing actions were lacking. The result was tens of thousands of lives lost and tens of billions of dollars in economic damage. The hazard in many parts of the United States is no less certain than it was in Armenia. The challenge that faces us now is to take the actions necessary to use our new capability and capacity for earthquake hazards reduction before we have to face the public and explain our inaction—as the Soviets now must.

Senators HOLLINGS, GORE, and WILSON share with me the imperative to act forcefully and promptly toward consideration of our bill. The threat is clear and the necessary actions apparent.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 629

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Earthquake Hazards Reduction Act of 1977 Amendments Act".

FINDINGS

SEC. 2. (a) Section 2 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701) is amended by inserting the following new paragraph between paragraphs (3) and (4) and renumbering paragraphs (4), (5), (6), (7), and (8) as paragraphs (5), (6), (7), (8), and (9), respectively:

"(4) The geological study of active faults and features can reveal how recently and how frequently major earthquakes have occurred on those faults and how much risk they pose. Such long-term seismic risk assessments are needed in virtually every aspect of earthquake hazards management, whether emergency planning, public regulation, detailed building design, insurance rating or investment decision.".

(b) Section 2 of such Act is amended by inserting the following new paragraphs immediately after paragraph (8) and renumbering succeeding paragraphs accordingly:

"(10) The vulnerability of buildings, lifelines, public works, and industrial and emergency facilities can be reduced through proper earthquake resistant design and construction practices. The economy and efficacy of such procedures can be substantially increased through research and development.

"(11) The vulnerability of existing buildings and facilities pose the predominant seismic risk throughout the country for the immediate future and thereby offer the most likely opportunity for the reduction of future earthquake impacts.

"(12) Programs and practices of departments and agencies of the United States are important to the communities they serve; some function, such as emergency communications and national defense, and facilities, such as dams, bridges and public works, must remain in service during and after an earthquake. Federally owned, operated and influenced structures and facilities should pose hazards to their occupants and to the community that are no greater than those posed to the community by other structures and facilities that are under private, local or State control or regulation.

LEAD AGENCY

SEC. 3. (a)(1) The heading of subsection (b) of section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)) is amended by deleting "Director of Federal Emergency Management Agency" and inserting in lieu thereof "Director of the United States Geological Survey".

(b) Section 5(b)(2) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)(2)) is amended to read as follows:

"(2) The United States Geological Survey (hereinafter referred to as the 'Survey') is designated as the agency with the primary responsibilities to plan, coordinate, and manage the National Earthquake Hazards Reduction Program. The Director of the Survey (hereinafter referred to as the 'Director') shall—

"(A) manage, through the mechanisms outlined in this section, the National Earthquake Hazards Reduction Program;

"(B) recommend to the President the role and responsibility of each appropriate Federal department, agency, and entity with respect to each object and element of the program;

"(C) recommend to the President goals, priorities, budgets, and target dates for implementation of the program;

"(D) establish and chair an interagency committee, which will meet regularly, composed, in addition, of the Directors of the Federal Emergency Management Agency, the National Science Foundation, the National Institute for Standards and Technology, and of such other agencies involved in the program as the Director of the Survey deems appropriate, for the purpose of developing plans, tasks and milestones and of assuring close cooperation and coordination among the Federal agencies involved in the execution of those plans, and for evaluating the effectiveness of their implementation;

"(E) provide a method for cooperation and coordination with, and assistance (to the extent of available resources) to, interested governmental entities in all States, particularly those containing areas of high or moderate seismic risk;

"(F) provide for qualified and sufficient staffing for the program and its components;

"(G) compile and maintain a written plan for the program specified in subsections (a), (c), (f), and (g) of this section, which shall include specific tasks and milestones for the coming and future years for each agency involved in the program, and which will be submitted to the Congress as part of the annual report, and updated at such times as may be required by significant program events;

"(H) recommend appropriate roles for State and local units of government, individuals, and private organizations;

"(I) utilize other Federal agencies, when and as appropriate, for the conduct of specific program activities;

"(J) bring to the attention of the President those proposed Federal programs, regulations, and practices with implications for earthquake hazards reduction and recommend to the President changes that offer improved safety with an assessment of the implications of these changes on safety and economy;

"(K) appoint an advisory committee, which will meet regularly, review program activities and advise the Director of program goals, objectives, plans and performance and which will have balanced representation from the disciplines and communities at interest; including appropriate representatives of State and local governments, the design professions, research community and the public, including representatives of business and industry;

"(L) make, in cooperation with those agencies determined by the Director to be appropriate under subparagraph (D) of this paragraph, the Federal Emergency Management Agency, the National Science Foundation, and the National Institute for Standards, and Technology an annual presentation to the appropriate committee of the Congress within 60 days after the end of each fiscal year for the purpose of communicating any events and any programmatic requirements deemed significant by the National Earthquake Hazards Reduction Program; and

"(M) to the extent practical, assure that the process leading to the recommendations to the President on the roles and responsibilities of the Federal departments, agencies and entities and their relative priorities and budgets for the purposes of the national program, are separated from the operational management of those research and implementation aspects of the national program for which the Geological Survey has operational responsibility.".

(c) Subsection (c) of section 5 of such Act (42 U.S.C. 7704(c)) is amended (1) by deleting "and" at the end of paragraph (6); (2) by deleting the period at the end of paragraph (7) and inserting a semicolon and the word "and"; and (3) by adding at the end thereof the following:

"(8) Performance of problem focused basic, applied and developmental research on all aspects of earthquake hazards reduction (including mitigation, prediction, hazard identification, insurance, preparedness, response, recovery, and utilization of developed knowledge and information).".

(d) Subsection (d) of section 5 of such Act is amended by inserting immediately after "Department of Housing and Urban Development," the following: "Department of Education,".

(e) Subsection (e) of section 5 of such Act is amended by deleting "The research elements of the program shall include—" and inserting in lieu thereof "The research elements of the program shall include problem focused basic, applied and developmental research to—".

(f) Subsection (e) of section 5 of such Act is amended (1) by deleting "and" immediately after the semicolon at the end of paragraph (8); (2) by deleting the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following:

"(10) development of approaches to combine earthquake hazard reduction measures with those of other natural and technological hazards reduction.".

EARTHQUAKE ADVISORY

SEC. 4. (a) The first sentence of section 5(f)(1) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(f)(1)) is amended to read as follows: "The Director of the Survey is authorized to issue an earthquake prediction or other earthquake advisory as he deems necessary. The Director of the Federal Emergency Management Agency shall be notified as soon as possible, in advance of public release if practical.".

(b) The last sentence of section 5(f)(1) of such Act is amended by inserting immediately after "Director" the following: "of the Federal Emergency Management Agency".

(c) Section 5(f)(7) of such Act is amended to read as follows:

"(7) the development and revision by the Director of the Federal Emergency Management Agency of preparedness plans for response to earthquake predictions for those areas specified by the Director of the Survey, and in carrying out such development and revision, the Director of the Federal Emergency Management Agency shall take action to assure that—

"(A) such prediction response plans are integrated with preparedness response plans;

"(B) such plans are coordinated with State and local government efforts; and

"(C) such plans are reviewed and revised as necessary as new and relevant information is available.".

(d) Section 5(i) of such Act is repealed.

ANNUAL REPORT

SEC. 5. Section 6 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7705) is amended by inserting immediately after "section 5(b)(2)(E)" the following: "and the plans described in sections 5(b)(2) and 5(f)".

THE DIRECTOR OF THE GEOLOGICAL SURVEY

SEC. 6. (a) Section 7(a)(7) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706(2)) is amended (1) by deleting "Director, to carry out the provisions of sections 5 and 6" and inserting in lieu thereof "Director of the Federal Emergency Management Agency, to carry out the provisions"; and (2) by deleting "$5,798,000" and inserting in lieu thereof "$5,513,000".

(b) Section 7(a) of such Act is amended by adding at the end thereof the following:

"(8) There is authorized to be appropriated to the Director of the Survey for carrying out his functions under this Act the sum of $385,000 for the fiscal year ending September 30, 1990.".

Mr. HOLLINGS. Mr. President, I am pleased to be an original cosponsor of the Earthquake Hazards Reduction Act of 1977 Amendments Act, and I commend Senator CRANSTON for introducing this bill. As chairman of the Commerce Committee I have watched the evolution of our Nation's earthquake program. From the early seventies, Senator CRANSTON has been reminding us of the hazard that earthquakes pose. In the midseventies, he worked with me and others on the Commerce Committee to fashion the National Earthquake Hazards Reduction Program [NEHRP]. This program was designed to improve our Nation's earthquake preparedness by combining the talents of four Federal agencies, the U.S. Geological Survey [USGS], the National Science Foundation [NSF], the Federal Emergency Management Agency [FEMA], and the National Institute of Standards and Technology [NIST].

I strongly support the National Earthquake Hazards Reduction Program. Most people do not know, it but my hometown of Charleston was devastated by a major earthquake in 1886, just over 100 years ago. More than 60 people died, hundreds of buildings were destroyed, and losses exceeded $5 million. Today, on many of the old homes in Charleston you can still see "earthquakes bolts" that were used to repair the damage from the quake.

Charleston's population has grown a lot over the past 100 years. A repeat of the 1886 quake would result in hundreds of deaths, maybe thousands. The 1886 quake was a major earthquake, comparable in magnitude to the recent Armenia quake, which killed tens of thousands, and left hundreds of thousands homeless and jobless. That catastrophe reminded us of what a major earthquake can do to an urban area that is unprepared for an earthquake.

Since the birth of NEHRP in 1977, Federal agencies have improved our knowledge of earthquakes, allowing Americans to take steps to reduce the earthquake threat. Geologists have mapped active faults. Geotechnical engineers have developed techniques for identifying areas where unstable soils could lead to building collapse in an earthquake. Structural engineers have developed techniques for designing earthquake-resistant buildings and strengthening old ones. Disaster response managers have learned a lot about coping with the fires, transportation disruptions, and injuries that a major earthquake will cause.

In many ways the National Earthquake Hazards Reduction Program has been a success. We have learned a great deal about preparing for earthquakes. However, we have not done enough to apply that knowledge. Geological maps are often not available to developers and others who could use them. The advances made in earthquake-resistant building design often are not being put to use by architects and builders. The main problem is a lack of awareness. The continental United States has not experienced a catastrophic earthquake since the 1906 San Francisco earthquake, and people do not appreciate what a major earthquake could do. In my hometown, many residents do not know about the 1886 quake. So the necessary planning and preparation are not being done.

I think that Senator CRANSTON's bill will help remedy this. He proposes to make the U.S. Geological Survey lead agency for the earthquake program. The USGS gets a majority of the funds for the earthquake program and has a large staff of technically trained people who have been instrumental in improving our understanding of earthquakes and in helping Americans prepare for them.

The USGS is well suited to apply what we have learned so far. In 1980, the Federal Emergency Management Agency was put in charge of the earthquake program and at the time, that made sense. FEMA's mission is to be there after a disaster, be it a flood, a hurricane, or an earthquake, to pick up the pieces. In 1980, we did not know as much as we know today about what can be done to prevent earthquake damage. So it made sense to put our focus on disaster planning by putting FEMA in charge of the program.

However, NEHRP has succeeded in providing us with new measures we

can take before an earthquake strikes to save lives and property. Geologists at the U.S. Geological Survey have identified seismic danger zones, researchers at the National Science Foundation have developed techniques for building safer buildings, and engineers at the National Institute of Standards and Technology and FEMA have worked with architects to incorporate these techniques into buildings. We need to apply all this new knowledge. It is a bit like medicine. When we started the earthquake program we focused on treating the disease, after the fact. Now we have developed the knowledge to practice preventative medicine. We have the techniques required to keep a major earthquake from being a major catastrophe. The Armenian quake taught us the need for this kind of preventative medicine.

The change in lead agency proposed by Senator CRANSTON should not be taken as an indication that we should deemphasize disaster planning. FEMA has helped communities recognize the threat that earthquakes pose and ensured that the resources are in place in case one occurs. But while FEMA has done a good job on disaster planning, it has not had the resources needed to ensure that the work done by the other agencies in the earthquake program is fully applied in the field. This bill will help correct this problem.

Senator CRANSTON's bill will also strengthen the already strong research programs at NSF, the USGS, and NIST. These programs have added greatly to our understanding of earthquakes. Having the USGS as lead agency should allow for better coordination between researchers in the different agencies. This is critical because we will continue to need an active earthquake research program. There is much yet to be learned. We need to improve our understanding of earthquake hazards while we apply what we have already learned.

This bill represents a useful step in improving our national earthquake program. Several members of the Commerce Committee, including Senators DANFORTH and GORE, are concerned about the threat that earthquakes pose, especially to the Eastern and Central United States. In the months ahead, our committee will look closely at this bill and other ways to improve America's earthquake program. This is a national program to address a serious national problem. It is a program that needs to be strengthened, and I thank Senator CRANSTON for his efforts to do so.

● Mr. GORE. Mr. President, I am pleased to be an original cosponsor of the Earthquake Hazards Reduction Act of 1977 Amendments. I fully believe that these amendments will reinvigorate the National Earthquake Hazards Reduction Program [NEHRP], refocusing it on the act's goal of reducing hazards. I also want to congratulate my distinguished colleague from California [Mr. CRANSTON] on his efforts to improve the national program to reduce the hazards from earthquakes.

The Earthquake Hazard Reduction Act of 1977, which Senator CRANSTON authored, was designed "to reduce the risks of life and property from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program." The first decade of the National Earthquake Hazards Reduction Program [NEHRP] advanced our understanding of earthquakes and what should be done to prevent deaths, injuries, and damage from them. Under the aegis of NEHRP, basic research efforts have added tremendous amounts of information to what we know about earthquakes.

Yet despite the program's successes, Members of Congress, structural engineers, State and local emergency management agency directors, and many others are concerned about the direction and future of the program. For example, since the program was established, its funding has declined 40 percent in real dollars. We need to make sure that we allocate adequate funds for critical earthquake research and mitigation programs. At the same time, we need to apply effectively the research and knowledge that we have already developed. I am quite concerned that NEHRP, so successful in studying eathquakes and the associated hazards, has neglected to implement this information or transfer it to the right people. Like my colleague from California, I believe that we need to take a fresh look at the national program. We need to shift the emphasis from basic research to applications with direct impact on hazards reduction. We know what needs to be done. But we need to do it.

After studying the problems in NEHRP, I concluded that we had to restructure the program and refocus our efforts on hazard mitigation. I believe that this legislation, amending the Earthquake Hazards Reduction Act of 1977, moves us from a strongly research-oriented program to one that continues important research programs but also transfers that research into practical prevention and hazard mitigation programs, using what we have learned about earthquakes to prevent deaths and minimize destruction in the event of one.

Changing the lead agency from the Federal Emergency Management Agency [FEMA] to the U.S. Geological Survey [USGS] is the main part of this bill. In December 1987, an expert review committee appointed by FEMA called into question FEMA's role as lead agency for NEHRP. In fact, that committee questioned whether any agency could satisfactorily run the program which is hampered by insufficient resources and has to coordinate the work of four agencies—FEMA, USGS, the National Science Foundation, and the National Institute of Standards and Technology. However, I believe that the USGS can do the job. The field-oriented Survey has a proven record of success, works well with State and local governments, and has a large and highly respected staff which is extremely knowledgeable about earthquakes. This legislation takes key steps to reform the Nation's earthquake program without requesting more funds. Having traveled far in 10 years, we need to recalibrate our position and aims and make sure that the NEHRP Program is headed in the right direction. I firmly believe that this legislation does that.

In the past few years, we have begun to recognize that earthquakes are not just California's problem. For example, in the winter of 1811–12, three of the most devastating earthquakes in history struck the Mississippi Valley at New Madrid, MO, a hundred miles upriver from what is now Memphis. According to one account of those powerful earthquakes, "the ground sank, trees were whirled away, and the Mississippi reversed its current." The shocks rang church bells as far away as Boston. Today, we must make sure that the national earthquake program takes full advantage of our accumulated knowledge and applies it to reduce the danger from earthquakes.

As chairman of the Science, Technology, and Space Subcommittee with jurisdiction over NEHRP, I plan to hold hearings to discuss thoroughly this legislation. Again, I want to thank my distinguished colleague from California for his hard work on this national problem. I look forward to working with him and others to make sure that the National Earthquake Hazards Reduction Program does what it is intended to do: Reduce the danger from earthquakes.

By Mr. BREAUX (for himself, Mr. MITCHELL, and Mr. JOHNSTON):

S. 630. A bill to conserve, protect, and to restore the coastal wetlands of the State of Louisiana, and for other purposes; to the Committee on Environment and Public Works.

LOUISIANA COASTAL WETLANDS CONSERVATION AND RESTORATION ACT

● Mr. BREAUX. Mr. President, I rise to speak about one of the most pressing environmental issues facing this Congress—wetlands loss. Why should we be concerned about the loss of our Nation's wetlands? We are familiar with the old line: "Well, if you believe this one, I'll sell you some swamp land in Florida." This one liner gives the

impression that wetlands are not valuable. And, in the past, conversion of wetlands to other uses was encouraged because wetlands were considered wastelands. So, is swamp land valuable? The answer is an emphatic "Yes."

ECONOMIC AND ENVIRONMENTAL VALUES OF WETLANDS

The citizens of the United States benefit daily from the numerous economic and environmental benefits of wetlands in both their natural and their developed state. The environmental values of wetlands include providing valuable habitat for aquatic, terrestrial, and migratory bird species; enhancing and maintaining water quality; forming barriers to waves, floods, and erosion; and nurturing valuable commercial and recreational fisheries. The economic values of wetlands include providing: Valuable fish, fur, energy, and other natural resources; land for water dependent activities such as port and marina development; and land for agriculture, housing, and business development.

WETLANDS LOSS—A NEW NATIONAL PRIORITY

Last year, the National Wetlands Policy Forum, a coalition of environment, industry, academic and Government interests convened to examine the causes of, and solutions for, wetlands loss. The forum report estimates that the United States has lost over 50 percent of its wetlands since European settlement began. This report has thrust wetland loss to the forefront of national attention. The report calls for a goal of no net loss of wetlands to arrest the rapid rate of loss. President Bush has embraced a goal of no net loss of wetlands.

Mr. President, the State of Louisiana contains 25 percent of the vegetated wetlands in the lower 48 States and 40 percent of the Nation's coastal wetlands. I fully recognize the national importance of wetlands resources and fully support the goal of no net loss of wetlands. The bill I am introducing today is an important step in defining and achieving that goal.

CONCERN ABOUT WETLANDS LOSS IS NOT NEW TO LOUISIANA AND FEDERAL AGENCIES

The concern about wetlands loss is not new to the citizens of Louisiana or to the Federal Government. The State of Louisiana is experiencing a disproportionate share of the Nation's wetlands loss; 80 percent of the total loss of coastal wetlands in the United States is occurring in Louisiana. If this loss is not arrested, the State of Louisiana is estimated to lose an area 1½ times the size of the State of Rhode Island by the year of 2040.

Beginning in 1967, the House and the Senate passed resolutions to study coastal wetlands loss in Louisiana. Since that time, the State and the Federal Government have devoted large amounts of time and resources to study the causes of the rapid rate of loss of coastal wetlands. The U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service have all published reports that address the issue of coastal wetlands loss.

There is consensus among the Federal agencies that activities of the Federal Government to develop the Mississippi River for navigation, flood control, and port development projects are a major cause of coastal wetlands loss in Louisiana. Since 1928, $5.9 billion has been spent to construct a series of levees and flood control structures along the Mississippi River under the congressionally authorized Mississippi River and tributaries project. This project has been credited with preventing 111.3 billion dollars' worth of flood damages along the Mississippi River.

While beneficial, the flood control levees have confined the flow of the Mississippi River and its sediments. The river, before being constrained between the levees, used to overflow its banks and move water and sediment into adjacent marshes. This constant supply of sediment helped build and enrich the wetlands. However, the levees are preventing the natural nourishment process and the adjacent wetlands have been, in effect, starved. The levees prevent freshwater from entering the wetlands. Freshwater acts to push back salt water. Lack of freshwater results in saltwater intrusion onto the wetlands and kills the non-salt tolerant marshes and replaces them with open water.

The forum report affirms the conclusion of these agencies, and specifically recognizes the importance of coastal wetlands in Louisiana:

One nationally important wetlands system that should be a focus of this initiative is the Louisiana Coast * * * this area is suffering extremely high wetlands losses from erosion and subsidence, largely as a result of government flood control and other water resource projects. Proposals for diverting Mississippi River sediment into this region to offset these losses should be developed and implemented.

Loss of coastal wetlands in Louisiana will be felt far more broadly than in the State of Louisiana. Loss of coastal Louisiana wetlands alone will result in: an estimated loss of 30 percent of the total commercial fish and fur harvest in the gulf coast by the year 2040 (Louisiana alone contributes 46 percent of the Nation's total shrimp harvest) and loss of wintering habitat of nearly 5 million migratory birds. The loss, if unchecked, will require billions of dollars to protect or relocate Federal, State, and local infrastructure development including, 155 miles of banks on the Mississippi River built by the Federal and State governments; 100 miles of Federal and State highways, 27 miles of railroad tracks, 1,570 miles of oil and gas pipelines, and 383 miles of gas, water, and electric power and telephone lines.

After nearly 20 years of concern and study of wetlands loss in Louisiana, now is the time to take action to restore coastal wetlands and to minimize future losses of coastal wetlands.

SUMMARY OF THE BILL

The problems of coastal wetlands loss in Louisiana have been extensively studied. The coastal wetlands of Louisiana are unique, the disproportionate rate of loss of those wetlands is unprecedented, and the cause of the losses of those wetlands is unique. Coastal wetlands loss in Louisana is reaching crisis proportions and the time for action is now. The legislation I am sponsoring today is designed to arrest the rapid rate of loss of coastal wetlands and to prevent further erosion.

Under this bill, the Governor of Louisiana may elect to enter into an agreement with the Secretary of the Army and the EPA to develop a coastal wetlands restoration and conservation plan. One office within the State will be in charge of developing the plan. The State has 3 years to develop the plan in consultation with the corps and EPA. The bill authorizes that the State receive $5 million for planning assistance for each of 3 years until the plan is completed.

The plan is to have two major components. The plan shall include provisions to deal with development related wetland loss over which the State can exercise control, and provisions to restore coastal wetlands lost as a result of taming the Mississippi River to provide national navigation and flood control benefits.

First, the plan shall include a program that builds on ongoing Federal work to develop solutions to coastal wetland erosion and restoration. The plan shall identify coastal wetlands in need of restoration and identify projects to restore those areas. The restoration activities will not be counted toward the no net loss goal. Rather, restoration activities will result in a net gain of wetlands in Louisiana.

Second, it shall include a wetland permitting program applicable to the coastal area of Louisiana, to be developed, implemented, and enforced by a single agency in the State under State law. The program is to achieve a goal of "no net loss" of coastal wetlands as a result of development activities causing the loss or conversion of wetlands.

The State would have flexibility in determining how the no net loss goal would be achieved, except that it is not the intent of this bill to require no net loss on a project-by-project basis or to require on-site compensation if it is not possible.

Restoration activities included in the plan, and approved by the corps and EPA, will be funded through a trust fund established by this bill. The trust fund would be financed by 5 percent

of annual revenues received from Federal Outer Continental Shelf [OCS] development in the form of bonuses, rents, and royalties. In 1987, that figure would have amounted to $145 million.

Why use OCS revenues? The State of Louisiana alone contributes 64 percent of the total OCS revenues to the General Treasury. It seems more than equitable to dedicate a small portion of OCS revenues generated from coastal Louisiana development to restoration of Louisiana's coast.

CONCLUSION

Mr. President, we have learned the lesson that wetlands are not wastelands. Louisiana has known this fact for many years and has seen its coastline rapidly diminish. Coastal wetlands are a vital national resource and provide critical habitat for fish, fur, and bird resources. Louisiana contains 40 percent of those wetlands but is experiencing 80 percent of the total wetlands loss. This loss is mainly the result of the taming of the Mississippi River through Federal navigation and flood control projects. By controlling the river upstream, we have starved the delta, the mouth of the Mississippi, which has resulted in the unprecedented loss of coastal wetlands.

Arresting wetlands loss is an important national objective. The National Wetlands Policy Forum and the President endorse a no net loss of wetlands goal. This bill is an important first step in achieving this goal. With a requirement of no net loss of wetlands resulting from development in coastal Louisiana combined with aggressive wetlands restoration projects, I believe we will go a long way toward saving this critical national resource and setting the tone for wetlands protection nationwide.●

By Mr. BREAUX (for himself and Mr. INOUYE):

S. 631. A bill to further the development and maintenance of an adequate and well-balanced American merchant marine; to the Committee on Commerce, Science, and Transportation.

FURTHERING DEVELOPMENT OF THE AMERICAN MERCHANT MARINE

● Mr. BREAUX. Mr. President, today I rise to introduce legislation on behalf of myself and Senator INOUYE which is intended to further the development and maintenance of an adequate and well-balanced American merchant marine. Title I is identical to a measure which passed the Senate unanimously in 1986; it would amend the Merchant Marine Act of 1936, by reestablishing the requirement that vessels of U.S.-registry be used for any international ocean transportation of mail originating in the United States. Title II attempts to respond to several of the recent recommendations of the Presidential Commission on Merchant Marine and Defense. That Commission concluded that there was a clear and growing danger to the national security in the deteriorating condition of America's maritime industries. To remedy this perilous situation the Commission made several recommendations, including:

First. A reaffirmation and restatement of our national maritime policy;

Second. Federal departments and agencies must take all steps within their current authority and discretion to preserve and begin the rebuilding of the U.S.-flag merchant marine and the U.S. maritime industrial base;

Third. Federal departments and agencies must refrain from any policies and programs that are contrary to the national maritime policy and detrimental to the maritime industries;

Fourth. Continuation of and strict adherence to existing statutory programs to reserve cargo for U.S. flag carriers is essential;

Fifth. The President should ensure the adequacy of the existing Federal structure to incorporate the legitimate interests of the maritime industries into international negotiations and actions;

Sixth. Many Government programs have addressed only parts of the maritime program and coordinated action is essential;

Seventh. The Government should provide an environment free of artificial, noneconomic, or discriminatory obstacles, including domestic regulations and tax laws, that currently impair the ability of American maritime businesses to compete on a fair basis, both among themselves and with their foreign competitors; and

To monitor and evaluate the Governmentwide efforts necessary to implement these recommendations, the Commission felt that ongoing considerations and evaluations of the maritime situation by a senior interagency group of the Federal Government could be of value.

Title II of my bill creates a mechanism for raising the level of awareness of the importance of the U.S. merchant marine in the decision making process of departments throughout the Federal Government; and provides a realistic way for ensuring that these Government agencies take into account the recommendations of the Presidential Commission on Merchant Marine and Defense Commission when adopting and implementing their policies and programs which impact our martime industry.

Mr. President, while there may not be agreement on everything that needs to be done to restore the vitality of the industry, everyone, I believe, would agree that the Government's extensive involvement in martime matters should be efficient and rational. In my judgment, therefore, it is only prudent to begin our task of revitalization by making that role more effective and efficient; and in that process make better use of the taxpayers' dollars. For example, it makes no sense for the Maritime Administration to pay hundreds of millions of dollars annually to promote the U.S. merchant fleet by subsidizing U.S.-flag operators so that they may compete for cargo in the U.S. international trades; while at the same time, other Federal agencies in the administration of their programs, are disregarding other laws intended to promote the U.S. merchant marine by requiring that at least half and in some cases all Government impelled cargo move on U.S. bottoms. All too often, executive branch agencies attempt to sacrifice the objectives of our maritime laws and policy for foreign policy objectives, without prior and full consultation with the relevant Federal maritime agencies, and adequate consideration of the relative merits of the competing policy objectives. When this occurs, our maritime laws and policies are frequently undermined, or Congress is often forced to resolve interagency differences. In my view, neither of these consequences is desirable.

The history of the United States-Canadian Free-Trade Agreement is, I believe, a case in point. During most of those negotiations, the U.S. side was prepared to negotiate away the absolute protection our cabotage laws and national maritime policy give U.S.-flag vessels. The rationale given by the Special Trade Representative was that there were other, nonmaritime concessions which the United States wanted, and our cabotage laws were only one part of a larger package the United States was offering in return. To my knowledge, at no time prior to making this offer was there an adequate and full opportunity for our maritime agencies to present the case against doing so to the special trade representative. At the eleventh negotiating hour, after a strong reaction from Congress, the issue was taken off the table, however.

Mr. President, title II of my bill attempts to make sense out of the Government's efforts to promote the U.S. merchant marine, and regulate our international waterborne liner trades so that all participants may complete on a level playing field.●

By Mr. BREAUX:

S. 632. A bill to amend the Internal Revenue Code of 1951 to exempt from tax earnings on certain investment accounts for savers and investors; to the Committee on Finance.

SAVERS AND INVESTORS ACT OF 1989

● Mr. BREAUX. Mr. President, private savings and investments are the backbone of our economy. From bank deposits to the purchase of stocks, bonds and mutural funds; all of these

add to the formation of capital used by individuals, entrepreneurs, and established industry alike. But the United Stats is facing a growing crisis in the failure of individuals to save.

An inadequate supply of capital can cause interest rates to rise and the rate of new business ventures to shrink. As a result, wages and the supply of jobs suffer, investment in new machinery and equipment are cut back, and planning for future retirement and long-term health care needs become even more unreliable. Last but not least are the troublesome implications associated with financing our debt with ever increasing amounts of foreign capital.

The United States has a problem with savings. We do not save enough. Our hibits dictate that we spend more money on credit than we put in the bank. Our national household rate of savings in 1987 was the lowest in the developed world; 3.3 percent. This is compared to Japan, which has a household savings rate of 16.8 percent, Germany with 12.4 percent, Italy with 21.9 percent and Canada with 9.7 percent. These figures reflect the percentage of a household's disposable income that is devoted to savings. I do not believe that emulation of Japan is the solution to the United States' economic problems. It would be hard to dispute, however, that Japan's high savings rate—more than five times our own—is one of the factors that has contributed to Japan's economic success, and that we could benefit from following their example in this area.

A strong habit of national savings is essential to successful and long-term economic growth. As people save, the amount of money that is available for investment increases. This is a simple concept. But the Federal Government has done less than it could to promote the idea among the American people. In fact, we have set a bad example; the Federal budget deficit is by far the largest source of dissavings, or debt, in our economy.

The legislation that I am introducing today, the Savers and Investors Act of 1989, is intended to be a vehicle for discussion and a starting point for action. This bill would create tax deferred accounts [TDA's] which will be as accessible to the average citizen as their present savings account. Upon withdrawal, the proceeds of these accounts would be taxable as part of the account-holder's gross income.

Mr. President, economic models show that the best way to improve our overall national savings rate is to reduce the deficit. We have a long way to go, but we are working on doing that. We have already seen the enactment of legislation that permits certain forms of tax-free savings for post-secondary education. Additional proposals would give tax incentives to individuals who are trying to buy a house, save for long-term health care needs and so on. What we are doing here is taking these ideas one step further. Savings are vital to the health of our economy. We need to encourage savings, and I hope that my colleagues will join me in working toward this goal.●

By Mr. MATSUNAGA (for himself and Mr. MURKOWSKI, Mr. BINGAMAN, Mr. INOUYE, Mr. WIRTH, Mr. PELL, and Mr. LIEBERMAN):

S. 633. A bill to promote the development of technologies which will enable fuel cells to use alternative fuel sources; to the Committee on Energy and Natural Resources.

S. 634. A bill to establish a national policy for the utilization of fuel cell technology; to the Committee on Energy and Natural Resources.

RENEWABLE ENERGY/FUEL CELL SYSTEMS INTEGRATION ACT OF 1989

FUEL CELLS ENERGY UTILIZATION ACT OF 1989

● Mr. MATSUNAGA. Mr. President, at this time, I am also introducing two bills to advance the energy technology of fuel cells, together with Senators MURKOWSKI and BINGAMAN, as well as the cosponsors of my hydrogen measure: Senators INOUYE, WIRTH, PELL, and LIEBERMAN.

These measures passed the Senate by unanimous vote in the 100th Congress after being reported favorably by a unanimous vote of the Energy and Natural Resources Committee. Unfortunately, House action was not completed on them prior to adjournment.

Fuel cell energy technology is perhaps the most developed example of hydrogen energy. It is also an example of a technology pioneered in the United States for its space program and rapidly being taken up by other countries. The bills I am introducing today are based on recommendations of a Congressional Research Service report on how best to bring this technology to commercial fruition.

The first bill, the Renewable Energy/Fuel Cell Systems Integration Act supports research on the use of renewable energy sources to produce hydrogen for use in fuel cells, as well the use of this technology as a backup system to renewable power systems in rural and isolated areas. Fuel cells have the potential to provide system continuity for unreliable renewable energy systems such as wind power. The bill would authorize $5 million for this integrative renewable energy/fuel cell research.

The second bill, the Fuel Cell Energy Utilization Act, would include fuel cells under the provisions of the Renewable Energy Industry Development Act as a fuel conservation technology, by itself or when used for cogeneration. This would empower the Department of Commerce to assess international markets for the technology and identify export barriers as well as opportunities. Included in this coverage would be integrated systems of fuel cells with renewable power technologies. The bill also would require the Environmental Protection Agency to prepare guidelines for the benefit of local governments in order to permit the use of fuel cells, subject to environmental and safety standards.

Mr. President, these two bills reflect needed legislation and, again, I urge my colleagues to join me in achieving their speedy adoption.●

By Mr. McCLURE (for himself and Mr. JOHNSTON, Mr. GARN, Mr. NICKLES, Mr. BRADLEY, and Mr. MURKOWSKI):

S. 635. A bill to prevent the unintended licensing of federally nonjurisdictional pre-1935 unlicensed hydroelectric projects; to the Committee on Energy and Natural Resources.

HYDROELECTRIC FAIRNESS ACT OF 1989

● Mr. McCLURE. Mr. President, along with Senators JOHNSTON, GARN, NICKLES, BRADLEY, and MURKOWSKI, I am today introducing the Hydroelectric Fairness Act of 1989. The purpose of this legislation is to prohibit third parties from misusing the Federal hydroelectric licensing system to obtain a license for nonjurisdictional, pre-1935 unlicensed hydroelectric projects owned by others—"claim jumping" in other words.

There are about 350 of these projects now at risk; they are owned by electric utilities, municipalities, irrigation districts, private industry and others. The loss of a project would have serious economic consequences to its owner and the consumers of the project's low-cost electricity.

These projects are at risk because they don't have the protection of a Federal license; and they don't have a license because in 1935 Congress "grandfathered" them from Federal jurisdiction.

In 1935, Congress modified the Federal hydroelectric licensing system by enacting the Federal Power Act [FPA]. The FPA requires only "new"; that is, post-1935 hydroelectric projects to obtain a license. Pre-1935 projects located on nonnavigable rivers were "grandfathered" from Federal jurisdiction and the requirement to obtain a license, as long as no "new" construction takes place. If new construction, other than normal maintenance and repair does occur, Federal jurisdiction does apply to the facility and a Federal license must be obtained.

Unfortunately, by relieving pre-1935 projects from the requirement to obtain a license, Congress inadvertently enabled third parties to use the FPA to claim jump them. This can happen in two different ways.

First, a claim jumper could seek a license for the pre-1935 project by proposing "new" construction on it, for example increasing the height of the dam. This new construction would make the project jurisdictional, thereby triggering the FPA's licensing requirements (sec. 23(b)). But because there is nothing in the FPA which requires the license applicant to be the project owner, the license for the project could be granted to a nonowner. If the owner does not want to give up its project that's just too bad; once the claim-jumper has the license, it can use the FPA's power of eminent domain to force the owner to sell out. Obviously, Congress failed to foresee this possible abuse of law, and there is no question that Congress would have forbid it had it been anticipated.

There is a second provision of the FPA (sec. 4(e)) which can also be used to claim jump an unlicensed project, but in this case the claim jumper doesn't even have to propose any project improvements. This is because section 4(e) has been interpreted by the Federal Energy Regulatory Commission and the Federal courts as allowing the "voluntary" licensing; for example, at an applicant's request, of an unlicensed project. Again, as with section 23(b), there is nothing in section 4(e) which requires the applicant to be the owner: any person can file to obtain a license—even you or I could. This possibility was recently noted by a Federal court which observed that:

> * * * pre-1935 project owners [are] at risk because volunteer applicants need not be project owners. *Thus, the owner of a project not requiring a license may find himself the target of a license application by strangers.* *Cooley v. FERC*, 843 F.2d 1464, 1470 (D.C. Cir., 1988) (Emphasis added).

Again, there is no question that Congress did not intend the FPA to be interpreted in this manner.

One might ask: Why don't the owners of these unlicensed projects just apply for a license? After all, if they had one wouldn't they be protected?

There are several significant reasons why owners are reluctant to seek the protection of a license. First, filing for a license is an invitation for others to file a competing application, which is explicitly encouraged by the Federal Power Act. And there is no guarantee that the owner would ultimately obtain the license which, in the case of an electric utility, would mean significant increases in electricity prices for its customers if they don't win. Second, filing for a license is expensive. It costs several thousands of dollars, and often many hundreds of thousands of dollars, to prepare the documents necessary for a license application. For a smaller project, that cost might make it uneconomic and result in it being shut down. Or the additional costs may be passed on to consumers through higher prices. Third, once licensed the project would be taken out of State regulatory jurisdiction; the Federal Government would then dictate how the project is to be operated and maintained, not the State.

The owner of a hydroelectric facility that has been granted a congressional "grandfather" from licensing should not be forced—either by the Commission on its own initiative, or as the result of a claim jumping attempt by a third party—to seek a license merely to protect its rights. That is the opposite of what Congress had in mind when creating the "grandfather."

Despite the existence of these potential misuses of the Federal Power Act for more than five decades; the Federal licensing system wasn't abused. It wasn't, that is, until a sharp operator decided it wanted to "claim jump" a nonjurisdictional, unlicensed project.

This situation involves the Orange and Rockland Utilities, an electric utility which serves thousands of residential, commercial, and industrial customers in New York, New Jersey, and Pennsylvania. They own one of these pre-1935 nonjurisdictional, unlicensed hydroelectric projects on which an outsider, Rio Hydroelectric Associates, filed for a license. Orange and Rockland has estimated that if they lose the project, they would have to pay $50 million to Rio Hydro over the next 30 years to purchase the power back from that project. And recall that another Federal law, the Public Utility Regulatory Policies Act of 1978, requires electric utilities to purchase power from "qualifying facilities" at "full avoided cost"—costs would then simply be passed on to Orange and Rockland's customers through higher electricity prices.

Whether or not Rio Hydro ultimately wins in its efforts to "claim jump" Orange and Rockland's project—which will turn on the facts of the case and not the application of the law—what we are seeing is the proverbial "tip of the iceberg." There are literally hundreds of these nonjurisdictional, unlicensed projects scattered throughout the United States. They are located in: Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Iowa, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, North Carolina, Nebraska, New Hampshire, New Jersey, Nevada, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Vermont, Washington, Wisconsin, and Puerto Rico. Each and every one of these projects faces the prospect of a "hostile takeover" if Congress does not step in to prevent it.

The Hydroelectric Fairness Act of 1989 would prevent this claim jumping by prohibiting the issuance of an original license for a pre-1935 nonjurisdictional project to any person other than the owner of the project. The act does so by prohibiting the Commission from issuing an original license for any project works located on nonnavigable waters and on which there has been no construction within the meaning of section 23(b) since August 26, 1935, to any person, State or municipality other than the owner of the project works. This prohibition would apply in the case of a "voluntary" (section 4(e)) license application. The prohibition would also apply in the case of a mandatory (section 23(b)) license application. Current law provides that new construction may not be undertaken at a pre-1935 facility until a Federal license has been issued. By limiting the issuance of such licenses to the owner of the facility, this act would eliminate the possibility that a nonowner could obtain a license simply by proposing new cosntruction at such facility. Under this legislation, once the project is licensed this prohibition would no longer apply to that project; when the original license expires, the project would face relicensing competition just as would any other licensed project.

This act would not expand or modify the Commission's licensing jurisdiction under part I of the Federal Power Act; and it would not require the licensing of a facility where existing law does not so require. By proposing this legislation, I am not intending to speak to the validity of the theory of licensing under section 4(e) of the FPA as articulated by FERC in its Clifton Power Corp. decision; that will ultimately be resolved by the courts. Finally, and most importantly, this amendment would not in any way limit, restrict or affect the Commission's exercise of its duties and obligations under the Federal Power Act to ensure that a license would be in the overall public interest, and would contain necessary and appropriate fish and wildlife protection, mitigation and enhancement.

This legislation would expand the protection against claim jumpers currently enjoyed by owners of licensed projects, to include the unlicensed projects that Congress grandfathered from Federal licensing in 1935. The Federal Power Act prevents claim jumping of licensed projects, and when it is enacted section 32 will provide the same protection to nonjurisdictional, unlicensed projects.

This legislation is obviously needed, it is without question justified, and it is clearly in the overall public interest. It would prevent the unintended use of Federal law by third parties to unfairly claim jump projects owned by others. Failure to prevent claim jumping would allow serious harm to befall the owners of the projects and the customers they serve. It would not be

good public policy to allow that to happen, and Congress should act to prevent it.

Mr. President, it is for these reasons that I am today introducing this legislation, and I am urging the other Members of the Senate to cosponsor this legislation.●

By Mrs. KASSEBAUM:

S. 636. A bill to amend the Foreign Assistance Act of 1961 to improve management of economic assistance, and for other purposes; to the Committee on Foreign Relations.

ECONOMIC ASSISTANCE REFORM ACT

● Mrs. KASSEBAUM. Mr. President, reforming our foreign aid process has received increased attention largely due to the efforts of the House Task Force on Foreign Assistance. The work that the task force has undertaken in reassessing our foreign aid program deserves high marks.

I strongly share the concerns that the shrinking pool of foreign aid funds, due to our budget problems, is creating a greater need for us to make sure that the money is being managed efficiently. These are important issues under ideal budget conditions. They become even more critical at a time when we are facing a funding crisis in foreign aid.

As a member of the Foreign Relations Committee, I have been concerned for some time about whether our foreign assistance program is working. This concern was initially the outgrowth of my frustration with our development programs in Africa. In the spring of 1985, I held a series of hearings to review U.S. development programs in order to gain information on how our assistance activities can be improved.

What I found parallels very closely with the findings of the Task Force on Foreign Assistance to the House Foreign Affairs Committee. The foreign aid procedure both here in Congress and in the executive branch can be improved.

We have spent years in Congress piling new programs and new priorities on the Foreign Assistance Act without ever stepping back to look at what we have created. Our assistance programs include an amazing array of earmarks and setasides. Superimposed upon this are specific functional accounts which may or may not coincide with development priorities.

In response to this problem, I introduced legislation in the 100th Congress which would have reformed our foreign economic assistance process. Today I am reintroducing this legislation.

Perhaps the most important change in this bill is that it will no longer allow congressional earmarks on the foreign aid account. Every year Congress not only determines the overall levels that are to be spent on development and economic support funds but adds earmarks on an ad hoc basis for specific countries and special projects. Last year's earmarks, for example, ensured that only 10 developing nations receive 70 percent of all U.S. foreign aid. And, even more importantly, these ad hoc earmarks severely compound the effect of overall budget cuts on those programs and countries which are not earmarked.

This reform bill would replace this ad hoc approach to budgeting with regional accounts. This approach has the benefit of making our budget efforts more systematic. It also will distribute much more evenly any budget cuts. Furthermore, Congress would be shifting to a budget process which parallels the administration budgeting process. Hopefully this shift will also result in our directly relating development programs to the needs of the specific regions we are assisting. Under the reform bill, Congress would authorize development assistance and economic support assistance by region.

The bill also streamlines the number of areas where we would direct our development aid. The bill sets out just four areas for development projects—health, education, agriculture and infrastructure. The intent of this streamlining is to avoid overcommitting ourselves to projects. Under the reform bill these areas are no longer budgeted by Congress, but they do remain mandatory guidelines.

The bill also outlines that it is the sense of the Congress that foreign assistance should be funded on a 2-year cycle and that the appropriations and authorization committees should coordinate their efforts more closely.

Improving the congressional process is only one part of the equation. The executive branch is also required by the bill to make a number of management reforms. Without reforms which require reducing costs, keeping budgets lean, and maximizing efficiency, our development efforts will only continue to be frustrated. The bill also seeks to improve donor coordination, as well as coordination within our own Government on foreign aid priorities.

Mr. President, I have been encouraged by the dedicated effort the House Foreign Affairs Committee has made to reforming our foreign aid process. I think it is important that the Houses of Congress consider the enactment of a new international economic cooperation act, which would aim to narrow the objectives of our foreign assistance program, provide greater flexibility and accountability of our foreign aid program, improve management in the executive branch and improve donor coordination.

The United States, which has played a leadership role in bilateral aid, has a responsibility to set the pace on efficiency and coordination. Also, we here in Congress have an important responsibility in meeting our foreign policy commitments despite budget constraints. It is for these reasons, I am reintroducing my bill which I hope will spark an open debate on how we run our foreign assistance programs.●

By Mr. WILSON:

S. 637. A bill to designate certain lands in Los Padres National Forest as wilderness, to designate Sespe Creek and the Sisquoc River in the State of California as wild and scenic rivers, and for other purposes; to the Committee on Energy and Natural Resources

DESIGNATION OF CERTAIN WILD AND SCENIC RIVERS IN CALIFORNIA

● Mr. WILSON. Mr. President, today I am introducing a bill to designate lands in the Los Padres National Forest as wilderness and establish the Sespe Creek and the Sisquoc River as components of the Wild and Scenic Rivers System. This legislation reflects the U.S. Forest Service's recommendations contained in its land management plan for the Los Padres National Forest.

My respected colleague from California, Mr. LAGOMARSINO, whose district encompasses a significant portion of the Los Padres National Forest, is introducing this same bill in the other body. Working with Representative LAGOMARSINO and representatives of the Forest Service, I have determined that protection of lands and waters in the Los Padres National Forest is essential for ensuring the continued enjoyment of this region for future visitors.

In designating nearly 245,000 acres in the Los Padres National Forest as wilderness, my bill establishes two new wilderness areas and expands a third.

The largest of these proposed wilderness areas is the Sespe Wilderness, which rests primarily in the Los Padres, but also extends into the adjoining Angeles National Forest. This 197,000-acre region serves as a major basin for the Piru, Sespe and Cuyama Rivers and is also an important habitat for many critical California wildlife species. The Bighorn Sheep and the Endangered California Condor are two examples of the kind of wildlife that inhabit the Sespe area.

In addition, the area is also represented by several natural and geologic landmarks, including Topatopa Mountain, Sespe Hot Springs and the 53,000-acre Sespe Condor Refuge. Wilderness designation for this sanctuary is particularly important in that it will provide even stronger Federal protection for this critical nesting and roosting habitat of the California Condor. My bill ensures that any oil and gas exploration in the area must be conducted in an environmentally safe manner outside the refuge. Furthermore, such development would be sub-

ject to the strict regulations embodied in the Forest Plan. Only then can we assure complete protection for this sensitive area and its important wildlife.

Additionally, my bill would establish the Matilija Wilderness in the Santa Ynez Mountains. This 30,000-acre region provides habitat to numerous animal species, including deer, mountain lion, bear, bobcat, and fox, as well as the California Condor.

This legislation also proposed to establish a 16,500-acre addition to the existing San Rafael Wilderness. The so-called La Brea addition would extend westerly along the southern incline of the Sierra Madre Mountains, encompassing the entire Horse Canyon watershed to its junction with the Sisquoc River.

The bill I am introducing also proposes to add 58.5 combined miles of the Sespe Creep and Sisquoc River to the National Wild and Scenic Rivers System. Protecting these additions fits in neatly with action that we have taken at my behest over the last several years in protecting four other great California rivers, the Tuolumne, Kings, Kern and Merced Rivers.

As proposed in the completed forest plan, the 27.5-mile segment of the Sespe—from its junction with Trout Creek to the Devil's Gate area north of the city of Fillmore—would be identified as a "wild" river. The 31-mile segment of the Sisquoc River—which flows through the San Rafael Wilderness—would also be designated as "wild." Such designation will help to preserve the esthetic quality of these two great natural watercourses as well as protect important plant and animal species in these areas.

I am aware that some may feel this legislation is too far-reaching. Yet, there will still be others who believe my bill does not do enough to protect sensitive areas in the Los Padres. Let me say that I am open to suggestions on how to improve this legislation, and I look forward to congressional hearings to discuss these matters.

I am confident that in the end we will have a bill that is in the interests of the State of California and the Nation. I urge my colleagues to give this legislation the prompt consideration that it deserves.

I ask unanimous consent that the full text of the bill be printed in the RECORD at this point.

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

S. 637

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

SECTION 1. FINDINGS AND POLICY.

The Congress finds that—

(1) areas of undeveloped National Forest System land on Los Padres National Forest have outstanding natural characteristics giving them high value as wilderness and will, if properly preserved, contribute as an enduring resource of wilderness for the benefit of the American people;

(2) it is in the national interest that certain of these areas be promptly designated as components of the National Wilderness Preservation System in order to preserve such areas as an enduring resource of wilderness which shall be managed to promote and perpetuate the wilderness character of the land and its specific multiple values for watershed preservation, wildlife habitat protection, scenic and historic preservation, scientific research and educational use, primitive recreation, solitude, physical and mental challenge, and inspiration for the benefit of all of the American people of present and future generations; and

(3) geologic evidence and production data suggest that a producing oil and gas field adjacent to the proposed Sespe Wilderness extends into such area.

SEC. 2. DESIGNATION OF WILDERNESS AREAS.

In furtherance of the purposes of the Wilderness Act, the following National Forest system lands are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System—

(1) certain lands in Los Padres National Forest, California, which comprise about 197,047 acres, which are generally depicted on a map dated May 1988, entitled "Sespe Wilderness Area—Proposed", and shall be known as the Sespe Wilderness;

(2) certain lands in Los Padres National Forest, California, which comprise about 30,017 acres, which are generally depicted on a map dated May 1988, and entitled "Matilija Wilderness Area—Proposed", and shall be known as the Matilija Wilderness; and

(3) certain lands in Los Padres National Forest, California, which comprise about 16,516 acres, which are generally depicted on a map dated May 1988, and entitled "San Rafael Wilderness Addition—Proposed", and which lands are hereby incorporated in, and shall be deemed to be a part of, the San Rafael Wilderness.

SEC. 3. ADMINISTRATION OF WILDERNESS AREAS.

(a) IN GENERAL.—Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act. Any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(b) FIRE PREVENTION AND WATERSHED PROTECTION.—Notwithstanding any provision of the Wilderness Act, in order to provide for the continued viability of the watershed affected by these wilderness designations, and to provide for the continued health and safety of the communities serviced by such watersheds, the Secretary of Agriculture is authorized to take whatever actions in the Sespe, Matilija, and San Rafael Wilderness areas which are deemed necessary for fire prevention and watershed protection including, but not limited to, fire presuppression and fire suppression measures and techniques utilized elsewhere on the National Forest System.

(c) SESPE CONDOR SANCTUARY.—Notwithstanding any provision of the Wilderness Act (16 U.S.C. 1131 et seq.), the Secretary of Agriculture may take such measures and utilize such facilities as are necessary for the management of the Sespe Condor Sanctuary, including (but not limited to) road, vehicular, and helicopter access, and related facilities. Such measures are to be taken only for the preservation and protection of the California Condor and related habitat as part of the recovery program for the Condor.

(d) SPECIAL MANAGEMENT RESTRICTION.—Notwithstanding any provision of the Wilderness Act (16 U.S.C. 1131 et seq.) and section 5112 of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226-3), the Secretary of the Interior may, under existing authority, issue oil and gas leases for the subsurface of the Sespe Wilderness. Such leases shall not allow surface occupancy and may be entered only by directional drilling from outside the Sespe Wilderness.

(e) BUFFER ZONES.—The Congress does not intend that wilderness areas designated under this Act lead to the creation of protective perimeters or buffer zones around such wilderness areas. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

SEC. 4. FILING OF MAPS AND DESCRIPTIONS.

As soon as practicable after enactment of this Act, a map and a legal description of each wilderness area designated in section 2 shall be filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and each such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia.

SEC. 5. RELEASE OF SESPE-FRAZIER AND MATILIJA WILDERNESS STUDY AREAS.

The table contained in section 111(e) of the California Wilderness Act of 1984 (98 Stat. 1631) is amended by striking—

(1) the line relating to the Matilija further planning area, Los Padres National Forest, area identification number 05129, and

(2) the line relating to the Sespe-Frazier further planning area, Los Padres National Forest, area identification number 05002.

SEC. 6. JOHNSTON RIDGE TRAIL STUDY.

(a) IN GENERAL.—The Secretary of Agriculture is directed to conduct a study of the Johnston Ridge Trail located on the Ojai Ranger District, Los Padres National Forest, for the purposes of ascertaining the appropriate management of the trail in relation to other portions of the Ojai Ranger District. Management options to be considered shall include a range of alternatives including both closure and maintenance of existing uses. In particular, the study will consider the environmental impacts of mechanized vehicles. The study may be prepared in the context of ongoing land management planning for Los Padres National Forest, or in such other context as the Secretary of Agriculture deems appropriate, and the study shall only require preparation of an environmental assessment. The study shall be completed within two years of the date of enactment of this Act and submitted to the Committee on Energy and Natural Resources of the Senate, and the Committee on Interior and Insular Affairs of the House of Representatives.

(b) OFF-HIGHWAY VEHICLE USE.—Pending completion of the study required by this section and a final management determination by Congress, it is the intent of Congress that the trail shall remain open to off-highway vehicle use subject to applicable laws, rules, and regulations governing such use. Nothing herein shall preclude management actions deemed necessary or desirable by the Forest Service to prevent considerable adverse effects on soil, vegetation, wildlife, wildlife habitat, adjacent wilderness, other recreation uses or facilities, or cultural or historic resources within Los Padres National Forest.

SEC. 7. DESIGNATION OF WILD RIVERS.

In order to preserve and protect for present and future generations the outstandingly remarkable values of Sespe Creek and the Sisquoc River, both in California, section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraphs at the end:

"( ) SESPE CREEK, CALIFORNIA.—The 27.5-mile segment of the creek extending from its confluence with Trout Creek downstream to where it leaves section 26, township 5 north, range 20 west, to be administered by the Secretary of Agriculture as a wild river.

"( ) SISQUOC RIVER, CALIFORNIA.—The 31-mile segment of the river extending from its origin downstream to its confluence with Burro Creek, to be administered by the Secretary of Agriculture as a wild river.".●

By Mr. KASTEN:

S. 638. A bill to authorize a certificate of documentation for the vessel *Nor'wester;* to the Committee on Commerce, Science, and Transportation.

AUTHORIZING DOCUMENTATION FOR THE VESSEL NOR'WESTER

● Mr. KASTEN. Mr. President, I am introducing today a bill to authorize issuance of a certificate of documentation for the vessel *Nor'wester* so that this United States-built sailing schooner may be used for charter cruising on the Great Lakes.

Section 27 of the Merchant Marine Act of 1920, commonly known as the Jones Act, coupled with the Coast Guard vessel documentation provisions of title 46 of the United States Code, require that vessels engaged in the domestic Great Lakes and coastwise trade be built and documented in the United States. A vessel may not be documented if it has ever been owned by an alien, and the owner of a vessel seeking documentation of a vessel must prove that it has always been owned by citizens of the United States.

The vessel *Nor'wester,* official number 913451, is a 38-foot Alden schooner that was built in 1926 at Marinette, WI, by Hemmy Larsen. The vessel, which has always been used solely for recreational purposes, was purchased on October 15, 1986, by Mr. Thomas Church, who has been working to restore the vessel for recreational sailing on the Great Lakes. Mr. Church hopes to defray some of the costs he has incurred in restoring the vessel by chartering it for recreational sailing to people who would otherwise never have the opportunity to sail on an authentic schooner.

The problem is that the chartering of the *Nor'wester,* as Mr. Church proposes, constitutes Great Lakes or coastwise trade. In order to obtain the necessary documentation for such trade, the law requires that Mr. Church produce a complete chain of title for the vessel and certification that each of the previous owners back to 1926 was a citizen of the United States.

Although Mr. Church has made diligent efforts to satisfy these requirements, he has been unable to reconstruct the chain of title to prove by clear and convincing evidence, as is required by the Coast Guard, that the *Nor'wester* has always been owned by citizens of the United States. Mr. Church is unaware of any past alien ownership of the *Nor'wester,* but he simply cannot prove the absence of such ownership, and a legislative waiver is necessary before the vessel can be used for the intended purpose. This bill provides the requisite legislative waiver, and I look forward to its adoption.

I request unanimous consent that the text of my statement and of the bill be printed at this point in the RECORD and that it be referred to the appropriate committee.

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

S. 638

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12105, 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for the vessel *Nor'wester,* United States official number 913451.●

By Mr. MATSUNAGA (for himself, Mr. INOUYE, Mr. WIRTH, Mr. PELL, and Mr. LIEBERMAN):

ESTABLISHING A HYDROGEN RESEARCH AND DEVELOPMENT PROGRAM

● Mr. MATSUNAGA. Mr. President, I rise to introduce, together with my senior colleague from Hawaii [Mr. INOUYE], the junior Senator from Colorado [Mr. WIRTH], the senior Senator from Rhode Island [Mr. PELL], and the junior Senator from Connecticut [Mr. LIEBERMAN], legislation which would advance a multitude of causes.

Seldom can a single bill be said to address the gamut of legislative issues, both environmental and economic, facing a new Congress and a new administration. After all, what common thread exists between global climatic change and those activities spawning greenhouse gases, on the one hand, and the U.S. trade deficit and American competitiveness in world markets, on the other?

Energy is the thread, Mr. President, and a national program for hydrogen research and development is the measure that touches all the aforementioned bases.

The form of energy we use is at the heart of virtually all environmental issues. The location of our energy sources is at the crux of our trade imbalance. And in no area of economic endeavor is overseas competition more keenly felt than in the quest for new energy technologies.

For all these reasons I am once more introducing the National Hydrogen Research and Development Program Act, legislation I first offered in the 97th Congress and have urged ever since. Mine has not been a lone voice on this subject, Mr. President. Throughout his career in this Chamber former Senator Dan Evans cosponsored and strongly advocated my hydrogen legislation. In this connection, it is significant that Senator Evans has been the only professional engineer to serve in the Senate in recent memory, save for Mike Mansfield, who was a mining engineer, and the late Stewart Symington, who was self-taught in mechanical and electrical engineering. If they were still with us, I am certain that both would be cosponsors, Mr. President. Moreover, the principal sponsor of companion legislation in the House, Representative GEORGE BROWN of California, is one of the very few scientists serving in that body.

Mr. President, hydrogen is one of the most abundant elements in the universe, with water, a primary source of hydrogen, covering three-fourths of the Earth. Indeed, hydrogen plays a role in such varied, every-day products as peanut butter, vitamin C, and aspirin, not to mention such larger products as clear plate glass windows.

As a transportation fuel, hydrogen's environmental benefits are particularly apparent, as was evident by its inclusion in the national energy policy legislation offered by Senator WIRTH in the last Congress to address the concerns over global warming, acid rain, and the greenhouse effect and introduced again this year. Moreover, hydrogen can be transported more efficiently and at less cost than electricity over long distances.

While hydrogen has definite environmental advantages over fossil fuels, because the product of hydrogen combustion with air is essentially water vapor, it also offers benefits in the utilization of numerous energy alternatives—ranging from coal and natural gas, to nuclear as well as to solar and the renewables. Injected into declining natural gas fields, hydrogen can serve as an enhancer, stretching out the life of dwindling supplies.

For those concerned with the interests of the coal industry, hydrogen also figures in an attractive scenario. If coal-gassed reactors were to be built at the seashore, they could eject carbon dioxide into the sea instead of into the air, and transmit energy in the form of hydrogen from coal. It is claimed that this could give us perhaps another half century of coal availability without adding anything to the world greenhouse effect.

For those interested in advancing nuclear power, hydrogen can be seen as a vehicle for hurling the safety barrier. Because energy is cheap to transport long distances with hydrogen as the storage medium and after 300 to 400 miles, increasingly cheaper than to transmit through electric wires, nuclear reactors could be located at greater distances from populated areas, even mounted on sea borne rigs.

Hydrogen's appeal to solar proponents is apparent since it is environmentally benign; indeed, it can act in behalf of environmental enhancement. For example, hydrogen has a key role in the process of nitrogen fixation whereby agricultural soils are replenished periodically. Also, there is the search for a replacement for the fully halogenated halocarbons used in refrigerants, solvents and the like that have been found to be the culprit in the erosion of the ozone layer. One criterion in the search for a replacement is that it should be capable of introducing hydrogen into its chemical bond.

Furthermore, the renewables represent the most promising source for hydrogen's production in terms of energy expended in the process. Finally, hydrogen is key to assuring continuity of supply for solar power by providing a ready storage medium whether overnight or until the clouds scatter in the sky.

If it were not for our dependence upon imported foreign oil, our trade balance would not reflect a deficit but rather a surplus. Hydrogen, then, offers a key to achieving energy security. Moreover, our national objective of designing and operating transatmospheric aerospace craft, such as the "Orient Express," is dependent upon the development of hydrogen fuel. For all these reasons, this legislation is absolutely essential, Mr. President, and must be acted upon in this new Congress.

For years now on this floor I have been citing the hydrogen work of other countries as evidence of how we have fallen behind in a field of research that we ourselves pioneered. Last spring Soviet television announced the triumph of an ordinary airplane flight using hydrogen fuel for the first time and showed the plane in the air with its jet stream of condensing steam instead of the usual kerosene smoke. Since then West Germany has commenced sea tests of a hydrogen fuel cell-powered submarine with a range said to be several times that of a conventional diesel-electric powered submarine.

Soviet success in hydrogen isn't confined to the skies, Mr. President; they also are moving on the ground and have announced plans to turn out 100 hydrogen fuel cell-powered vans. Recently, the Soviets joined forces with the Hungarian bus manufacturer Ikarus to adapt a 6,500 kilogram vehicle to a 40 kilowatt hydrogen-air fuel cell bus. A number of 12-passenger vehicles are being operated in Moscow with this technology on a hybrid basis with gasoline and there have been reports of at least five automobiles and three taxis operating exclusively on hydrogen in Moscow and Kharkov over the past year.

Elsewhere in Europe, the municipal government of Hamburg, West Germany is considering converting the city's 823 buses to hydrogen while in Italy the city of Milan, which operates 2,000 buses, is also weighing such an idea as well.

Over the past few weeks has come the startling announcement by the European Economic Community and the provincial government of Quebec of a joint feasibility study on the establishment of $500 million hydrogen energy project involving transatlantic energy shipments from Canada to Europe. The 2-year, $4 million study could lead to the construction of a liquid hydrogen plant in the 100 megawatt range on the St. Lawrence Seaway with its output shipped to Europe in either liquid cryogenic form as ammonia or as a form of liquid hydride. There it would be used as fuel for transport, for testing advanced aerospace engines and for district heating purposes, among others. Shipments would be made aboard a 20,000-ton gas tanker yet to be built but designed for at least 15 round trips a year. There is great interest in this undertaking among West German industrialists who forsee hydrogen fuels rapidly becoming cost competitive with fossil fuels as the cost of pollution becomes fully reflected in the price of energy.

Mr. President, in the race for a hydrogen economy the rest of the world is already out of the starting gate while we in the United States are hardly pawing the ground. This technology is too important to get away from us. The United States must get serious above hydrogen research and development. My bill signals this intention. The legislation I am offering today calls for two 5-year development programs: one of $55 million for research and development in hydrogen production and use and the other of $100 million for hydrogen fueled aircraft R&D. I welcome the support of my colleagues in cosponsoring this vital legislation whose time is now at hand this year and I urge its speedy adoption.●

By Mrs. KASSEBAUM (for herself, Mr. BOND, Mr. CHAFEE, Mr. DANFORTH, Mr. DOLE, Mr. EXON, Mr. FORD, Mr. GARN, Mr. HATCH, Mr. HEINZ, Mr. HUMPHREY, Mr. INOUYE, Mr. KASTEN, Mr. KERRY, Mr. LOTT, Mr. MCCAIN, Mr. PELL, Mr. PRESSLER, Mr. RUDMAN, Mr. SYMMS, Mr. WALLOP, and Mr. WILSON):

S. 640. A bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents; to the Committee on Commerce, Science, and Transportation.

GENERAL AVIATION PRODUCT LIABILITY STANDARDS ACT

Mrs. KASSEBAUM. Mr. President, for a number of years now, I have shared my concerns over aviation accident liability standards with my colleagues in the Senate. I introduced legislation to address the need for uniform liability standards at the beginning of the 99th and the 100th Congresses. I am continuing that tradition today with the introduction of the General Aviation Accident Liability Standards Act of 1989.

The bill I am introducing along with Senators BOND, CHAFEE, DANFORTH, DOLE, EXON, FORD, GARN, HATCH, HEINZ, HUMPHREY, INOUYE, KASTEN, KERRY, LOTT, MCCAIN, PELL, PRESSLER, RUDMAN, SYMMS, WALLOP, and WILSON, is identical to the legislation I introduced in the two preceding Congresses. Both of those bills, S. 473 last Congress and S. 2794 in the 99th Congress, were reported out of the Senate Commerce Committee—in the case of S. 2794, the report was without objection.

The Commerce Committee has, over the past 4 years, held hearings on this legislation. The testimony taken at those hearings documented a liability crisis of major, if not catastrophic, proportions. In addition to Commerce Committee hearings, those previous bills have twice been referred to, and twice discharged from, the Judiciary Committee.

The bill has widespread support. It received broad-based support from the last administration. It was supported by the Department of Justice, the Department of Commerce, and the Department of Transportation.

Mr. President, I ask unanimous consent that the letters outlining that support be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mrs. KASSEBAUM. Mr. President, my cosponsors and I are offering this

legislation because the general aviation industry in the United States is in serious trouble. During the past year, for the first time in a decade, the industry has shown some improvement in both sales and revenues. While this is certainly welcome news, it by no means signals that the industry's problems are over. The major problem that still has to be addressed is the soaring cost of product liability.

Contrary to claims made in a recent publication by the American Trial Lawyers Association, the general aviation industry has indeed suffered over the past decade from increased liability insurance costs and exorbitant damage awards. Only 10 years ago, $24 million was the total amount paid out by general aviation manufacturers and their insurers in liability claims. Today, that amount is well over $200 million. This astronomical increase occurred over a period during which the safety record of general aviation has greatly improved, with the number of accidents down to approximately 2,300 per year in 1988 versus more than 3,800 in 1979. The total accident rate and fatality rate for the industry has continually declined over recent years.

So, the question remains: Why are insurance costs rising while safety is improving? The answer, in part, lies in the liability standards to which this industry is subject. The source of the increase in insurance costs has not been in the number of claims against manufacturers; but, rather, in the size of the awards and in the expanding number of situations in which manufacturers are held responsible for damages.

Mr. President, I am not saying that the general aviation industry has been hurt solely because of rising insurance costs—there are many other factors affecting the industry which have contributed to the troubles manufacturers now face. And I believe it is important to understand that this is not an insurance problem. General aviation manufacturers are primarily self-insured. In fact, last year, all major manufacturers were self-insured for the first $100 million. Yet, with only a handful of domestic insurance companies providing any type of aviation liability insurance, it is fast becoming impossible for general aviation manufacturers to secure insurance at any level.

What this legislation addresses is the severe threat which the general aviation industry faces due to the upwardly spiraling product liability costs. These rising costs pose a very real problem on an already troubled industry.

To address this crisis, my legislation proposes the creation of Federal liability standards for this highly regulated industry. These standards were not selected in an arbitrary fashion. They are the product of many, many hours of negotiation. They reflect accommodations made over the past 4 years, including accommodations reached with those who have opposed the measure in years past.

Contrary to what the trial lawyers and others might imply, this bill is not an aviation manufacturer's relief bill. It will not impose obstacles to compensation for injured victims and their families. The language of the bill remains strict liability. It retains completely, joint and separate liability between the manufacturers of all subsystems and component parts and enacts comparative responsibility among other parties. It also establishes a 20-year statute of repose for aircraft and replacement parts—which begins anew each time a part is replaced.

The legislation also does not cap damages in any way. It does not cap or limit attorneys' fees. It does not waive the manufacturer's responsibility to supply warnings against dangers. Those responsibilities continue regardless of the age of the product. Nor does the measure limit the right to sue.

What the bill does do is establish uniform Federal standards of liability. Uniform standards are critical, and there is ample precedent for setting those standards at the Federal level. The Federal Government regulates the aviation industry from design to production. It regulates the training and licensing of pilots and mechanics. The air traffic control system is federally operated and regulated.

The Federal interest and presence in aviation is all-pervasive except in one area. Litigation is conducted under individual and widely varying State laws. Federal product liability standards are necessary to provide uniformity and predictability.

In 1979, over 17,000 general aviation aircraft were sold in the United States. Yet, in contrast, only 1,143 units were sold last year. The erosion of U.S. general aviation competitiveness is, in great part, the result of the devastating effects of our current product liability environment; its future is largely dependent on the resolution of the problem.

Unemployment in the domestic industry has risen drastically over the years. An example of this may be seen in the experience of the three largest general aviation aircraft manufacturers based in Wichita, KS, which, on aggregate, currently employ only 37 percent of the workers they employed in 1980. Such massive unemployment not only strips workers of a means of livelihood; it takes away the skills and dedicated work force necessary if we are to ever rebuild this industry.

Technology and innovation are being stifled because of prohibitive product liability costs. Airframe manufacturers are finding it increasingly difficult to find component manufacturers, as many businesses are totally giving up their aviation product lines because they are too costly to maintain. All of this adds up to even more American jobs lost. The increasing export of this industry is a tragedy.

Mr. President, this legislation is fair and balanced. It attempts to afford judicial protections to both plaintiff and defendant. It would guarantee compensation for innocent victims that is timely and fair. But, it would do so in a manner that provides treatment of product manufacturers that is reasonable and just.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed at this point in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section contains the short title of the legislation, the "General Aviation Accident Liability Standards Act of 1989".

SECTION 2.—FINDINGS AND PURPOSE

Subsection (a) sets forth Congressional findings regarding the necessity for the legislation.

Subsection (b) states that the purpose of the bill is to establish standards for determining liability for harm arising out of general aviation accidents.

SECTION 3.—DEFINITIONS

This section contains definitions of 8 terms used in the bill. Paragraph (4) defines "general aviation aircraft" to include all aircraft which have been issued a type certificate or airworthiness certificate by the FAA; at the time the certificate was issued had a maximum seating capacity of 20 persons; and were not, at the time of the accident, engage in scheduled passenger carrying operations.

Paragraph (5) defines "general aviation manufacturer" to include the builder of the airframe, engine, or any system, component, subassembly or other part of a general aviation aircraft.

Paragraph (6) contains the definition of the term "harm," which is defined to include property damage, bodily injury, death resulting from bodily injury, pain and suffering caused by such bodily injury, and emotional harm caused by such bodily injury.

SECTION 4.—PREEMPTION; APPLICABILITY

Section 4(a) provides that this bill supersedes any State law regarding recovery, under any legal theory, for harm arising out of a general aviation accident, to the extent that this bill establishes a rule of law or procedure applicable to the claim. With respect to matters not addressed by this bill, courts may make reference to applicable State law.

Section 4(b) provides that this bill shall not be construed to supersede, waive or affect any defense of sovereign immunity asserted by the United States or any State.

Section 4(c) provides that this bill shall not be construed to affect liability with respect to any aircraft that is not a general aviation aircraft for damages arising out of the operation of an aircraft that is not a general aviation aircraft.

Section 4(d) provides that this bill provides that no right of action for harm exists under this bill if the right would be incon-

sistent with the provisions of any applicable worker's compensation law. The intent of this provision is to maintain the employer's immunity from tort liability for injuries to its employees to the extent provided under applicable State workers's compensation law.

Section 4(e) provides that the act applies to manufacturers, owners, or operators of any general aviation aircraft, and any person who repairs, maintains, or provides any other support for such an aircraft. The Act also applies to occupants of general aviation aircraft, persons who bring an action on behalf of such an occupant, and nonoccupants if they are bringing an action based on harm to an occupant. For example, the surviving spouse of an occupant killed in a general aviation accident may bring an action for bereavement or loss of consortium. That action would be subject to the provisions of the bill since it arises out of harm to an occupant of a general aviation aircraft.

The bill does not apply to actions brought by or on behalf of nonoccupants for their own injuries caused by a general aviation aircraft, such as persons on the ground at the time of an accident.

SECTION 5.—UNIFORM STANDARDS OF LIABILITY FOR GENERAL AVIATION ACCIDENTS

Section 5 provides that liability for harm arising out of a general aviation accident may be established on the basis of negligence or, in three circumstances, an alternative standard. Subsection (a) provides that any person claming damages for harm arising out of a general aviation accident may bring an action and may recover damages for a party, if such party was negligent and such negligence is a proximate cause of the claimant's harm.

Subsection (b)(1) provides for liability based on defects in design or construction. Damages may be recovered if (a) the product left the control of the manufacturer in "a defective condition unreasonably dangerous for its intended purpose according to engineering and manufacturing practices which were reasonably feasible", (b) the defect is a proximate cause of the harm, and (c) the aircraft was being used at the time of the accident for a purpose and a manner for which it was designed and manufactured.

The phrase "defective condition unreasonably dangerous for its intended purpose" is not defined in the bill, but is intended to incorporate the standard of strict liability for products set out in the Restatement (Second) of Torts. The Restatement uses the same phrase to establish liability for products, and the states have used a variety of tests for determining whether a product is in a "defective condition unreasonably dangerous."

Determination of the defective condition of the product under the bill would involve application of engineering and manufacturing knowledge in existence at the time the product left the manufacture's control.

A claimant must prove, as part of a prima facie case under the bill, that the aircraft was being used at the time of the accident within the operating limits for which it was designed and manufactured.

Subsection (b)(2) establishes a cause of action against a general aviation manufacturer for failure to provide warnings or instructions. The manufacturer is liable if, at the time the product left the manufacturer's control, the manufacturer (a) knew or should have known about a danger connected with the product; and (b) failed to provide warnings or instructions that a person exercising reasonable care would have provided with respect to the danger, unless such warnings would not have materially affected the conduct of the user of the product. The manufacturer is also liable if, after the product left the manufacturer's control, the manufacturer knew or reasonably should have known about a danger connected with the product, and failed to provide warnings or instructions that would have been provided by a person exercising reasonable care, unless such warnings would not have materially affected the conduct of the user of the product. In all instances, the failure to warn must be a proximate cause of the claimant's harm.

Subsection (b)(3) establishes a cause of action against a manufacturer arising out of an express warranty provided by the manufacturer. Liability exists if (a) the manufacturer makes an express warranty with respect to the product, (b) the warranty relates to the aspect of the product which causes the harm, (c) the product fails to conform to the warranty, and (d) the failure to conform to the warranty is a proximate cause of the harm. The focus is on the product's failure to conform to express representations about it made by the manufacturer.

Subsection (c) establishes a defense to actions brought based on subsection (b). Paragraph (1) provides that there shall be no liability if the manufacturer proves, by a preponderance of the evidence, that a defective condition could have corrected by compliance with either an FAA airworthiness directive or a manufacturer's service bulletin. The bulletin must have been issued within a reasonable time before the accident occurred, and after the product left the control of the manufacturer. Under the Federal Aviation Act of 1958, the owner or operator of an aircraft, not the manufacturer, has the legal responsibility for compliance with airworthiness directives.

Paragraph (2) permits evidence of compliance with FAA standards, conditions or specifications to be admissible with regard to the defective condition of a product.

SECTION 6.—COMPARATIVE RESPONSIBILITY

This section establishes a general rule of comparative responsibility among the parties to an action arising out of a general aviation accident.

Subsection (a) states that the claimant's negligence reduces the amount of damages payable in proportion to the percentage of responsibility attributable to the claimant. It requires the trier of fact to determine comparative responsibility by making a determination of the respective percentage of responsibility for the claimant's harm attributable to the claimant, each defendant, and persons not parties to the action.

Subsection (b) establishes, subject to exceptions in subsection (c), that each defendant's liability shall be several, but not joint, and in proportion to the defendant's share of the responsibility for the claimant's harm.

Subsection (c) provides for joint and several liability in two circumstances. First, a manufacturer who is the builder or manufacturer of the airframe of the aircraft involved in an accident is jointly and severally liable when the harm is caused by a defective system, component, subassembly or other part that the manufacturer either installed or certified as part of the original type design. Second, a manufacturer of a system or component of the aircraft is jointly and severally liable for harm caused by a defective subassembly or other part of such system or component. Thus, manufacturers are made jointly liable for actions in the manufacture of the aircraft over which they could exercise control.

Subsection (d) provides that any persons jointly liable under this section shall have the right to bring an action for indemnity or contribution from any person with whom they are jointly liable.

SECTION 7.—TIME LIMITATION ON LIABILITY

This section establishes a time limit after which an aviation manufacturer no longer has any liability for harm caused by an aircraft, often referred to as a statute of repose. Subsection (a)(1) provides that no action alleged to have been caused by an aircraft may be brought for harm which occurs more than twenty years from either (A) the date of delivery of the aircraft to its first purchaser if delivered directly from the manufacturer, or (B) the date of first delivery to a person engaged in selling or leasing aircraft. Paragraph (2) deals with replacement or additional parts or systems. No action can be brought for harm which occurs more than twenty years after the replacement or addition.

Subsection (b) provides that the twenty year time limit does not apply if there is an express warranty from the manufacturer or seller of the product causing the harm that it would be suitable, for the purpose intended, for a period longer than twenty years. In such instances, the manufacturer would be liable for the longer period provided in the warranty.

Subsection (c) makes clear that the section does not affect a person's duty to provide additional or modified warnings or instructions regarding the use of maintenance of an aircraft, system, component or part.

SECTION 8.—SUBSEQUENT REMEDIAL MEASURES

This section expressly adopts Rule 407 of the Federal Rules of Evidence for actions covered by the bill. It provides that evidence of any measure taken after an event which, if taken previously, would have lessened the likelihood of the event's occurring, is inadmissible to prove liability, and is admissible only to the extent permitted by Rule 407.

SECTION 9.—ADMISSIBILITY OF CERTAIN EVIDENCE

This section provides that evidence of the tax liability attributable to earnings and profits alleged to have been lost as a result of an accident is admissible in connection with the proof of the claimant's harm, as is evidence of the present value of future earnings.

SECTION 10.—PUNITIVE DAMAGES

This section establishes the standards for awards of punitive damages in general aviation liability actions.

Subsection (a) provides that punitive damages may be awarded only if the claimant establishes by clear and convincing evidence that the harm was "the direct result of conduct manifesting a conscious, flagrant indifference to . . . safety. . . ."

Subsection (b) limits the admissibility of evidence regarding the financial worth of a defendant or other evidence relating solely to punitive damages. Such evidence is admissible only if the claimant can establish, before the evidence is offered, the ability to present prima facie proof of the existence of evidence to justify an award of punitive damages.

Subsection (c) relates to wrongful death actions where applicable state law provides that only damages termed punitive are recoverable. In such situations, punitive dam-

ages are in fact a substitute for compensatory damages. Subsection (c) provides that a defendant may be liable for any such damages, regardless of whether a claim is asserted under section 10 of this bill. The subsection further provides that recovery of such punitive damages under state law will not bar a claim under section 10 of this bill.

SECTION 11.—TIME LIMITATION ON BRINGING ACTIONS

Section 11 preempts state law statutes of limitations, establishing the time within which actions may be brought, with respect to actions governed by this bill. Section 11 provides that any action arising out of a general aviation accident is barred if a complaint is not filed within two years after the date on which the accident occurred, and the summons and complaint are not properly served within 120 days after the filing of the complaint. The section provides for an exception from the service requirement for good cause, or in cases of service of process in foreign countries pursuant to Rule 4(i) of the Federal Rules of Civil Procedure or similar state law.

SECTION 12.—SANCTIONS

This section requires the strict enforcement of the sanctions provided for by Rule 11 of the Federal Rules of Civil Procedure, in actions governed by the Act. Rule 11 provides for appropriate sanctions, including a party's expenses and attorney's fees, should an opposing party or attorney file a pleading without a reasonable belief that it is well grounded in fact and law, or for an improper purpose such as delay.

SECTION 13.—JURISDICTION

Subsection (a) provides jurisdiction for Federal district courts, concurrent with state courts, over civil actions arising out of general aviation accidents, without regard to the amount in controversy. Subsection (b) permits a defendant in such an action in state court to remove the action to Federal district court without the consent of any other party. Subsection (c) gives the Federal district court in such cases jurisdiction to determine all claims arising under State law if a substantial question of fact is common to the State law claims and the Federal claim, defense or counterclaim. Subsection (d) provides that venue of such a case in Federal court may be in the district in which the accident occurred, or in which any plaintiff or defendant resides. Transfer of venue is permitted on the court's own motion or the motion of any party, for the convenience of parties and witnesses in the interest of justice. Subsection (e) provides that, for venue purposes, a corporation is considered a resident of any State in which it is incorporated, licensed to do business or doing business.

SECTION 14.—SEVERABILITY

This section provides that if any provision of the bill, or the application of any provision to any person or circumstance, is held invalid, the remainder of the Act and its application to any other person or circumstance shall be unaffected.

SECTION 15.—EFFECTIVE DATE

This section makes the bill applicable to any civil action otherwise covered by the act which is filed on or after the date of enactment of the bill. It further provides that, for any action governed by the bill and filed within 180 days after enactment of the bill, a party shall be given liberal leave to amend any filing to conform with the provisions of the bill.

EXHIBIT 1

OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, July 26, 1988.

Hon. ROBERT C. BYRD,
Senate Majority Leader, Washington, DC.

DEAR MR. LEADER: It has come to the Department's attention that S. 473, the General Aviation Accident Liability Standards Act of 1987, has reached the floor of the Senate and may soon be considered there. The Department previously provided its views on the bill in a letter dated June 13, 1988, to Senator Ernest F. Hollings, Chairman of the Committee on Commerce, Science, and Transportation. Apparently, there is some confusion about our position on S. 473. I would like to take this opportunity to erase any ambiguities.

The Department has steadfastly supported tort reform measures as a means of resolving the product liability problems faced by our American companies, and we have been seeking a comprehensive national approach to product liability reform rather than industry-by-industry reforms. This preference, however, does not draw the Department into opposition to this legislation, which offers generally well considered and workable solutions to the problems faced by the domestic general aviation industry. Our letter of June 13, 1988 did not oppose the bill. Rather, it was intended to focus on several amendments, technical in nature, that will add to the clarity and purpose of the bill.

As we stated in our letter to Chairman Hollings, the provisions of S. 473 should not be viewed as preempting the rights of States to pass additional tort reform measures deemed appropriate. For this reason, we suggested adding the language from the Department's product liability legislation:

"The provisions of this Act shall preempt and supersede any State law to the extent such law is inconsistent with the limitations contained in such provisions. The provisions of this Act shall not preempt or supersede any State law that provides defenses or places limitations on a person's liability in addition to those contained in this Act."

We would hope that this language, or similar language will be offered as an amendment to the Bill.

Section 4(b) of S. 473 preserves to the United States sovereign immunity defenses in the following language:

"Nothing in this Act shall be construed to supersede or to waive or affect any defense of sovereign immunity asserted by the United States or any State."

This savings clause, without some clarification, may affect the Federal Tort Claims Act's ("FTCA") statutory framework in ways which are not intended, such as FTCA provisions affecting venue. To alleviate any ambiguity, therefore, we suggest that a new phrase be added to the end of the savings clause, at section 4 (b), to provide the following: "nor shall any provision of this Act be construed to supersede, waive or affect any condition, limitation, or procedure pertaining to any claim, action, or proceeding for damages otherwise applicable to the United States or any State."

The only additional technical change we feel is necessary would be to adopt the "amount in controversy" jurisdictional limits of Federal District Courts found at 28 U.S.C. § 1332. This amendment could be effected by deleting from section 13(a), the phrase "without regard to the amount in controversy" and substituting in its place the phrase "in cases where the amount in controversy exceeds the sum provided in 28 U.S.C. § 1332(a)." This would be consistent with current federal court practice, and would ensure that less complex matters involving small amounts in controversy (i.e., below $10,000) would not be brought in federal district courts. This would avoid any unnecessary burden being placed on the already overcrowded federal court system.

As previsouly stated, we believe these amendments are technical in nature, and as such, do not reflect on the substantive desirability of adopting S. 473, which the Department otherwise supports. We hope the Senate will move swiftly in acting favorably on this legislation.

The Office of Management and Budget has advised this Department that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

THOMAS M. BOYD,
Acting Assistant Attorney General.

THE SECRETARY OF COMMERCE,
Washington, DC, September 6, 1988.

Hon. NANCY LANDON KASSEBAUM,
U.S. Senate, Washington, DC.

DEAR NANCY: Thank you for your letter regarding S. 473, the "General Aviation Accident Liability Standards Act." The general aviation industry has been particularly hard hit in recent years with rising product liability costs and the inadequacies of the tort liability system beng major contributing factors to the decline. The Department of Commerce thinks that S. 473 is a very postive response to the problems of the general aviation industry. We also think that the success of this bill in obtaining meaningful Federal tort reform for the aviation industry will increase efforts to obtain comprehensive reform of the entire tort system.

We will continue to work actively within the Administration, with Congress and with the business community to obtain significant Federal reform of the tort system by lending our support for legislation like S. 473.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

BILL,
Secretary of Commerce.

U.S. DEPARTMENT OF TRANSPORTATION,
Washington, DC, June 21, 1988.

Hon. JOSEPH R. BIDEN,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Department of Transportation would like to provide its views on S. 473 as reported June 2 from the Committee on Commerce, Science, and Transportation, the General Aviation Accident Liability Standards Act of 1988.

This Department is seriously concerned about the tort liability crisis, especially as it affects the manufacture of general aviation aircraft. The tort liability system is threatening the existence of the domestic manufacture of general aviation aircraft and, if left uncorrected, this industry may well be forced to move offshore to survive. Product liability insurance for these manufacturers is so expensive, and the deductibles are so high that manufacturers are no longer able to protect themselves adequately from the effects of this exposure. Even where a manufacturer's alleged negligence is only a small factor in a general aviation accident,

the lack of other financially responsible parties will make a manufacturer in effect the insurer of last resort under widely accepted principles of joint and several liability. Thus, a single judgment alleging a defect in a plane manufactured over twenty years ago can rob a manufacturer of its profits for an entire year, no matter how insignificant the risk caused by the alleged defect.

In our judgment, the bill takes a significant step towards correcting these and other inequities in the operation of the tort system for this particular industry. Accordingly, the Department supports the bill, deferring to the Department of Justice on technical aspects of the drafting.

Sincerely,

B. WAYNE VANCE.

Mrs. KASSEBAUM. Mr. President, I yield to a cosponsor of the legislation, the ranking member of the Aviation Subcommittee, who has taken a major role in addressing this issue.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. McCAIN. Mr. President, I wish to take this opportunity to congratulate and express my appreciation to my distinguished friend and colleague from Kansas on this legislation, and express my strong support for this effort.

Mr. President, general aviation could not have a greater champion than my colleague from Kansas. I am not going to repeat some of the facts that my distinguished friend, Senator KASSEBAUM, just stated, like the fact that this legislation does not cap any damages, like the fact that it does not impose any restrictions on attorneys' fees. It does not limit or waive the responsibility to provide warnings to the public on known dangers or possible defects. It does not affect the rights of persons injured on the gound or affect more than general areas of product liability law.

Although I think it bears repeating, Mr. President, because opponents of this legislation will come forward, in my view, with a great deal of misinformation about exactly what this legislation does and does not do.

Mr. President, the situation in general aviation in America today is grave. We are in danger of losing an industry. We are losing our ability to compete with foreign manufacturers of general aviation aircraft. When you look at the trade deficit and the problems we are having with trade and look at the way general aviation business is being taken over by foreign manufacturers, I think it should give us all pause.

A December 8, 1986, report from the United States Foreign Commercial Services staff in Switzerland provides an interesting trade perspective. "United States-made single-engine aircraft, especially at present exchange rates, would find a ready market in Switzerland as nearly half of the existing fleet will have to be replaced within the next 2 to 5 years. However, the present high cost of the U.S. product liability insurance makes most U.S. small aircraft uncompetitive."

This will inevitably take its toll in other foreign markets as well as in this country.

Cessna Aircraft, the oldest manufacturer of general aviation in this country, has been building aircraft as long as any of us can remember. Cessna Aircraft, the world's largest general aviation manufacturer, has suspended production of all piston aircraft engines through the 1987 model year. Piper Aircraft has stated that it may be forced to manufacture only one piston engine aircraft, and Beech Aircraft has cut back its production significantly. No training aircraft are being made in the United States today.

As foreign manufacturers move in to fill this near vacuum in domestic airplane supplies, the U.S. industry's negative trade balance will likely increase.

Mr. President, it was in the United States that the Wright brothers flew at Kitty Hawk. It is in the United States that the first jet aircraft was flown. It is the United States that had the first major jet commercial aircraft.

What is the outlook over the next decade for general aviation if we do not enact this legislation? In my view I see the disappearance of this industry as we know it unless we adopt some reasonable standards as embodied in the bill proposed by my colleague from Kansas.

Mr. President, I know the hour is late. I wish again to express my deep appreciation to my dear friend and colleague from Kansas, and I wish to close by relating one incident that took place at an aviation hearing which both Senator KASSEBAUM and I attended.

One of the witnesses was Col. Frank Borman, former astronaut, former Air Force pilot, and former president of Eastern Airlines, a man who I think is extremely well qualified to discuss general aviation in this country.

The hearing was on another issue. At the end of the hearing Mr. Borman said he would like to make a point to the committee. That point was that he, after leaving Eastern Airlines, was now going back to the endeavors and enjoyment of his youth which was basically flying small light aircraft around the State of New Mexico as he had done as a youth. He was struck, angered, and terribly upset about the fact that there are no young people around airports any more learning to fly; there are no young people who are bumming a ride and getting in the back seat of someone's aircraft going from one place to another, whether it be a crop duster or somebody out for a short ride, and learning how to fly as generations of Americans have been able to do since Kitty Hawk. Why are they not able to? Because frankly, Mr. President, they are no longer able to afford to fly.

It seems to me that there is a wide range of compelling reasons, including training pilots of general aviation for airlines for which there is going to be an ever-increasing demand, allowing Americans to enjoy the recreation and sheer enjoyment of flying aircraft, particularly in the Southwest of this country as well as the rest of it, and also keep Americans at work, to keep Americans at work in States like Kansas, Missouri, and the State of Washington and others where manufacturing of general aviation aircraft is an important and vital part of their economy.

Mr. President, this bill has been discussed, debated, and gone over for years, literally years. It is time we moved on it.

I hope that the long and arduous crusade of my friend and respected colleague, the Senator from Kansas, will be brought to fruition not for her benefit but for the benefit of the American people.

I yield back to my colleague.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I would just like to add how much I value the leadership of Senator MCCAIN on this issue because he well understands—he is a pilot himself—the importance of this industry as he mentioned in training and encouraging new pilots but more than that the technology, too, that simply must come and start with the general aviation industry.

Mr. FORD. Mr. President, I am pleased, once again, to cosponsor the General Aviation Liability Standards Act of 1989, which has been introduced today by my distinguished colleague and friend from Kansas, Senator KASSEBAUM. Mr. President, identical legislation was considered and approved in the Commerce Committee in both the 99th and 100th Congress.

The need for this legislation remains as strong as ever: rising product liability costs continue to bring about the biggest single annual increase in the costs of new general aviation aircraft. This decade-long trend of increasing product liability costs has occurred despite the fact that the general aviation safety record has improved consistently during that time span. The impact of these liability costs on the general aviation industry has been well cataloged, and it has been devastating. Sales of domestic aircraft have declined from almost 18,000 units in 1978 to only 1,143 units in 1988. Consequently, employment by most general aviation manufactuers has plummeted, as entire aircraft model lines have been discontinued and factories closed.

Mr. President, we have heard significant discussion in this Chamber over the past few years about U.S. competitiveness and our steadily eroding international balance of trade. Outrageous and unwarranted product liability actions against general aviation manufacturers have strained the resources of this industry, which now spends too much time and money defending unfair lawsuits and as a result has too little time and money to spend on the technology development necessary to remain internationally competitive. Foreign manufacturers have, of course, moved rapidly to fill the void left by U.S. companies that have been forced out of business. In the past decade, the general aviation industry endured an 875 percent increase in product liability litigation costs, from $24 million to $209 million, despite its improving safety record. How can this industry compete internationally under this yoke?

I would like to briefly highlight the major provision of the general aviation liability bill. First, the bill establishes uniform, Federal liability standards that would apply to the general aviation industry. I note that every aspect of this industry is federally regulated, except the liability scheme. The design and manufacture of the aircraft and its component parts, the licensing of pilots and mechanics, control of air traffic and accident investigation—all are federally regulated. Second, the bill would limit the liability of manufacturers and suppliers to a fixed period of time and establish a comparative liability standard in assessing liability after an accident. Third, the bill would apply only to general aviation aircraft seating fewer than 20 passengers in nonscheduled service. Fourth, the bill would allow a plaintiff to file a claim in Federal or State court and a defendant to remove a State court action to Federal court.

Mr. President, now let me tell you what this bill would not do, despite what you might believe if you listened to the bill's detractors. The bill does not place a cap on the victim's potential award or place limitations on attorney's fees. The bill does not unfairly cut off a plaintiff's remedy—it does recognize that the manufacturer cannot be responsible indefinitely, particularly for causes not of his own making. The operators and maintenance personnel must assume proportionate responsibility for the working condition of aging aircraft, and they must heed information included in aviation safety circulars sent out by the manufacturers.

Let me make one further point on this subject: after a hearing which I chaired on the legislation in the 100th Congress, I offered to consider any changes proposed by critics of this bill to the provision which limits a manufacturer's liability to 20 years after the date of the aircraft's delivery. In fact, this provision was crafted as a compromise by Senator INOUYE in the 99th Congress. To date, they have offered no such proposal, though they continue to claim that a manufacturer should be liable for more than 20 years. I can only conclude that they do not really desire to negotiate on this issue.

Lastly, this bill is not intended to be, nor will it be, a burden on the Federal court system. In 1986 and 1987 there were only a total of 62 general aviation cases that actually went to trial, 23 in Federal court and 39 in State court. Even if all these cases, averaging 30 per year in 2 recent years, were brought in Federal court, as this bill allows, you could hardly say that they impose an undue burden on the Federal court system.

I want to speak for a moment about materials which were recently circulated by opponents of the legislation. Despite statements of the bill's critics, the industry has never claimed that it is suffering from an insurance crisis. The fact is that most major general aviation companies, such as Piper, Cessna, and Beech are fully or largely self-insured, so increases in insurance rates are highly irrelevant. The industry is, however, suffering from a crisis of spiralling, uncontrolled product liability costs brought on by a legal system that encourages forum shopping and results in disparity in the verdicts from jurisdiction to jurisdiction. The merits of an individual case, the fault, and whose fault—these issues are swept aside by a system that rewards artful pleading over the actual quality of an individual claim.

Critics also allege that the industry seeks to limit its liability for the manufacture of defective aircraft. Nothing could be further from the truth, and I defy anyone to show that this legislation has that purpose or accomplishes that result. The bill does provide the industry with some measure of protection against the court-determined liability of others. Comparative liability is hardly a novel concept. The fact that many manufacturers are often saddled with a court judgment, or the threat of one, for which they are minimally or not at all responsible helps to explain the economic situation with which the industry is confronted today.

One suggestion has been that better-built airplanes would reduce accidents and the number of claims. The answer to this point is two-fold. First, general aviation aircraft is being better-built, as evidenced by the continually improving safety record of the industry. As I pointed out earlier, however, safety and the number and amount of claims have not been directly related in recent years. Further, it is not new aircraft, and how well they are built, that is at issue in explaining the industry's accident statistics. Rather, the statistics show that accidents result primarily from improper care and maintenance of older aircraft. The industry does stand behind its product, and it regularly sends out information regarding the use and upkeep of its products—it is imperative that recommended inspections and maintenance occur.

The Federal Aviation Administration [FAA] safety standards have been mischaracterized as "minimum standards," when in fact the actual standards are "minimum necessary for safety." Despite claims to the contrary, there is no self/regulation in this industry. The FAA does not issue a type certificate for any airplane that is not performance tested using standards that are the "minimum necessary for safety."

Finally, critics charge that consumer groups oppose this bill. Mr. President, I can only respond by noting that the consumer groups relevent to this industry—the aircraft owners and operators—strongly back this bill. These are the groups that fly the planes with friends and family aboard. These are the groups that are aware of the state of the industry, which produces a product they can hardly still afford. These are the groups that should be heard because they have a legitimate stake in this issue.

I urge my colleagues to support this important, much needed legislation.

Mr. DOLE. Mr. President, I am proud to join as a cosponsor of the General Aviation Accident Liability Standards Act of 1989, which has been introduced today by my colleague from Kansas, Senator Kassebaum. Over the past several years, it has become clear to me that the general aviation industry is in the midst of a liability crisis. Liability insurance claims have skyrocketed to over $200 million annually, even though safety in the general aviation industry has dramatically improved. Aviation manufacturers in my home State of Kansas for example, have been particularly hard hit as liability costs have increased.

The bill introduced today would create uniform Federal liability standards for the general aviation industry. Uniform standards are absolutely essential if we are to bring some rationality and predictability back into a system of liability allocation that is clearly not serving the public interests.

By Mr. LAUTENBERG:

S. 641. A bill to amend title 23, United States Code, with relation to the reduction in apportionment of Federal-aid highway funds to certain States, and for other purposes; to the Committee on Environment and Public Works.

APPORTIONMENT OF FEDERAL AID HIGHWAY FUNDS

● Mr. LAUTENBERG. Mr. President, I rise today to introduce legislation to roll back the speed limit on our Nation's rural interstate highways to 55 miles per hour.

Mr. President, this is not a new issue to the Senate. In 1987, the Senate approved a provision on the highway reauthorization bill to allow States to raise the speed limit to 65 on rural interstates.

In doing so, this body turned its back on 13 years of experience with the 55 speed limit. It turned its back on the estimated 36,000 lives that were saved because of 55. It turned its back on the 2,500 to 4,500 serious injuries that were prevented each year because of 55. It turned its back on a 60-percent reduction in paralyzing spinal injuries. And it turned its back on sound energy conservation policy, the reason 55 was adopted in the first place.

This Senator could not support the abandonment of the many benefits of 55. I voted against the amendment.

Unfortunately, Mr. President, the support for a higher speed limit was overwhelming, and within months of the passage of the legislation, 38 States had adopted the higher speed limits.

Since that time, we've had a chance to look at the impact of higher speeds. In January, the Department of Transportation released a study on the safety impacts of 65. The results were startling, but not totally unexpected.

DOT found that on highways posted at 65, fatalities rose by 10 percent over the previous year, when those same roads had a speed limit of 55. The DOT study has helped shed a new light on this issue. With this sort of solid, scientifically valid data, I think the choice becomes clear. A few minutes saved is not worth a life lost.

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

S. 641

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

SECTION 1. (a) Subsection (a) of section 154 of title 23, United States Code, is amended—

(1) by striking out "other than a highway on the Interstate System located outside of an urbanized area of 50,000 population or more" in clause (1),

(2) by striking out clause (2),

(3) by redesignating clause (3) as clause (2), and

(4) by striking out "Clause (3) of " in the last sentence thereof and inserting in lieu thereof "Clause (2) of".

(b) Section 101(1) of Public Law 100-202 (101 Stat. 1329-383; 23 U.S.C. 154, note) is amended by striking out section 329, relating to a demonstration program for sixty-five MPH limit.

SEC. 2. (a) Subsection (f) of section 154 of title 23, United States Code, is amended to read as follows:

"(f)(1) If the Secretary determines, on the basis of a formula provided in regulations the Secretary shall prescribe, that a State is not enforcing the maximum speed limit described in subsection (a), the Secretary shall, notwithstanding any other provision of law—

"(A) withhold up to 10 percent of each of the apportionments otherwise to be made to such State under paragraphs (1), (2), and (6) of section 104(b) for the fiscal year succeeding the fiscal year in which such determination is made, and

"(B) use the funds withheld from such State under subparagraph (A) to fund those highway safety programs of such State under section 402 that have the primary effect of improving enforcement in such State of the maximum speed limit described in subsection (a).

"(2) The formula provided in the regulations the Secretary is required to prescribe under paragraph (1) shall—

"(A) assign greater weight to violations of the maximum speed limit described in subsection (a) in proportion to the amount by which the speed of the motor vehicle exceeds that maximum speed limit;

"(B) differentiate between the type of road on which the violations occur;

"(C) consider enforcement efforts made by the State; and

"(D) consider data on the fatalities and serious injuries that have occurred on roads in the State.

"(3) The funds available for highway safety projects of a State by reason of paragraph (1)(B) shall be in addition to any other funds available to such State for such projects under section 402 or under any other provision of law.".

(b) Subsection (a) of section 154 of title 23, United States Code, is amended—

(1) by striking out "a reduction in" and inserting in lieu thereof "the withholding of an",

(2) by striking out "reduced" and inserting in lieu thereof "withheld under subsection (f)", and

(3) by striking out "such reduction" and inserting in lieu thereof "the withholding".

(c) Subsection (h) of section 154 of title 23, United States Code, is amended to read as follows:

"(h) Any funds withheld from a State under subsection (f)(1)(A) that have not been expended for a highway safety program described in subsection (f)(1)(B) shall be made available to the State for the purpose for which such funds were originally available as soon as the Secretary determines, on the basis of the regulations prescribed under subsection (f)(1), that the State is enforcing the maximum speed limit described in subsection (a).".

SEC. 3. (a) By no later than the date that is 90 days after the date of enactment of this Act, the Secretary of Transportation shall prescribe, in preliminary form, and publish in the Federal Register the regulations that—

(1) provide the formula required under section 154(f)(1) of title 23, United States Code, for improved enforcement of the maximum speed limit described in section 154(a) of such title,

(2) improve the reporting requirements under section 154 of such title, and

(3) improve the certification requirements under section 141(a) of such title.

(b) The Secretary of Transportation shall publish in the Federal Register the final form of the regulations described in subsection (a) by no later than the date that is 180 days after the date of enactment of this Act.

SEC. 4. The Secretary of Transportation shall not withhold apportionments by reason of section 154(f) of title 23, United States Code, during fiscal year 1989 or at any time before the final form of the regulations described in section 3(a) are published in the Federal Register.●

By Mr. HATFIELD (for himself, Mr. HARKIN, Mr. CRANSTON, Mr. JEFFORDS, and Mr. DASCHLE):

S. 642. A bill to restrict U.S. Military Assistance for El Salvador, and for other purposes; to the Committee on Foreign Relations.

DEMOCRACY DEVELOPMENT AND PEACE IN EL SALVADOR ACT OF 1989

● Mr. HATFIELD. Mr. President, on behalf of myself, Senator HARKIN, Senator JEFFORDS, Senator DASCHLE, and Senator CRANSTON, I rise today to introduce the Democracy, Development, and Peace in El Salvador Act of 1989. Patterned after an amendment we offered last fall to the fiscal year 1989 foreign operations appropriations bill—which was defeated by one vote in the full committee markup—this bill is designed to underscore our support for negotiations and development in the deeply troubled country.

As much as we have tried to avoid it, Mr. President, El Salvador is about to become an issue again. Once the focus of our attention in Central America, El Salvador has been all but forgotten in recent years. After the election in 1984 of Christian Democrat Jose Napoleon Duarte, we were told El Salvador had become a democracy. We were told the economy would improve, the civil war would wind down, the death squads would disappear. So we appropriated the aid—$3.6 billion since 1981, $1.3 million a day since 1984—and then turned our attention to Nicaragua.

But the unfortunate truth is that we have not been bankrolling democracy in El Salvador—we have been bankrolling failure. As grand as the dreams and as good as the intentions of President Duarte, the economy is worse, the civil war continues and hundreds of thousands of innocent men, women, and children continue to suffer from indiscriminate violence and widespread poverty. Under- and unemployment hover around 50 percent, as does the percentage of the population without access to clean water. One in every 10 Salvadorans now lives as a refugee, per capita income—about $500—has declined almost 40 percent since 1980. One in every four Salvadoran children is malnourished, almost 1 in 10 does not survive its first year, and roughly half of the children who do survive are not in school.

As El Salvador prepares for a transition of power from President Duarte—the first round in the elections are

scheduled for this Sunday—death squad killings have more than tripled and guerrilla attacks on civilian targets have escalated dramatically. In all, the Roman Catholic Church's Legal Education Office reports that deaths resulting from human rights violations rose to 261 in 1988—a 67-percent increase over the 1987 total.

Things are not getting better in El Salvador, Mr. President. For all our aid, for all the genuine commitment to democracy, things in El Salvador are getting worse. Unfortunately, that remains one of the best kept secrets in this city: indeed, the Senate has not had a single vote on our policy in El Salvador for 5 years.

The obvious and legitimate question is why—why, have we ignored the reality of El Salvador for so long? Because the failure we have been bankrolling is our failure. Our policy has been to pursue a military solution to the civil war. That policy, Mr. President, has prove itself to be a total and complete failure. Our failure.

We started appropriating more military assistance and sending the Salvadorans better military hardware. The guerrillas simply broke into smaller groups and changed their tactics. We started appropriating more economic assistance—the guerrillas simply started destroying infrastructure faster than our dollars could repair it. In 9 years, never once did anyone stop to think that maybe, just maybe, there was another way. Never once did anyone stop to think that the civil war is fueled by the poverty and repression and hunger which have been rampant for so many years in El Salvador. Never once did anyone stop to think that the bargaining table might be a more effective place to seek an end to the war than the battlefield.

To the great credit of the Bush administration, all that has started to change. When the Salvadoran Government immediately denounced a guerilla proposal to lay down their arms if the Presidential elections were delayed 6 months, the United States suggested publicly that the proposal was "worthy of serious consideration." Suddenly the Salvadorans changed their tune—if anyone ever needed proof that our position makes a difference in El Salvador, that what is said and done in the United States makes a difference, the dialog which ensued is it.

But that was just a start. The negotiations eventually fell apart—and the elections are going to go ahead as scheduled. Our choice now is to pretend that opening, the space, never existed and go back to our support for a military solution to the war—or to make crystal clear our strong support for negotiations.

The legislation Senator HARKIN and I are introducing embraces the second option—it would hold 50 percent of United States military assistance for 6 months and until we have had 15 days to review a report submitted to the Congress on efforts made by the administration and the Government of El Salvador to seek a negotiated settlement to the civil war. There is no litmus test, no requirement of progress—indeed, it may well be that the guerillas, not the government, are dragging their feet. We just want to know what is being done—what the Salvadorans are doing and what we are doing—to seek a negotiated settlement. We want the Salvadoran Government—whomever that may be—to understand that we are convinced that the only way democracy can survive is through peace and development.

The report also would contain information on human rights and the judicial system in El Salvador. It is really very simple—and, I believe, consistent with the Bush administration's stated support for negotiations.

At this point, Mr. President, let me remind my colleagues that it has been the stated policy of the United States to encourage negotiations for many years. Time and time again the Reagan administration said that. In a 1987 report to Congress, they went so far as to call it our moral responsibility. And yet our policy—and our aid—really was based on the contention that the Salvadoran military could—and should—eventually win the war on the battlefield.

Behind that policy were those who believed that negotiations—our support for negotiations—would legitimize the guerrillas. I ask my colleagues: Does our support for negotiations in the Middle East—indeed, our recent recognition of the PLO—necessarily legitimize the tactics of the Palestinian Liberation Organization? Does our support for negotiations in southern Africa necessarily legitimize the tactics of the Cubans, the Soviets, the Angolans, or the South Africans? Or does our support for negotiations in Southeast Asia necessarily legitimize the tactics of the Vietnamese, the Chinese, or even the Cambodians? The answer is no.

Our enthusiasm for negotiations in all of those conflicts, as it should be for negotiations in El Salvador, is a direct result of our recognition of reality. The reality in the Middle East, in southern Africa, in Southeast Asia, and in El Salvador is that a lot of innocent civilians are being killed in the name of politics and the struggle for power. At least 60,000 people—probably more like 70,000 people—have been killed in El Salvador since 1981. There should be no alternative but to remove those struggles from the battlefield and put them squarely in the middle of the bargaining table.

Mr. President, some people will oppose our legislation because they support a political settlement to the civil war in El Salvador only if it means that the guerrillas are militarily defeated and rendered irrelevant to the process. There are those who will oppose our legislation—as they have opposed the recent dialog in El Salvador—because they believe anything short of military victory to be unacceptable, that negotiations are tantamount to surrender.

But, Mr. President, I am convinced those people are increasingly in the minority—both in Congress and in the administration. I am convinced that most people now realize—at least privately—that El Salvador is going down the tubes. They know that the "democracy" we all cheered in 1984 may one day soon fall apart at the seams.

The question is: What are we going to do about it? Are we going to wait for more bloodshed, more hunger, more instability—or are we going to act now?

Are we going to wait until it really is too late to save democracy in El Salvador—or are we going to act now to lend our full support to negotiations, peace, and development?●

● Mr. HARKIN. Mr. President, I am pleased to join Senator MARK HATFIELD in introducing the Democracy, Development, and Peace in El Salvador Act of 1989. Joining us as cosponsors are Senators ALAN CRANSTON and JAMES JEFFORDS.

This legislation would delay obligation of 50 percent of El Salvador's military assistance for fiscal year 1990 until after April 1 of next year.

In order to release those funds, the President is required to submit to Congress a report on the status of peace talks in El Salvador.

It specifies that the report describe efforts made by the Salvadoran Government, the Salvadoran rebels, and the United States to achieve a peace settlement as called for by the Esquipulas II accords signed in August 1987.

It also specifies that the report describe efforts made by the Government of El Salvador to reduce death squad activity and to punish perpetrators of human rights abuses against Salvadoran and American citizens.

Finally, it requires that half of all economic support funds approved for fiscal 1990, which will total $180 million, be used for projects and programs in health, education, judicial, and agricultural reform.

An amendment to the fiscal year 1989 foreign operations appropriations bill, on which this bill is patterned, was defeated by a one vote margin in the full Senate appropriations.

The introduction today of the Democracy, Development and Peace in El Salvador Act marks the advent of a new era of congressional concern about United States policy in El Salvador.

Equally important, this Sunday marks the passing of an historic era of Salvadoran politics, as voters elect a successor to President Jose Napoleon Duarte.

For the past 5 years, El Salvador enjoyed a free ride from Congress, with the American taxpayers footing the bill. Nearly $4 billion in United States aid later, it's time to determine whether the Salvadoran and the American people have received a fair return on that investment.

By most standards, U.S. policy has failed the test.

Sixty thousand Salvadorans have been killed during the country's civil war. Yet not a single military officer has been prosecuted for a human rights abuse.

In many respects, according to a recent GAO report, the poor in El Salvador are worse off than a decade ago.

More than half the population is under- or unemployed.

Just more than 1 in 10 Salvadoran peasants today have access to safe drinking water, down from 3 in 10 just 4 years ago. And the infant mortality rate has surged to nearly 1 in 10, the highest in Central America.

Over the past 8 years, while the United States has pumped in $1 billion of military aid into El Salvador and quadrupled the size of the Salvadoran Armed Forces to their present size of 56,000 troops. Yet the war grinds on.

I commend to my colleagues' attention the findings of a 1988 report by four U.S. Army lieutenant colonels who were fellows at Harvard's Kennedy School. That study concluded:

> The FMLN—tough, competent, highly motivated—can sustain its current strategy indefinitely. The Salvadorans have yet to devise a persuasive formula for winning the war.

According to the colonels, "The war in El Salvador is stuck * * * [and] unhappily, the United States finds itself stuck with the war."

Despite President Duarte's courageous efforts—not to mention $3.6 billion in U.S. aid—the democratic center has failed to stabilize either the Salvadoran economy or its politics.

In March's parliamentary elections, Duarte's Christian Democratic party suffered a stunning defeat at the hands of the right wing Arena party. This Sunday, Salvadoran voters are likely to put Arena, the party founded by death squad leader Roberto D'Aubuisson, in control of the Presidency, giving them power over all three branches of government.

U.S. policy appears to be unraveling * * * and the Bush administration knows it.

Vice President QUAYLE's recent visit, when he warned top Salvadoran military officers of aid cuts unless human rights conditions improve, signals a renewed interest in El Salvador by the Bush administration. But it also indicates the depth of the administration's concern.

Moreover, our Embassy's decision to encourage the Salvadoran Government to take seriously the FMLN's January 23 election proposal is a welcome development. Following Sunday's Presidential election, the United States should work with all political parties and the Salvadoran military to revive peace discussions with the rebels.

Staying the course in El Salvador could be a prescription for disaster: further polarization, further suffering, and conceivably the fall of democracy. The Vice President knows that, the army colonels know that and the Congress knows it.

The legislation Senator HATFIELD and I are introducing today is a call for a correction of United States policy in El Salvador, not an abandonment of it.

Our bill would make this correction in policy by pushing harder for human rights improvements, for a peaceful settlement of the civil war and for programs that address the root causes of that war. It puts more legislative teeth into this commitment and sends a strong signal to the Salvadoran military.

In 1984, Salvadorans elected Napoleon Duarte President because they shared his platform of peace, reform, and democracy. But the previous administration oftentimes sacrificed Duarte's sincere efforts to consolidate democracy to its single-minded pursuant of military victory over the rebels. Eight years of Reagan administration policy has shown that you cannot pursue democracy while waging war at the same time.

Our legislation is designed to ensure that U.S. policy and aid not only reaffirms Duarte's original platform of peace, reform, and democracy but works to achieve those goals.

We owe it to the Salvadoran people, and the legacy of Napoleon Duarte to help make their dreams of a democratic and peaceful El Salvador a reality.●

Mr. CRANSTON. Mr. President, on Sunday elections will be held in El Salvador. Whoever wins, the Christian Democrats, Arena or the Democratic Convergence must be mindful of one point. Although the January rebel initiative to begin a dialog for peace and the subsequent meeting between the rebels and the political parties did not lead to peace, one thing is very clear. The people of El Salvador want peace. They are tired of being pawns in a war that has ravaged their country, displaced families and taken more than 60,000 lives.

Mr. President, the political elites and the rebel leadership owe it to their people to work for peace.

I believe the United States, which has poured over $3 billion in economic and military aid into El Salvador over the last 8 years, can contribute to this peace process.

We need to reevaluate the situation in El Salvador, and we need to formulate a new policy toward that country. I believe our policy should support a negotiated solution to the war.

That is why I have joined Senators HARKIN, HATFIELD, and JEFFORDS in cosponsoring legislation which addresses the issue of peace in El Salvador.

Our bill seeks to promote a refinement in U.S. policy. We believe our policy should seek to encourage the Government of El Salvador to make significant efforts to promote a negotiated solution. It is also crucial that death squad activity be curbed and that respect for the rule of law be promoted aggressively.

I was pleased to learn that during his recent visit to El Salvador, Vice President QUAYLE warned Salvadoran military officials that continued aid would be dependent on an improved Salvadoran human rights record.

The bill releases half of El Salvador's military aid for fiscal year 1990. The rest of the aid would be withheld while the United States Government assesses the efforts of both the Government of El Salvador and the armed opposition to resolve the conflict, as well as what steps can be taken toward this end. Our government would also assess efforts taken to reduce the death squad activities and to prosecute those found of human rights violations.

Under this legislation the administration will report to Congress on these issues on April 1, 1989. If the administration seeks release of the remaining 50 percent of the aid, it will inform the appropriate Foreign Affairs and Appropriating committees of its intent. They will then review the administration's report and will have 15 days to act on the President's notification of intent to use the funds.

Mr. President, the administration and Congress need to work together to reevaluate and refine our policy toward El Salvador. Our bill is an important step in this process.

By Mr. DIXON:

S.J. Res. 81. Joint resolution to designate the week of October 1 through 7, 1989, as "National Health Care Food Service Week"; to the Committee on the Judiciary.

NATIONAL HEALTH CARE FOOD SERVICE WEEK

Mr. DIXON. Mr. President, today I am introducing a joint resolution which calls for the declaration of the week of October 1 through 7, 1989, as "National Health Care Food Service Week."

The resolution is intended to highlight the importance of health care food service employees to the overall health care delivery system. Nutrition is an essential component of the care

and treatment process for patients in hospitals and long-term care facilities. Health care food service workers, chefs, dietitians, dietary assistants, and hospital and long-term care administrators work in concert with other professionals to provide good patient care.

I understand that as of today, over 35 States and many city and county governments have honored America's health care food service employees by setting aside a week to recognize their efforts.

With the passage of this resolution, we hope to generate public awareness of the hard work and the caring that are provided by health care food service employees.

Mr. President, I ask unanimous consent that the joint resolution be printed in the RECORD and I urge its prompt approval.

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

S.J. RES. 81

Whereas health care food service is a vital function of the provision of care and treatment of hospitalized persons;

Whereas health care food service workers, chefs, dietitians, dietary assistants, and administrators work in concert with other health care professionals to provide the best possible patient care; and

Whereas the provision of nutrition and sustenance is an essential component of the care and recovery of hospitalized persons: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 1 through 7, 1989, is designated as "National Health Care Food Service Week", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe that week with appropriate ceremonies and activities.

By Mr. HELMS (for himself, Mr. D'AMATO, Mr. DECONCINI, and Mr. LOTT):

S.J. Res. 82. Joint resolution disapproving the certification by the President under section 481(h) of the Foreign Assistance Act of 1961; to the Committee on Foreign Relations.

DISAPPROVAL OF CERTAIN PRESIDENTIAL CERTIFICATIONS

Mr. HELMS. Mr. President, on March 1, the State Department released its annual narcotics control strategy report—and for the third year in a row, the State Department has certified that the Government of Mexico has fully cooperated with the United States during the last 12 months in our efforts to control the flow of illegal drugs into our country. Under the Anti-Drug Abuse Act of 1986, economic, military, and other U.S. assistance must be suspended for any country unless the President so certifies.

Mr. President, today I introduce a resolution of disapproval of the certification of Mexico. Joining me as cosponsors are Senators D'AMATO, DECONCINI, and LOTT.

I have become increasingly concerned that the entire certification process is a sham. Although the issue has often been discussed on this floor, for the benefit of new Members I will review how the narcotics certification requirement became law.

Under the provisions of the Anti-Drug Abuse Act of 1986, countries must be certified as having cooperated fully in the previous 12 months in three areas: Crop eradication, interdiction of traffickers, and money laundering. I repeat that the standard of the law is in the words "cooperated fully."

Mr. President, when the law was debated in this Chamber under the management of the senior Senator from Indiana, I do not recall that one single Senator rose to oppose the provision on drug certification. But for the last 2 years since the law was enacted, I have heard Senators say "the standards in the law are too high," or "we have too much at stake to risk offending these countries." But the law is clear, and to date it has not been changed.

Furthermore, the law does not say that we are going to have to get tough with every country except Mexico. No, Mexico is not exempt. The same standard applies.

Mr. President, I listened to a lot of rhetoric about "the war on drugs" last year. But now comes the real test. Will Members of the U.S. Congress say one thing in their home States on the campaign trail, and then come to Washington and do another? I hope they will not.

I do not accept the argument that decertification of a noncooperating country will hurt U.S. economic or diplomatic interests. That is pure poppycock.

I remind my colleagues that Mexico is the No. 1 single-country source for heroin, and the No. 2 source for the marijuana pouring over our Southern border, and destroying and killing our youth. Mexico is also a major transit country for shipping cocaine from South America to the United States. No one disputes these facts. The question is not even whether Mexico is cooperating. The question is whether Mexico is fully cooperating.

Mr. President, on March 3, an op-ed article appeared in the New York Times entitled "The Giant Loophole" by A.M. Rosenthal regarding the certification process. I believe that Mr. Rosenthal is right on the mark when he says that we have a right to ask the President to use the economic incentives and weapons at his command to try to wage the war on drugs. We might ruffle some feathers and raise some eyebrows, but in the long-run, our relations with Mexico and the other countries will be significantly strengthened. As Mr. Rosenthal states so eloquently, if the President "expects to reduce demand at home, he has to say no to the rest of the world." And we in Congress have the responsibility to help the President do just that.

Mr. President, I ask unanimous consent that the New York Times op-ed article be included in the RECORD at the conclusion of my remarks.

Mr. President, I do not intend to go into great detail today on Mexico's dismal record of noncooperation in the drug war in the past year. I will do that when the entire Senate debates this issue sometime next month. I will, however, at this time lay out the principal reasons why I believe that Congress must vote to disapprove the President's certification of Mexico.

I imagine that there will be some this year who will say, "Mexico has a new President, so let's give them the benefit of the doubt this year." Well, try telling that to the mother of a drug addict. And remember, the countries are certified on the basis of their cooperation from March 1, 1988 to March 1, 1989. If Mexico has not given us full cooperation for that 12-month period, then Mexico should not be certified. Any casual observer could review the record and conclude that Mexico clearly has not given us its cooperation. For example:

The United States has made repeated requests for overflight and hot pursuit by U.S. law enforcement aircraft. The requests have been denied.

The United States has repeatedly asked to join in participation of air surveillance flights for interdiction efforts. The requests have been denied.

The United States has asked for bank records to assist in carrying out narcotics related investigations. These requests have also been denied.

Mexico has not prosecuted the principal suspects in the murder of United States DEA agent Camarena, or in the torture of DEA agent Cortez. This is not full cooperation.

The Mexican Army will not let the United States verify its eradication figures, or any other statistics. I argue, therefore, that the figures are meaningless. This is not full cooperation.

The State Department's statement of explanation for the certification of Mexico states: "Corruption remains a serious impediment to program effectiveness, and many major traffickers remain at large." I do not call that full cooperation.

The Mexican Government claims to have arrested 12,000 persons on drug charges in 1988. But they will not tell the United States how many of those people were tried, charged, sentenced and served time. It is not cooperation to merely arrest someone for a period of hours or days. Success is much more accurately measured by the

number of persons convicted and sentenced.

The State Department report admits that Mexico refused to extradite convicted terrorist, William Morales, to the United States last year. That is not cooperation.

Mr. President, I do not believe that this is too much to ask of the Mexican Government. The new Mexican President, Carlos Salinas de Gortari has had some tough antidrug rhetoric—but in his 3½ months in office, there is very little action to back up his words.

Mr. President, of particular interest and concern to this Senate are the long-standing issues of the 1985 murder of the U.S. DEA agent, Enrique Camarena, and the 1986 torture of U.S. DEA agent, Victor Cortez. We have long known the identity of the major suspects for both of these heinous crimes. But have these people been prosecuted? No. And what does the State Department annual report have to say about this? I quote from the report:

> Verdicts from the trial in Guadalajara for the 1985 kidnaping and murder of DEA special agent Enrique Camarena are expected in 1989. The court case related to the 1986 detention of DEA special agent Victor Cortez by Jalisco state police continues, and should also be resolved in 1989.

This was the same story we were given about these cases last year. Frankly, I am tired of waiting. Enrique Camarena's family is tired of waiting, and so are our other DEA agents who continue to risk their lives in Mexico and other countries so that our children might live in a safer country.

Mr. President, now I must discuss the No. 1 reason why I cannot in good conscience agree with the State Department's certification of Mexico. I know of no other country, with the exception of Panama, where narcotics-related corruption so thoroughly permeates the highest levels of the Government. And Mexico cannot wage any kind of war against drug traffickers if Mexico's own law enforcement officials are involved in the protection of those traffickers.

The Mexican Government routinely dismisses the drug issue as solely a United States problem. They maintain that as long as there is a demand in the United States, drugs will be produced in Mexico. Many Senators have used this same argument. While it is true that the majority of the consumers are in our country, there is a fundamental difference in the way the two countries are fighting the war on drugs—I have never heard one allegation that the highest law enforcement officials in the United States are involved in any form of drug trafficking, or in the protection of traffickers. I know of no one who would allege that Attorney General Thornburgh, or our Directors of DEA, FBI, or Customs are involved in drug-related activities. Unfortunately, this is not the case in Mexico.

Mr. President, I know that there are honorable Mexicans who are dedicated to fighting this international war on drugs. Some have even lost their lives while on duty. Those men are to be commended. But they are crying out for help from the highest levels of their Government—or their labor will be in vain.

As I have already stated, President Salinas has had some good rhetoric in his first 3 months. His actions, however, have done little to allay the concerns of many Mexicans and Americans.

Mr. Salinas has bragged about how many resources and new personnel he will put to work on the drug issue. But who did he name to spearhead his war against drugs? The President named his new Attorney General to run the war—Mr. Enrique Alvarez del Castillo. And what do we know about Mr. Alvarez? We know that he is the former Governor of Jalisco State where our DEA agent Camarena was kidnaped and murdered. That is also the state where our DEA agent Cortez was brutally tortured by police. We know that Mr. Alvarez was absolutely noncooperative in assisting us in these investigations. It is a matter of record that as Governor of Jalisco, Mr. Alvarez did nothing to fight drugs in a state where drug traffickers run rampant and free.

Mr. President, it is tragic enough that the new Attorney General is believed to be a friend of drug kingpins—but he is not alone. There are many new appointees in the Salinas administration who have alleged ties to the drug world, and they have been rewarded with top law enforcement posts.

On January 26, 1989—7 weeks ago—I wrote to Secretary Baker regarding my concern with ratifying the Mutual Legal Assistance Treaty with Mexico. Incidentally, many of my concerns about entering into the permanent MLAT Treaty with Mexico, are the same concerns I have with certifying Mexico on drug cooperation. I have not received a response to my letter yet.

In my letter to Secretary Baker, I said:

> The problem with the Salinas administration is not that one or two individuals may have dubious connections, but that a significant number of key officials connected with law enforcement is reported allegedly to be tied to criminals, or in fact themselves accused of criminal actions.

Mr. President, I attached to my letter a list of 14 high-level officials named to the new administration in Mexico about whom I have reliable information which links them to various drug-related criminal activities.

Just days before the March 1 certification report was to be released, the Mexican Government saw it convenient to relieve one official of his duties—the chief of the Mexico City Police Investigative Service. That is only 1 out of 14. But they may have felt pressured to do so insomuch as the individual has been indicted in the United States, and we have asked for his extradition. Time will tell if his dismissal was a publicity stunt, or if Mexico is serious and will extradite Mr. Nazar Haro to the United States.

Mr. President, the Mexican officials I included on my list were not low-level persons. They are the people who occupy some of the most crucial posts in Mexican law enforcement. They include the Secretaries of the Interior and of National Defense, the Mexico City Police Chief, the Assistant Attorney General for Anti-Narcotics, Deputy Attorney General for Investigations, the Chief of the Anti-Narcotics Police Unit, and the Director of Eradication.

Mr. President, I ask unanimous consent that my letter to Secretary Baker be included in the RECORD at the conclusion of my remarks. I also ask unanimous consent that two articles be included at the end of my remarks; the Washington Post, January 7, 1989, entitled "Newly Named Mexican Officials Linked to Drugs" by William Branigan, and the Los Angeles Times, January 7, 1989, entitled "U.S. Officials Worry About Mexico Police Appointees" by Marjorie Miller.

Thus far, it appears that Mexico is planning to conduct business as usual. And up to this time, Mexico has been in the business of protecting drug kingpins. We saw the same situation in Panama—but no one wanted to act until it was too late. Had we not closed our eyes and ears to the facts about Mr. Noreiga and Panama, Mr. Noriega may not have been able to maintain himself in power. But we all remember that just 2 short years ago, the State Department actually certified Panama, telling us privately that we would ruin our relations with them if we did otherwise. Well look at our relations with Panama now.

Mr. President, last April, the Senate voted 63 to 27 to disapprove the President's certification of Mexico. It was most unfortunate that the House of Representatives buckled under the pressure from outside lobbyists representing the Government of Mexico and decided not to vote on this crucial issue. Although the House is not under expedited procedures, I would strongly urge House Members to take a stand on the issue and schedule a vote on this resolution.

Last year the Senate sent a clear message. Once again this year, I urge the Senate to approve the resolution to decertify Mexico. If we do not act decisively this year, we may as well remove this law from the books. But my hope is that not only the Senate,

but the entire Congress will send an ever-stronger message to the Mexican Government this year. We must act before it is too late.

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

EXHIBIT A

[From the New York Times, Mar. 3, 1989]

THE GIANT LOOPHOLE

(By A.M. Rosenthal)

Here we have it, plain, painful and perfidious, in a State Department report to the Congress of the United States:

"Political and economic instability in drug-producing areas around the world have resulted in the subordination of our drug control agenda to other pressing concerns."

That is about as clear a statement as we can expect in a report that is a confession that our Government says one thing and does another. But put this way it might be a lot clearer:

"President Reagan and President Bush said they understood that drugs are poisoning our society and are the public's number one concern. They promised they would do everything in their power to fight drugs.

"Forget it. For two terms, Mr. Reagan went along with the advice he got from State Department and other advisers not to hurt drug-producing nations because it might be against our diplomatic or economic interests. Now President Bush is doing the same thing."

So who is deciding that foreign instability should result in the "subordination" of our own drug agenda? The State Department and our Presidents.

Our Presidents have been switching priorities on us. They tell us at election time that the drug fight is number one. Then, whenever there is a choice, they decide the stability of drug-producing countries and our relations with them are more important. Stepping back and trying to keep cool. I think this is what is going on:

The law requires drug-producing countries to either cooperate in reducing their role as drug producers and transit centers or lose American aid, loans, tariff benefits, air travel agreements—substantial penalties.

But there is an escape clause: no penalties at all if the President decides it would harm our national interests to use them. Every year President Reagan used it. He certified major drug-producing countries for United States aid, making the law one giant loophole—as President Bush is doing.

Mr. Bush's report says drug production is increasing. He refuses to invoke sanctions against the countries that are doing the increasing—except for a few with which we have little or no relations, like Laos and Panama.

The excuse is that countries like Peru, Colombia, Bolivia and Mexico might be "destabilized" if they lost U.S. help.

Enough of cool. Drugs have already destabilized our own country. With all the international good will in the world, that seems more important than the politics of Bolivia. Thousands of murders a year on the streets of America, millions of lives wrecked, gang warfare making killing fields of American cities—those things seem truly destabilizing.

Senator Dennis DeConcini, Democrat of Arizona, a longtime drug fighter, says certification of major drug-producing countries is a circumvention of the law. He intends to vote against certification for Mexico.

No, sanctions will not end the drug trade. But they sure might help. President Nixon once picked up the phone and told the Turks that unless they cut back hard on opium production, he would put them on the sanction list, ally or no ally. They did cut back, and the United States helped the Turkish peasants find a substitute crop.

We have a right to ask the President to use the economic incentives and weapons at his command to try to cut down drug production, as the law intended. If he expects to reduce demand at home, he has to say no to the rest of the world.

International drug withdrawal will hurt, but in the end it will help relations between countries as it did between Turkey and the United States.

But the way it is now, says Representative Charles Rangel of New York, chairman of a House committee on drug control, the State Department does not even use the threat of sanctions seriously in negotiations with drug-producing nations.

Well, President Bush is new in the job and happily he can redeem his record on fighting drugs abroad.

He can call a summit meeting with leaders of drug-producing nations, establish clear criteria for automatically imposing sanctions and offer American help to make them unnecessary.

He can give substantial responsibility for making recommendations on sanctions to the Drug Enforcement Administration and William J. Bennett, who will be the anti-drug director, instead of allowing the State Department a monopoly over anti-drug policy. It seems fair that agents who risk their lives should at least be represented when decisions are made in the drug war—assuming it resumes.

EXHIBIT B

COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, January 26, 1989.

HON. JAMES A. BAKER III,
Secretary of State, Department of State, Washington, DC.

DEAR JIM: During your nomination hearings, I asked whether you would withhold asking for approval of the Mutual Legal Assistance Treaty (MLAT) with Mexico until the President is in a position to assure the Senate that leading officials in the administration of President Carlos Salinas de Gortari were not connected with drug-trafficking and other international crimes.

My great concern is that the MLATs are a two-way street, but it's a street loaded with land-mines from the standpoint of the United States. We can ask the other party for information on specific cases, and they can ask us for information on specific cases. If we comply with a request from Mexico's law-enforcement authorities and provide confidential information, that information could easily fall into the hands of criminals who have connections within the government. There is always a risk in transmitting any confidential information, but that risk is multiplied many times if we know in advance that any official in the foreign law enforcement administration had criminal connections.

The problem with the Salinas Administration is not that one or two individuals may have dubious connections, but that a significant number of key officials connected with law enforcement is reported allegedly to be tied to criminals, or in fact themselves accused of criminal actions. According to information that is available in the press and that has come to me privately, the pattern of criminality is so widespread in Mexican law enforcement that it is difficult to believe that a U.S. administration could prudently comply with Mexican requests under the proposed MLAT treaty.

Our concern should be to ensure that high-level law enforcement officials of the Salinas Administration and at the state level are not involved in the production of narcotics, drug-trafficking, the protection of drug-traffickers, money-laundering, the receiving of illegal gratuities, consorting with known criminals, or other illegal activities. Obviously, the standard of evidence for setting prudent policy should be accurate, but need not be as high as required for a court of law. Nor need the information be publicly revealed. This rule should be especially true when there is a pattern of involvement by many officials across the roster of Mexican government.

Therefore I ask that the names of the specific individuals in the Salinas Administration on the list appended to this letter be checked against any derogatory information of criminal activities which may be contained in the files of any U.S. law enforcement or intelligence agency, including the CIA, DIA, NSA, FBI, DEA, Customs, the Criminal and International divisions of the Department of Justice, and appropriate bureaus and embassies of the Department of State. The names on this list have not been chosen at random: they have been chosen on the basis of specific information which I am not in a position to evaluate, but which comes from sources which have proved reliable in the past. Unless the Senate has such information, I do not see how this body could fulfill responsibly its duties under the advice and consent clause of the U.S. Constitution.

As you can surmise from the extent of the attached list, the problem could be one of the utmost gravity.

Sincerely,

JESSE HELMS.

ATTACHMENT A

Attorney General: Enrique Alvarez del Castillo.

Secretary of the Interior: Fernando Gutierrez Barrios.

Secretary of Fisheries: Maria del Los Angeles Moreno Iruegas.

Secretary of of National Defense: Antonio Riviello Bazan.

Secretary of Public Education: Manuel Bartlett.

Chief, Mexico City Police: Javier Garcia Paniagua.

Chief, Investigative Service, Mexico City Police: Miguel Nazar Haro.

Assistant Attorney General for Anti-Narcotics: Hector Castaneda Jimenez.

Assistant Attorney General for Preliminary Investigations: Abraham Polo Uzcanga.

Deputy Attorney General for Judicial Matters and Social Progress: Luis Octavio Porte Petit.

Deputy Attorney General for Investigation and Fight against Narcotics: Javier Coello Trejo.

Chief, Anti-Narcotics Police Unit of Attorney General's Office: Pablo Aleman Diaz.

Chief, Special Narcotics Division: Fausto Valverde Salinas.

Director, Eradication Campaign: Jose Ramirez Franco.

EXHIBIT C

[From the Washington Post, Jan. 7, 1989]

NEWLY NAMED MEXICAN OFFICIALS LINKED TO DRUGS

(By William Branigan)

MEXICO CITY, January 6.—Several top antinarcotics and law enforcement officials in the new government of President Carlos Salinas de Gortari are suspected of having links to major Mexican drug traffickers, according to Mexican and foreign sources.

Their appointments have aroused intense criticism here and alarmed Mexico-watchers in the U.S. government.

One recent appointee, Miguel Nazar Haro, the chief of a newly created intelligence unit in the Mexico City police department and a reported former top CIA informant here, is wanted in the United States on charges of involvement in a huge international car-theft ring that was smashed in 1981 by the FBI and California police.

Some of the new appointments have shocked officials in Washington, who view them as flying in the face of Salinas' tough rhetoric on combating drug trafficking. The U.S. government is known to have expressed concern to the Salinas administration over some of the antinarcotics appointees but generally has adopted a wait-and-see attitude.

"The previous activities of some of these individuals is a cause for some concern," U.S. Customs Commissioner William von Raab said in Washington." "The proof of the pudding is going to be in their actions."

"Maybe it takes a thief to catch a thief," said one source here in trying to sound an optimistic note about some of the more questionable to deliver on Salinas' promise to "make life miserable for drug traffickers in Mexico" and put a lid on Mexico's rising crime rate.

Another source of optimism, Mexican and foreign officials said, was the naming of a tough former government prosecutor, Javier Coello Trejo, to a new senior post in the Mexican attorney general's office in charge of the fight against drug trafficking.

However, the prevailing U.S. attitude is one of pessimism, and knowledgeable officials are bracing for the likelihood of an eventual confrontation between the new U.S. administration and the Mexican government over drug trafficking.

"It's very discouraging what we're seeing right now," said one foreign law-enforcement official. "There are people in key positions [in the Mexican government] that we know have direct links with the underworld." He said that in particular, some new government appointees "have very close relations" with Miguel Angel Felix Gallardo, who is described by U.S. authorities as the head of one of Mexico's top drug trafficking organizations.

According to a well-informed former Mexican government official, the connections of some new appointees with narcotics dealers stem from past service in the Federal Security Directorate, a national security police force considered the Mexican equivalent of the CIA. Created in 1946 under the Interior Secretariat, the Federal Security Directorate was disbanded in 1985. In a crackdown following the torture-murder of U.S. Drug Enforcement Administration agent Enrique Camarena and his Mexican pilot, a number of Federal Security Directorate agents were implicated in protection rackets for drug traffickers and other corrupt practices.

In an apparent indication of the defensive attitude that the government is taking in response to the criticism of its appointees, a senior government official, speaking on condition that he not be identified, asserted in an interview this week that Camarena himself had been "involved up to his ears" as an accomplice of international drug traffickers. The official claimed to have read a "Mexican intelligence report" detailing this allegation, but he declined to produce the report or offer any evidence of the charge.

A knowledgeable U.S. source said there was "no substance" to the charge, which he described as a "smokescreen" to divert attention from the new Mexican appointees and a tactic typical of some of the old-school politicians who have been given key posts in the new administration.

Besides Mexico City intelligence chief Nazar Haro, some of the appointees who have come under heavy criticism here are Attorney General Enrique Alvarez del Castillo, Interior Secretary Fernando Gutierrez Barrios, Mexico City police chief Javier Garcia Paniagua and a director of the Federal Judicial Police, Col. Pablo Aleman Diaz.

Until he took office Dec. 1 as the head of the Mexican government department responsible for antinarcotics efforts, Alvarez del Castillo had been governor of Jalisco State, a major drug-trafficking area and headquarters of the traffickers who killed Camarena. Officials in Washington have complained that the governor did little to help the investigation of the Camerana murder, in which state police were implicated, or rein in the major traffickers. Before assuming his current post, Aleman had served as the Jalisco State security chief under Alvarez del Castillo.

The governor "showed a total lack of concern and lack of effort during the [Camarena] tragedy, one senior U.S. law-enforcement official said in Washington. "He was not helpful at all—zero."

David Westrate, assisted DEA adminstrator for operations, played down the concerns, noting that in the Camerena investigation, U.S. officials dealt mostly with Mexican federal authorities and not with Jalisco State officials under Alvarez del Castillo.

Gutierrez Barrios and Garcia Paaniagua each headed the Federal Security Directorate under previous administrations and have come under criticism from opposition groups here for presiding over alleged human rights abuses and political repression during the 1970's. Garcia Paniagua, a former head of the ruling Institutional Revolutionary Party and a contender for the nomination as the party's presidential candidate before Mexico's 1982 elections, has been out of government for the last six years.

The brunt of the criticism, however, has come down on Nazar Haro, who was named Dec. 16 by Garcia Paniagua as "director of intelligence services a newly created and so far ill-defined post under the Mexico City police department. The appointment, which one senior official in Washington termed "a bad joke," was made with the approval of Manuel Camacho Solis, a youthful technocrat and close ally of Salinas. Camacho, who earlier had named Garcia Paniagua as police chief, was himself appointed by Salinas Nov. 30 as the new chief of the Federal District, in effect mayor of Mexico City.

The Mexican news weekly Proceso recently reported detailed charges that Nazar Haro had been personally involved in the torture of leftist government opponents while serving as chief of the Federal Security Directorate in the late 1970s.

In April 1982, Nazar Haro was indicted in San Diego on charges of involvement in a car-theft ring that U.S. authorities said had smuggled about 600 stolen American luxury cars and vans from southern California to Mexico. While a San Diego grand jury was investigating the case in early 1982, U.S. Attorney William H. Kennedy said that the CIA and the Justice Department were holding up the indictment of Nazar Haro because he was a top CIA informant in Mexico. President Reagan subsequently fired Kennedy for making the remarks, which then-Attorney General William French Smith called "highly prejudicial to the interests of the United States."

Nazar Haro, who had been forced to resign from his federal security post in January 1982 after he was implicated in the ring, vigorously denied involvement with either the CIA or the car-theft scheme. But he fled back to Mexico after posting $200,000 bail and has since remained a fugitive from U.S. justice. He is subject to arrest under an outstanding warrant for skipping bail if he reenters the United States, the U.S. Embassy here confirmed.

Since he was appointed last month, Nazar Haro has denied knowing anything about the case and has refused to discuss it.

In seeking to explain the appointment of Nazar Haro and other controversial figures, a senior government official said that crime, particularly in Mexico City, had become a major problem and that tough, experienced people with "political weight" were needed to deal with it. He said such attributes outweighed the "political cost" of appointing them and that in government, "sometimes you have to choose the lesser of two evils."

The official added that he did not know whether the U.S. charges against Nazar Haro were true or not, but that "for us this was not a determining factor" in his appointment.

A former government official who is now a prominent critic of the Mexican administration acknowledged that, despite his unsavory reputation, Nazar Haro had been "very effective in controlling crime" and was one of Mexico's best-trained and most experienced investigators.

EXHIBIT D

[From the Los Angeles Times, Jan. 7, 1989]

U.S. OFFICIALS WORRY ABOUT MEXICO POLICE APPOINTEES

(By Marjorie Miller)

MEXICO CITY.—U.S. officials are expressing fear that appointments to several top Mexican police posts, including that of a fugitive from the United States, signal a lack of commitment by new President Carlos Salinas de Gortari to crack down on narcotics trafficking and improve law enforcement.

Salinas, who took office Dec. 1, has called drug trafficking a national security problem and told visiting U.S. congressmen last month that its eradication is a priority. He vowed "to make life miserable " for traffickers.

But the attorney general Salinas appointed, Enrique Alvarez del Castillo, comes to the job after five years as governor of the state of Jalisco, home to several Mexican drug lords. U.S. and Mexican sources said drug trafficking and related killings increased in Jalisco during his tenure. Among the cases cited is the 1985 kidnaping by state judicial police of Enrique S. Camarena, an agent of the U.S. Drug Enforcement Administration who was tortured and murdered along with his Mexican pilot.

"Putting that governor in as attorney general is a complete insult to any hope of working with Mexico," said a U.S. Senate investigator who has worked on drug issues. "It's a joke."

Sources here and in Washington, who spoke on the condition that they not be identified, said American officials also were irked by the appointment of Miguel Nazar Haro as Mexico City police intelligence chief. Nazar was indicted in 1982 by a U.S. grand jury in San Diego on car theft and conspiracy charges. He was arrested in the United States, posted $200,000 bail and fled the country.

Nazar, also a one-time CIA source, was named to the new and still-undefined intelligence post by Mexico City Police Chief Javier Garcia Paniagua, a former director of the federal security police and a resident of Guadalajara, in Jalisco state, for the last few years.

Sources said they were baffled by the great gap between the government's rhetoric, which "has been extremely good," and the appointments. They said they are taking a "wait-and-see" approach.

"There is the theory that it takes one to know one, that these people are certainly wise to what is going on. They are not criminally or politically naive," said one source.

Added another, "Who knows, maybe all bets are off and tomorrow they'll bring in [reputed drug lords] Felix Gallardo and Manuel Salcido. If those things happen, we'll have to give the devil his due."

The concern in the U.S. government is not unanimous. David L. Westrate, assistant administrator of the DEA, for example, cited the assurances that Salinas gave President-elect Bush when they met last month that combatting drugs would be among his top priorities.

Asked about such individuals as Nazar, Alvarez del Castillo and Garcia Paniagua, he pointed out that they are state or city officials—not federal authorities.

"We deal with federal officials," Westrate said. "We don't deal with state officials.

The appointments have come under unusually strong attack by the Mexico City press, coming at the same time as a police scandal over the suppression of a riot last month in the state jail at Tepic, about 110 miles northwest of Guadalajara in Nayarit state, that officials said left 23 dead.

A Mexico City SWAT team called the Zorros stormed the jail after prisoners took over the administrative offices with hostages. The prisoners killed the warden and commander of the SWAT team, but at least five of the prisoners who were filmed giving their names to police after surrendering were later listed as among the dead.

Mexican officials insist that there was no impropriety in the jail capture and defend the law enforcement appointees as capable officers. But in what appears to be a political move to counter the bad publicity, a Mexican official asserted to two reporters that the Guadalajara-based DEA agent Camarena had been a drug trafficker himself.

The official, who declined to be identified, claimed to have seen a Mexican intelligence report that Camarena "was up to his ears" in narcotics trafficking before his murder. He implied that Camarena had worked for Colombians competing with Mexican drug kingpin Rafael Caro Quintero, who is in jail for masterminding the killing.

No other U.S. or Mexican police officials could be found who had seen the report and nothing like it has been leaked in the four years since the killing. The source refused to give details.

The Mexican press has focused attention on Nazar, who, in addition to his indictment in the United States, is accused of having personally tortured political prisoners in the 1970's. While with the federal security police, Nazar was a leader of the Brigada Blanca, an interagency task force established to fight an urban guerrilla movement. The Brigada Blanca was widely accused of torture and of being behind the disappearance of several thousand students and political opponents.

Those familiar with police work describe Nazar, 64, as efficient and brutal, a 20-year veteran of the federal security police and director of that now-defunct agency from 1977 until he resigned in January, 1982, apparently because of the American indictment.

At a press conference last week, Police Chief Garcia Paniagua said Nazar is perhaps the best police investigator in Mexico.

"He has been accused by U.S. authorities, but here, in this country, I don't know of any case against him or any arrest warrant," Garcia Paniagua said. Asked if the U.S. accusation was false, he said, "If they are wrong, that's their problem, not mine. I am not interested in their opinion either."

Nazar was accused of participating in an $8.4 million car theft ring that smuggled luxury cars stolen from Orange and San Diego counties into Mexico for sale. Nazar testified before a grand jury in San Diego that he was innocent and was being framed.

A U.S. attorney was fired over the case after he publicly accused the CIA and Justice Department of having delayed the indictment because Nazar was regarded as an "indispensable" CIA source.

While Nazar's appointment is viewed as something of a slap in the face to the United States, sources appeared more worried about the implications of Alvares del Castillo's appointment as attorney general for drug eradication efforts.

Under Alvarez del Castillo, Jalisco drug traffickers operated with near impunity, they said, charging that either Alvarez had been bought off to do nothing or was totally unaware of what was going on in his own state.

U.S. officials also are concerned about some of the people Alvarez del Castillo brought with him from Jalisco.

(Times staff writer Ronald J. Ostrow, in Washington, contributed to this article.)

Mr. LOTT. Mr. President, I am deeply concerned about the State Department certification of Mexico. The State Department, in a classic example of saying one thing and doing another, stated in its annual narcotics report:

Political and economic instability in drug-producing areas around the world have resulted in the subordination of our drug control agenda to other pressing concerns.

I would suggest that it is the State Department itself that has subordinated our Nation's war against drugs to other not so pressing concerns, such as a fear of offending major drug-producing countries.

The State Department would have us believe that Mexico has met the standard of "full cooperation" in our antinarcotics legislation. I think the evidence shows that Mexico is not cooperating to any significant degree with our antinarcotics efforts and that is why I am cosponsoring this resolution.

This resolution sends a clear signal that the Senate will not tolerate the Mexican Government's indifference to the narcotics problem for which they themselves are in large measure responsible.

The simple facts are that Mexico is the No. 1 source, I repeat the No. 1 source, for heroin in the United States.

Mexico is the No. 2 source, I repeat, the No. 2 source, for marijuana coming into the United States.

Mexico is the main transit country, I repeat the main transit country, for cocaine coming into the United States.

Mr. President, U.S. law requires that for a country to be certified there must be full cooperation in three major areas: crop eradication, money laundering, and drug interdiction.

With respect to crop eradication, the fact is that the Mexican Government refuses to let us verify their statistics.

With respect to money laundering, the Mexican Government has repeatedly denied requests from the U.S. Customs Service to turn over bank records for inspection and analysis.

With respect to drug interdiction, the Mexican Government has denied us hot pursuit and overflight rights. The Mexican Government has even denied joint crewing of air surveillance flights such as we had back in the 1970's.

Mr. President, I am saddened that it is necessary to present this situation in such harsh and stark terms. Mexico is our friend and our neighbor. The Mexican people are our friends and we share common values such as our belief in strong family ties, the belief in the value and dignity of hard work, and a strong sense of national pride.

Neither Americans nor Mexicans want to see their children addicted to narcotics.

Neither Americans nor Mexicans want narcotics to destroy public health and thereby undermine economic productivity.

Neither Americans nor Mexicans want their sovereignty undermined by the narcotics mafia.

Mr. President, we would not be good friends or good neighbors if we followed the State Department's certification and swept the narcotics problem under the rug in order to have diplomacy as usual. The real test of friendship and good neighborliness is honesty and frank communication.

We know that we have a massive problem on the demand side. We admit this problem and President Bush has stated his intention to do everything in his power to solve this problem. I would point out that Mexico has a growing internal demand problem as well, so the problem is not just on our side of the border.

But today it is the supply side of the problem that is before us. We must be honest about the situation. We must be frank about the situation. The Mexican Government simply has not fully cooperated with us in the antidrug effort. It does our relationship no good to pretend otherwise.

Mr. President, I do not doubt the sincerity of President Salinas. He is a fine man; he came to our country for his higher education and had a distinguished record at Harvard University; he understands our country and he wants to be a friend and a good neighbor.

The problem that we have is not with President Salinas. The problem that we have is with the massive corrupt governmental apparatus in Mexico which is undermining the antidrug war. It is this corrupt governmental apparatus that President Salinas must reform in order to save his own country from economic collapse, social disintegration, and drug addiction.

This resolution sends a clear signal to those corrupt elements in Mexico who are counting on the State Department to take the heat off of them by glossing over and covering up the real and serious problems that both countries face in the antidrug war. In my view, by being an honest and frank friend we can help President Salinas in his own efforts to fight the drug war and to prevent Mexico from losing its sovereignty to the international drug mafia.

By Mr. KERRY:

S.J. Res. 83. Joint resolution to establish a bipartisan Commission on Third World Debt; to the Committee on Foreign Relations.

COMMISSION ON THIRD WORLD DEBT

● Mr. KERRY. Mr. President, today I am reintroducing a joint resolution to establish a bipartisan Commission on Third World Debt, a proposal I introduced originally on September 30, 1987, as Senate Joint Resolution 193.

At that time I noted that a bipartisan Commission was needed to forge a national consensus on an issue that has cast a cloud over the international economy, has stymied economic growth and development in Third World countries, and has threatened the political stability of emerging democracies.

The events of the past several weeks have shown us once again just how serious a problem we face. The outbreak of massive demonstrations in Venezuela in reaction to government austerity measures resulted in the death of some 300 people, and sent shock waves throughout Latin America—waves that have reached our shores. In the aftermath of this huge catastrophe, Secretary Brady has announced a reversal of administration policy, and has acknowledged what many have argued all along: that the Baker plan is dead and that debt reduction must be a part of any successful strategy to deal with this problem.

There is a real opportunity now for the United States to play a leading role in shaping the international policy response to the debt problem, but we cannot do so unless we have the institutional means to examine the options and build a bipartisan national consensus on how to proceed. While various committees of Congress and agencies of the executive branch can and must address those aspects of the problem that fall within their jurisdiction, there must be a broader effort to frame the issues—in a context that brings together representatives of both parties, the Congress, the administration, academics, the media, and the private sector.

Such a Commission can help not only to explore innovative options, but to build an understanding and support for these options among the American public. For example, one element of several proposals is to increase the use of swaps that enable creditor countries to offer some debt forgiveness in exchange for certain environmental protection measures which would otherwise be extremely difficult to achieve. Viewed in this context, debt forgiveness need not be seen as a bailout but rather as an investment in the protection and preservation of our global environment. Similarly, there are direct benefits of debt restructuring in terms of increased U.S. exports and renewed, balanced economic growth that are not now fully appreciated by the general public.

There have been, of course, many studies and panel reports on the debt situation convened by a variety of distinguished foundations and similar organizations. But now, as we begin with a new administration, and a new approach to the debt problem, it is a timely opportunity to establish a bipartisan Commission of the kind that was used so successfully to forge a national consensus on Social Security in 1982.

If we had acted on this proposal when it was originally introduced, we would now have before us a blueprint for action, we would be debating the specifics of implementing solutions today, and we would have a foundation for a national consensus.●

By Mr. HATCH:

S.J. Res. 84. Joint resolution to designate April 30, 1989, as "National Society of the Sons of the American Revolution Centennial Day"; to the Committee on the Judiciary.

NATIONAL SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION CENTENNIAL DAY

Mr. HATCH. Mr. President, I rise to introduce a joint resolution (S.J. Res. 84) to designate April 30, 1989, as "National Society of the Sons of the American Revolution Centennnial Day."

The Sons of the American Revolution is one of the oldest and largest patriotic societies in America. It was organized on April 30, 1989, and incorporated under Public Law 59-214. The Sons of the American Revolution's objectives are patriotic, historical, and educational. Its activities perpetuate the memory of those who by their services during the American Revolution achieved the independence of our Nation. These activities are also intended to engender respect for the principles of government established by our forebears.

I want to take this opportunity to urge my colleagues to salute the Sons of the American Revolution as they celebrate their 100th anniversary by approving this resolution. I extend my personal congratulations to them.

By Mr. ARMSTRONG (for himself and Mr. GLENN):

S.J. Res. 85. Joint resolution to designate the week of July 24–30, 1989, as the "National Week of Recognition and Remembrance for Those Who Served in the Korean War"; to the Committee on the Judiciary.

NATIONAL WEEK OF RECOGNITION AND REMEMBRANCE FOR THOSE WHO SERVED IN THE KOREAN WAR

● Mr. ARMSTRONG. Mr. President, our country is fortunate to have many heroes. Some of our greatest heroes are the men and women who served in the military during the Korean war. Because those who served the cause of freedom have never been forgotten, I am pleased to once again introduce a resolution with Senator GLENN which designates the week of July 24–30, 1989, as "National Week of Recognition and Remembrance for Those Who Served in the Korean War." This resolution will not only authorize the President to issue a proclamation calling on the people of the United States to observe the week with proper ceremonies, but it will also encourage the country to fly the American flag at half staff in honor of those brave Americans who died as a result of their service in Korea.

In June 1950, waves of Communist soldiers from North Korea poured over the 38th parallel for the sole purpose of subjecting the people of the south. Until that time, most Americans had little knowledge of that Asian peninsula. However, when President Truman, honoring our commitment to democratic principles, authorized combat support by United States troops, some 5.7 million Americans went to Korea to put their lives on the line. The cost was high. More than 54,000 Americans gave their lives and 100,000 more were wounded.

On July 27, 1958, after 3 years of active hostilities, the territorial integ-

rity of the Republic of Korea was restored, and the freedom and independence of its people are assured even to this date. In recent years, an increasing number of Korean war veterans are setting aside July 27, the anniversary of the armistice, as a special day to remember those with whom they served and to honor those who made the supreme sacrifice for freedom and for their country.

Mr. President, it is fitting that we honor those Americans who so valiantly served this Nation in the Korean war. I am sure my colleagues will remember with pride that Congress and the President of the United States enacted a law to honor the forgotten warriors of the Korean war by establishing a Korean War Memorial. This site has been designated, and the design of the memorial is being reviewed.

America is blessed with many heroes. I am proud to be part of the effort to recognize those heroes who served the cause of freedom in Korea, and I ask unanimous consent that the joint resolution be printed in the RECORD.

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

S.J. RES. 85

Whereas on June 25, 1950, the Communist army of North Korea invaded and attacked South Korea, initiating the Korean War;

Whereas the week of July 24-30, 1989 includes July 27, the 36th anniversary of the Cease Fire agreement that ended the active combat of the Korean War;

Whereas the Korean War was brought to an end primarily through the effort of the United States Armed Forces;

Whereas for the first and only time in history a United Nations Command was created, with the United States as the executive agent, to repel this invasion and preserve liberty for the people of the Republic of Korea;

Whereas, in addition to the United States and the Republic of Korea, twenty other member nations provided military contingents to serve under the United Nations banner;

Whereas, after three years of active hostilities, the territorial integrity of the Republic of Korea was restored, and the freedom and independence of its people are assured even to this date;

Whereas, over 5.7 million American servicemen and women were involved directly or indirectly in the war;

Whereas American casualties during that period were 54,246 dead, of which 33,629 were battle deaths, 103,284 wounded, 8,177 listed as missing or prisoners of war, and 328 prisoners of war are still unaccounted for;

Whereas although the Korean War has been known as America's "Forgotten War", those who served have never forgotten, and this nation should never forget the sacrifice made by those who fought and died in Korea for the noble and just cause of freedom;

Whereas the Congress and the President of the United States have enacted a law authorizing the establishment of a Korean War Veterans Memorial in the Nation's Capital to recognize and honor the service and sacrifice of those who participated in the Korean War;

Whereas increasing numbers of Korean War veterans are setting aside July 27, the anniversary date of the Armistice, as a special day to remember those with whom they served and to honor those who made the supreme sacrifice in a war to preserve the ideals of freedom and independence; and

Whereas on this significant anniversary of the cease fire which started the longest military armistice in modern history, it is right and appropriate to recognize, honor, and remember the service and sacrifice of those who endure the rigors of combat and the extremes of a hostile climate under the most trying conditions and still prevailed to preserve the independence of a free nation: Now, therfore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the week of July 24-30, 1989, is designated as the "National Week of Recognition and Remembrance for Those Who Served in the Korean War." The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities, and to urge the departments and agencies of the United States and interested organizations, groups and individuals to fly the American flag at half staff on July 27, 1989 in honor of those Americans who died as a result of their service in Korea.●

By Mr. RIEGLE (for himself, Mr. BRADLEY, Mr. WILSON, Mr. CONRAD, Mr. INOUYE, Mr. COATS, Mr. ROBB, Mr. SANFORD, Mr. METZENBAUM, Mr. PRYOR, Mr. STEVENS, Mr. MITCHELL, Mr. SIMPSON, and Mr. BOSCHWITZ):

S.J. Res. 86. Joint resolution designating November 17, 1989, as "National Philanthropy Day"; to the Committee on the Judiciary.

NATIONAL PHILANTHROPY DAY

● Mr. RIEGLE. Mr. President, I am introducing a resolution today to designate Friday, November 17, 1989, as "National Philanthropy Day." The purpose of this legislation is to recognize the generous efforts of the many people who support charitable organizations and the important role these organizations play in meeting the diverse needs of our society.

Philanthropy is an American tradition, dating back to colonial days. Thomas Jefferson and Benjamin Franklin were two early promoters of the need to give of oneself to benefit both the individual and society—"enlightened self-interest" they called it. Early Americans worked together to develop schools and educational institutions, lending libraries, and societies for the advancement of learning, and to provide essential community services such as fire protection and health care.

Alexis de Tocqueville, the French historian, admired the American propensity to organize philanthropic associations to meet the needs of society, as well as our tendency to "make great and real sacrifices for the common good." He attributed the growth of these traits to the prevalence of free democratic institutions in the United States.

Today, the spirit of philanthropy and voluntarism is stronger than ever. We currently have over 800,000 nonprofit philanthropic organizations in the United States, employing more than 10 million people. Americans gave $94 billion to these organizations in 1987. In addition, 89 million people participated in some kind of volunteer work.

Mr. President, there are many things that we can do, many problems that we can address if we pool our resources and work together, both through small community groups or large national institutions. By publicly declaring November 17, 1989 as National Philanthropy Day, we can encourage efforts to carry on this vital tradition of giving.

Mr. President, I ask unanimous consent that the full text of the resolution be printed in the RECORD directly following my remarks.

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

S.J. RES. 86

Whereas there are more than 800,000 nonprofit philanthropic organizations in the United States;

Whereas such organizations employ more than 10,000,000 individuals, including 4,500,000 volunteers;

Whereas the people of the United States contributed approximately $94,000,000,000 in 1987 to support such organizations;

Whereas philanthropic organizations are responsible for enhancing the quality of life of people throughout this Nation and the world;

Whereas the people of this Nation owe a great debt to the schools, churches, museums, art and music centers, youth groups, hospitals, research institutions, and community service organizations, and to the institutions and organizations which aid and comfort disadvantaged, sick or elderly individuals; and

Whereas the people of the United States should demonstrate gratitude and support for philanthropic organizations and for the efforts, skills and resources of individuals who carry out the missions of such organizations: Now therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 17, 1989, is designated as "National Philanthropy Day" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.●

By Mr. WIRTH (for himself, Mr. JOHNSTON, Mr. HEINZ, Mr. CHAFEE, Mr. DURENBERGER, Mr. LUGAR, Mr. BUMPERS, Mr. GORE, and Mr. CRANSTON):

S.J. Res. 88. Joint resolution to establish that it is the policy of the United States to reduce the generation

of carbon dioxide and for other purposes; which was ordered held at the desk until the close of business March 17, 1989.

GLOBAL ENVIRONMENT POLICY

Mr. WIRTH. Mr. President, the recent decision by the European Community to accelerate controls on chemicals that harm the Earth's ozone shield—front page news around the world—once again demonstrated that global environmental issues are emerging very rapidly. This global campaign to protect the atmosphere offers President Bush an opportunity and a challenge to lead the world.

It is my belief that the emergence of issues like ozone depletion and global warming occurs in the context of a dramatically changing world. Restructuring in the Soviet Union, new peace initiatives in the Middle East and the laying down of arms in Latin America and Africa are reminders of a world in flux. On the diplomatic front, competition for world leadership is intense, characterized by initiatives to seize the high ground in global cooperation—from bold arms control proposals to conflict resolution in Angola, Afghanistan, and elsewhere.

Increasingly, the initiatives being pursued by world leaders demonstrate that global environmental protection has become a source of international prestige.

The British Prime Minister, Margaret Thatcher, convened what was probably the most significant conference to date on ozone depletion and Mrs. Thatcher has taken the lead on multilateral efforts to protect the ozone layer.

Similarly, Soviet General Secretary Mikhail Gorbachev and Foreign Minister Eduard Shevardnadze each called for global environmental cooperation in their most recent speeches to the United Nations. The leaders of West Germany and Canada have also been vocal proponents of environmental issues. Despite reports about political and economic difficulties, even the Government of Brazil is making in addressing environmental issues with worldwide implications—specifically, the widespread destruction of tropical rainforests. The dean of these efforts is the Norwegian Prime Minister, Gro Harlem Brundtland, who has pioneered the provocative concept of sustainable economic and environmental development.

President Bush, too, has proclaimed himself an environmental President. However, it is ironic that the United States, which guided the development of the historic Montreal protocol on ozone-depleting substances, followed the European Communities' call for stronger controls on chlorofluorocarbons [CFC's]. Commendably, the President endorsed the EC's call for a complete phase out of CFC's by the year 2000. Now it is time to develop a regulatory structure to accomplish this goal—and perhaps to set a more ambitious timeline. Strong controls are warranted by the increasing evidence of ozone layer damage and because CFC's are the most potent substances that scientists believe are trapping heat and warming the globe.

We are fortunate in the U.S. Senate to have had strong leadership in the fight to prevent ozone depletion. As in the 100th Congress, bipartisan legislation, sound and responsible legislation, has been introduced by Senators BAUCUS, CHAFEE, and GORE. I commend my colleagues for their efforts. It is time now for the new administration to endorse these efforts or submit a plan of its own.

Indeed, the development of global environmental initiatives requires the President's immediate attention. The United States must, as it always has, lead the world to protect the planet's natural systems.

How can we regain our leadership position?

First, the President should schedule now the international environmental summit he pledged to host during last year's campaign. If heads of state are to be involved, and they must, a date must be determined soon.

Second, the President should establish as a top priority for domestic policy, measures to protect the global environment. At the top of both our energy and environmental agendas should be energy efficiency. More than 10 consecutive years of energy efficiency improvements have screeched to a halt, according to recent data. Consequently, oil imports are rising and emissions of greenhouse gases and air pollutants are increasing unabated. A strong program of research and new initiatives to encourage efficiency in all sectors of our economy should be developed. The most optimistic forecasts show that we could cut our $440 billion energy bill in half; reduce emissions that contribute to global warming, acid rain and local air pollution; and lessen our dependency on imported oil (now at levels greater than the oil crisis days of the 1970's) and cut the resulting trade deficit for energy. Yes, Mr. President, good environmental policy can be good economic policy and good energy policy. Unfortunately, President Bush's 1990 budget calls for further cuts in energy efficiency programs and alternative energy programs.

Third, the President should take on the issue of world population growth. Unless we are able to address the question of swelling numbers of inhabitants on Earth, our other efforts at global environmental protection will be futile. At current growth rates, 1 billion individuals will be added to today's 5 billion during the next 10 years—another China's worth of inhabitants. Population growth adds precipitously to the demand for energy, the pressures on tropical rainforests and to the generation of greenhouse gases and air pollutants. The President's first opportunity to demonstrate his commitment will come late this spring, when the United States will be asked to resume support for the United Nations Fund for Population Assistance.

Fourth, the United States should strengthen its commitments to such multilateral institutions as the United Nations Environment Programme and the World Bank to promote research and develop accords in these areas and to provide assistance to the developing nations that will help them manage their natural resources more soundly.

Finally, we should demonstrate to the world that we are serious about preventing global warming by establishing a goal for reducing carbon dioxide (CO_2) emissions.

Today, I am introducing a joint resolution with Senator JOHNSTON and a number of my colleagues that would establish that it is the policy of the United States to reduce emissions of greenhouse gases. Specifically, this bill sets as a goal, a 20-percent reduction in CO_2 emissions by the year 2000. This ambitious goal, and it is only a goal, was adopted only 2 weeks ago by the international conference on global climate change held in New York by the National Governors Association, Cornell University and Governors Mario Cuomo of New York, Thomas H. Kean of New Jersey, and Madeline Kunin of Vermont.

I urge all of my colleagues to join me in support of this resolution. I believe it is exactly the kind of signal we in the U.S. Senate should be sending to the rest of the world. Judging from my discussions with other Senators, this issue will be the focus of a great deal of activity in this body in the months and years ahead.

In closing, Mr. President, leadership, from the international to local level, is needed now to halt the assault on the atmosphere. To succeed, the leaders of the world must accept what the public already knows: We are pushing the limits of our environmental systems. We must act to reverse these trends. President Bush should seize this opportunity for world leadership and reestablish the United States at the forefront of global environmental protection.

Mr. President, I ask unanimous consent that the joint resoluton and several of the articles I referred to be printed in the RECORD at this point, and that the bill held at the desk until the close of business Friday, March 17.

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

S.J. RES. 88

Whereas, the concentration of the so-called greenhouse gases—including carbon dioxide, methane, nitrous oxide, chlorofluorocarbons, tropospheric ozone—is rising:

Whereas, since the start of the industrial revolution 150 years ago the atmospheric concentration of carbon dioxide, the most prevalent of these gases, has increased by 25 percent; the concentration of methane has increased by 100 percent; the concentration of nitrous oxide has increased by 10 percent; the concentration of CFC's has increased from zero 60 years ago at an average rate of 5 percent per year; and concentrations of tropospheric ozone continues to increase by one percent per year.

Whereas, the leading scientists of the world have warned policy makers that increased concentrations of these gases will alter climate; and that such climatic alterations could have devastating effects on weather patterns, agricultural productivity, coastal population centers due to rising sea levels, and biological health;

Whereas, the majority of these gases are generated in the production of energy;

Whereas, the Department of Energy's National Energy Policy Plan projects the United States' generation of carbon dioxide to increase from 1985 levels by 38 percent in the year 2010;

Whereas, the leading scientists of the world, including the National Academy of Sciences, the National Academy of Engineering and the Institute of Medicine have urged the President to take action to reduce the generation of these gases by the United States;

Whereas, international negotiations are underway to develop strategies to reduce the generation of these gases;

Whereas, the United States is chair of the response strategies working group of the Intergovernmental Panel on Climate Change (IPCC), which was established by the United Nations Environment Programme and the World Meterological Organization;

Whereas, at the first meetings of the IPCC's response strategies working group, the Secretary of State urged the nations of the world to act to reduce the generation of "greenhouse" gases;

Whereas, action by the United States to reduce the generation of greenhouse gases will encourage other nations to take similar action to reduce the generation of these gases. Now therefore, be it

Resolved, by the Senate and the House Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This act may be cited as the "National Global Warming Policy Act."

SEC. 2. NATIONAL GLOBAL WARMING POLICY.

It is the policy of the United States: (1) to reduce the generation of "greenhouse" gases in the United States, with an initial goal of reducing emissions of carbon dioxide from calendar year 1988 levels (as determined by the Department of Energy) by 20 percent by the end of calendar year 2000; (2) to host, in 1989, an international summit meeting on global warming and global environmental concerns; (3) to encourage other nations to undertake measures to reduce the generation of greenhouse gases; (4) to develop binding multilateral agreements with other nations by the end of calendar year 1992 to reduce, or as early as is practicable, the global generation of greenhouse gases; (5) to assist in the worldwide protection of tropical rainforests; (6) to require each Federal agency to examine its programs to determine the impacts of global warming on its missions and activities and to evaluate and propose policies under its authority that could reduce the generation of greenhouse gases; and (7) to develop new technologies that will provide reliable supplies of energy and services for the citizens of the United States while reducing the generation of greenhouse gases.

[From the Washington Post, Mar. 11, 1989]

ANOTHER ENVIRONMENTAL SUMMIT OPENS, ILLUSTRATING ISSUE'S NEW CURRENCY

(By Edward Cody)

THE HAGUE, March 10.—A hastily organized 24-nation summit conference opened here today seeking strengthened international authority to protect the global environment, a suddenly fashionable issue that has world leaders jockeying for preeminence.

The two-day conference, which France initiated and put together with help from Norway and the Netherlands, follows by only three days an international conference on the ozone layer sponsored by Prime Minister Margaret Thatcher in London. It also comes only a week after European Community environment ministers unexpectedly committed the 12 member states to try banning ozone-threatening chlorofluorocarbon gases by the year 2000.

As high-level attention to environmental threats intensified in Europe, reports from Washington said President Bush has complained that the conference here is premature. During last year's election campaign, Bush pledged to organize his own high-level environmental conference in Washington, but the United States was not invited to this one.

After the European ministers acted on the ozone issue on March 2 in Brussels, however, Bush endorsed their decision and announced the United States would join in the effort to the degree that safe alternatives to chlorofluorocarbons become available.

Thatcher, whose London conference was overshadowed somewhat by the European ministers, declined to attend the gathering here, although Dutch officials said she was invited. A Dutch Environment Ministry spokeswoman, Marjan van Giezen, said Thatcher objected to a draft resolution calling for increased supranational power in the United Nations to enforce environmental standards against member governments.

The United States also is likely to look askance at creating a new U.N. authority over the environment or expanding the U.N. Environment Program's bureaucracy, an informed diplomatic source said. French and Dutch officials said these proposals were put forward for inclusion in the final conference declaration, which officials negotiated today for presentation to heads of government on Saturday.

Unexpectedly, more hesitation came from the European Commission in Brussels. The commission president, Jacques Delors, expressed fear the conference might create something that would supplant the community's own authority to regulate the European environment.

Delors' fellow French Socialist, Prime Minister Michel Rocard, initially suggested today's conference in private contacts last fall with Prime Ministers Ruud Lubbers of the Netherlands and Gro Harlem Brundtland of Norway, officials said.

A Dutch official said the Rocard proposal intrigued some officials in The Hague, where France traditionally has been considered among the countries least willing to take steps to protect the environment.

Similarly, officials here expressed amusement at Thatcher's new role as a champion of environmental protection. Previously, they recalled, the conservative British leader tended to lump environmentalists together with pacifists, viewing them as political leftists.

A Dutch official said Thatcher's decision to take up the issue stems from recent advances by British industry in finding substitutes for the ozone-damaging chlorofluorocarbons, or CFCs, that are widely used in air conditioning and refrigeration equipment, computer chip cleaning and, in Europe, aerosol spray cans.

These gases have been blamed for depleting the ozone layer that protects the Earth from harmful sun rays. Increasingly inescapable scientific evidence on the gases' effects has been piling up, contributing to the swell of political concern over the issue.

The United States and other major industrialized nations, in the 1987 Montreal Protocol, had agreed to halve CFC production by 1997. With the new European Community decision endorsed by Bush, that goal suddenly has been outdone by the new objective of a complete ban on the harmful gases.

Van Giezen said it was hoped the meeting here would create a political environment in the Third World as well as in Europe for making those resolutions stick. In addition, she said the draft declaration proposes an organization with power to impose the new rules on governments.

The United States was not invited here, French officials maintained, because decisions on who would attend were made during the U.S. election campaign. But Lubbers told reporters last week that the United States, the Soviet Union and China were excluded to avoid turning the conference into an East-West competition.

R.A. van Swinderen, the Dutch Foreign Ministry's European affairs director general, said the invitations were meant to reflect a world-wide balance of small and medium-sized countries, ranging from West Germany and New Zealand to India, Egypt and Zimbabwe. Dutch officials said 17 of the 24 governments were represented by their prime ministers, presidents or, in the case of Jordan, its king.

[From the Washington Post, Mar. 12, 1989]

GLOBAL ENVIRONMENTAL POWER SOUGHT

(By Edward Cody)

THE HAGUE, THE NETHERLANDS, March 11.—Representatives of 24 nations, gathered here at an environmental summit conference, called today for increased authority in the United Nations to police the global atmosphere and for "appropriate measures" to enforce its directives.

The appeal by leaders of 15 nations and ranking envoys from nine others marked the broadest and highest-level expression to date of political determination to take swift steps to organize worldwide protection of the earth's threatened atmosphere, the officials declared. They called on "all states of the world" to endorse their work and join in negotiating the new U.N. authority and financing its operations.

"People are aware, and they are worried," said Prime Minister Gro Harlem Brundtland of Norway, who organized the two-day conference along with Prime Ministers Michel Rocard of France and Ruud Lubbers of the Netherlands.

"The principles we have endorsed are in fact radical, but anything less would not serve us," she added. "This authority must have power."

It was difficult, however, to assess the impact of an initiative launched without participation from four of the five permanent U.N. Security Council members and which, as President Francois Mitterrand of France noted, implies "the idea of renouncing a bit of national sovereignty."

The absent great powers—Britain, China, the Soviet Union and the United States—are among the world's greatest polluters of the atmosphere. Because of their size and wealth, the United States and the Soviet Union also would be expected to become principal providers of compensatory financing to Third World countries unable to bear the cost of the conservation and antipollution measures outlined in the conference declaration.

But Rocard, expressing hope the absent governments will follow the environmental course set here, said, "This is a call for the big powers of the world to give their agreement".

Lubbers explained that the major powers were excluded to avoid turning the conference into an East-West confrontation. Prime Minister Margaret Thatcher of Britain was invited, Dutch officials said, but she refused to be associated with an appeal for increased supranational authority in the United Nations.

Apparently with such reluctance in mind, the 24 governments stepped back from earlier proposals by French, Dutch and Norweigian officials that the declaration call for a new U.N. authority, to be named "Globe", with power to impose sanctions on governments refusing to heed antipollution rules it would lay down. In fact, in anticipation that such a proposal would be included in the final declaration, security passes for conference officials were stamped with "Globe" in bold letters.

Instead, the "Declaration of The Hague" endorsed a more modest principle defined as:

"Developing, within the framework of the United Nations, new instituitonal authority, either by stregnthening existing institutions or by creating a new institution, which, in the context of the preservation of the earth's atmosphere, shall be responsible for combating any further global warming of the atmosphere and shall involve such decision-making procedures as may be effective even if, on occasion, unanimous agreement has not been achieved." This language left questions about specific powers and procedures of such a global authority open for further negotiation among all U.N. members, Rocard said.

Similarly, the 24 governments meeting here avoided the word "sanctions", speaking instead of "appropriate measures to promote the effective implementation of and compliance with the decisions of the new instituional authority".

The leaders, who included Mitterrand, King Hussein of Jordan, Chancellor Helmut Kohl of West Germany and President Robert Mugabe of Zimbabwe, also urged "fair and equitable assistance" to Third World nations. Participants said environmental protection would pose a special financial burden on developing countries that bear only marginal responsibility for atmospheric pollution.

Calls for such financial aid to poor countries emerged as a chief feature of another environmental conference sponsored by Thatcher earlier this week in Britain.

That conference, as did this one, underlined the participants' view that swift action is needed to protect the earth's ozone layer. Scientists say the ozone has come under particular attack from chlorofluorocarbons, or CFCs, in gases widely used in refrigeration equipment and as aerosol spray propellants.

Increasingly clear scientific evidence of damage to the ozone layer has given a sense of urgency to politicians' desire to deal with the issue, an informed official explained, and politicians have recognized environmentalism as an issue with a growing constituency.

[From the Washington Post, Mar. 4, 1989]

BRAZIL DECLINES INVITATION TO CONFERENCE ON ECOLOGY

SARNEY FEARS AMAZON WILL BE SINGLED OUT

(By Richard House)

SAO PAULO, BRAZIL, March 3.—President Jose Sarney has refused an invitation to attend next week's international environmental conference at The Hague on grounds that Brazil already has been singled out for unfair criticism because of its failure to protect the Amazon rain forest.

Sarney had accepted French President Francois Mitterrand's invitation to attend the conference, organized by the Dutch. The meeting, which begins March 10, is expected to debate the creation of an international environmental group to monitor tropical areas.

After a meeting with the chiefs of the Army and the military intelligence service, however, Sarney changed his mind yesterday. Instead he issued a fresh attack on "intolerable" meddling in Brazil's domestic affairs.

"We are masters of our destiny and will not permit any interference in our territory," Sarney said.

A presidential palace official said Sarney wanted to attend the meeting but was told that he would be the target of criticism while his arguments would not be taken seriously. The official said military chiefs believed Sarney's presence would represent a breach of sovereignty, because a domestic subject—the Amazon—would be discussed by other nations.

Sarney's presence "would be politically inconvenient because at The Hague, Brazil will be the villain of the piece," a senior diplomat said.

Sarney's refusal will exacerbate the emotional climate surrounding the issue of the Amazon. In recent weeks, ministers have said that the rise of world concern for the forest conceals sinister economic interests and territorial ambitions.

Army Minister Gen. Leonidas Pires Goncalves recently attacked "false ecologists" whose objective he said was to "internationalize Amazonia." The rapid mobilization of lobby groups and international press coverage of the recent gathering of Indians at Altamira in the Amazon also have been offered by officials as proof of a sinister plot.

Brazils leading ecologist, Jose Lutzemberger, challenged the minister to name the "false ecologists" and pointed out that part of the destruction is being caused by Brazilian state-owned companies that export minerals below world prices. He also said Sarney was afraid to go to The Hague because of the shameful things he would hear about his country there.

Fabio Feldmann, leader of the ecological movement in the National Congress, said there is no proof of any international conspiracy and that Sarney's refusal shows a lack of statemanship. Instead, he charged there is "a sinister alliance of people inside Brazil who benefit from what's happening in Amazonia and who now have the ear of Sarney. The government is getting more and more xenophobic and right-wing, and Sarney has become a demagogue using dangerous arguments."

Feldmann said public opinion is being confused and manipulated by groups with interests in lumber, mining and construction in the Amazon region, which occupies half of Brazil's territory.

Though it announced six months ago that it planned firm measures in response to international criticism that deforestation of the Amazon contributes to global warming, Brazil's government is only now beginning to draft new legislation to protect the forest.

This month the government is drafting 10 bills to control deforestation, the invasion of Indian reservations and the activities of mineral prospectors in the Amazon. Brazil is looking for support from its seven neighbors in the Amazon Pact—Bolivia, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela. At an Amazon Pact meeting in Quinto, Ecuador, next week, Brazil will propose joint measures to protect the forest.

[From the Washington Post, Mar. 4, 1989]

"GREENING" OF THATCHER SURPRISES MANY BRITONS

(By Jonathan C. Randal)

LONDON, March 3.—In a decade as prime minister, Margaret Thatcher has often been characterized as The Iron Lady because of her fierce struggle against socialism, but few ever expected her to go into battle under the green banner of environmentalism.

Only four years ago she was denouncing environmentalists as "the enemy within," and Environment Secretary Nicholas Ridley was dismissing the green lobby as "pseudo-Marxists." But nothing better illustrates her conversion that the 112-nation conference she will host here starting Sunday to push for quicker action by industrialized and less developed nations to save the Earth's ozone layer from erosion by man-made clorofluorocarbons (CFCs).

She even appeared unfazed when her old nemesis, the 12-nation European Community, yesterday upstaged the London conference goal of an 85 percent reduction in global emissions of CFCs by calling for a complete ban on these chemicals by the year 2000.

Still high on her agenda is to use the London conference to project a world leadership role for Britain on the issue—especially by persuading the Third World to wait for substitute chemicals that British industry is now perfecting to replace CFCs, which are used in refrigerators, air conditioners, foam insulation and aerosols.

"The Greening of Maggie," as the tabloid press calls her conversion to environmental issues, became evident at the annual conference of her ruling Conservative Party, where 10 percent of the resolutions were related to the environment.

If her conversion is sometimes compared to that of St. Paul on the road to Damascus, exactly how and why her change of heart of environmental issues occurred so suddenly remain obscure.

Crispin Tickell, British ambassador to the United Nations and an amateur climatologist, is credited by some people with convincing her of the urgency of ecological

problems in a detailed report on the damage to the ozone layer and the danger of the related "greenhouse effect," which threatens to raise world temperatures.

Thatcher's advisers also noted that she was educated as a chemist at Oxford and has retained her ability to absorb complicated scientific data along with the mountain of detail that makes her one of the best-informed of world leaders.

With the benefit of hindsight, her partisans now claim she was edging toward embracing environmental issues as early as 1982. She then overruled budget cutters and insisted on maintaining funds for the scientists who eventually helped locate the "hole" in the ozone layer over the South Pole.

At no point has she publicly recognized the slightest influence on her thinking of Britain's outspoken environmentalists, who include Queen Elizabeth, Prince Philip and Prince Charles, or of binding European Community antipollution edicts she once ignored.

But whatever their past reservations, even the most determined environmentalists are willing to take her new found faith at face value and try to hold her to account.

Jonathon Porrit, executive director of the environmental group Friends of the Earth, recalled recently how amazed he had been by a speech she gave last fall emphasizing her new commitment. "Blimey," he recalled saying, "the speech is impressive, a milestone for the environment."

An environmental specialist at the 24-nation Organization for Economic Cooperation and Development in Paris said the speech marked an end to British obstruction of efforts to curb acid-rain-producing coal-fired power plants, automobile emissions and other kinds of pollution that long have vexed Scandinavian and other European states.

Since then, British officials have demonstrated a "much more activist approach," the specialist said.

Yet despite Thatcher's unflappable assurance on a British Broadcasting Corp. environmental program last night that "in the next five years I think we will get rid of most of our problems," the environmentalists are wary.

She is fundamentally opposed to state regulations, and no plans exist for a British equivalent of the U.S. Environmental Protection Agency to enforce and monitor decisions.

Her critics claim her government has been reluctant to finance antipollution measures, a charge she obliquely accepts by insisting that the wealth her rule has helped create can now be spent on the environment.

[From the Washington Post, Mar. 4, 1989]

BUSH ENDORSES PHASING OUT CFC'S BY YEAR 2000

(By Michael Weisskopf)

President Bush called yesterday for elimination of chlorofluorocarbons (CFCs) by the turn of the century, joining a diplomatic initiative in Europe to phase out one of the most versatile but destructive chemicals of the past 100 years.

Bush, in remarks to winners of high school science awards, said that recent scientific reports indicate that a 1987 treaty in which industrial nations agreed to halve production of CFCs within a decade "may not be enough" to stop the chemicals' threat to the stratospheric ozone layer that protects life on Earth from harmful solar rays.

Bush said he has instructed Environmental Protection Agency Administrator William K. Reilly to support the European Community in calling for a phase-out by the year 2000 at an international conference scheduled to start Sunday in London.

The conference will provide a forum for environmental officials of more than 100 nations and set the stage for a meeting of treaty signatories in Helsinki two months later. The treaty, which becomes effective in July, is not supposed to be revised before April 1990, but European nations are expected to use the Helsinki session to speed up negotiations aimed at a phase-out.

Bush's remarks have little direct significance at home since industry is already planning to phase out CFCs, nearly ubiquitous chemicals used as refrigerants, computer chip solvents and gasses to shape plastic foam products. Bush set as a condition for the phase-out that "safe alternatives are available."

Nor did Bush pledge, as some environmentalists wished, a unilateral U.S. ban on the chemical, which wafts into the stratosphere and eats up the gaseous ozone layer that helps prevent skin cancers, crop damage and higher temperatures.

But by joining the European Community, Bush adds momentum to an effort for further international controls that has inspired little interest from Japan and the Soviet Union. Moreover, a united front by the West, where nearly two-thirds of the world's CFC supply is produced, could increase pressure on developing nations to join the pact.

Reilly said in an interview before leaving for London that Bush's remarks indicate that he intends to continue U.S. leadership on the control of CFCs, which were banned in aerosol sprays in this country in the 1970s. He said the president has staked out an "ambitious position" that reflects sensitivity to the "evolving scientific picture," particularly recent findings that huge masses of CFCs have accumulated in the Arctic stratosphere.

Bush, speaking at the National Academy of Sciences, notes that "scientific advancement" identified the dangers of ozone and the need to "reduce CFCs that deplete our precious upper atmospheric resources." Findings of the ozone hole in Antarctica prompted the treaty signed in Montreal in 1987 and ratified by 36 countries.

"But recent studies indicate that this 50 percent reduction may not be enough," he said, apparently referring to the Arctic findings and a U.S. government report last year detailing significant ozone damage over Europe and North America.

The treaty provides mechanism for revision but only after studies are completed in August to assess ozone damage, environmental effects and the economics of the 50 percent phase-down. Parties are barred from any changes until April 1990, six months after their representatives meet to consider the studies.

Representatives of CFC users and manufacturers yesterday endorsed the Bush initiative, noting with relief that he called for safe alternatives as condition.

But senators seeking legislation to speed up the timetable for a phase-out were critical. Sen. Albert Gore Jr. (D-Tenn.), a member of the U.S. delegation to the London conference who want to eliminate CFCs within five years, said "there is no reason to wait" for further damage to the ozone layer.

[From the New York Times, Mar. 4, 1989]

BUSH BACKS PROPOSAL TO ELIMINATE USE OF OZONE-DEPLETING CHEMICAL

(By Philip Shabecoff)

WASHINGTON, March 3.—President Bush today endorsed a proposal that the use of industrial chemicals that deplete the earth's protective ozone shield be eliminated by the year 2000.

Mr. Bush announced his decision a day after the 12 European Community countries unexpectedly vowed to ban production and use of the chemicals, chlorofluorocarbons, by the end of the century.

Administration officials said the United States would seek worldwide elimination of the chemicals through the strengthening of an existing treaty, which calls for cutting by 50 percent the production and use of the chemicals by the year 2000.

SEVENTY-FIVE PERCENT OF WORLD PRODUCTION

Together the United States and the European Community account for more than 75 percent of world production of chlorofluorocarbons, the most pervasive of several chemicals that many scientists now believe are depleting the ozone in the upper atmosphere.

Scientists have warned that as the ozone layer gets thinner, more ultraviolet radiation from the sun will penetrate to the earth's surface. This would cause more cases of skin cancer, cataracts and other health problems among humans, as well as damage to wildlife and crops.

Mr. Bush said in a talk at the National Academy of Sciences today that his support for the elimination of the chlorofluorocarbons, which are used by industry in refrigerants, foams, solvents and a wide range of other applications, is contingent upon the development of adequate substitutes.

But William K. Reilly, Administrator of the Environmental Protection Agency, said industry leaders had assured him that substitutes would be available in time for a complete phaseout of the chemicals over the next decade.

In addition to chlorofluorocarbons, the President is supporting the elimination of halons, chemicals used in fire extinguishers, which also destroy ozone in the atmosphere, he reported.

Mr. Reilly left this evening for London to take part in a 112-nation meeting called by Prime Minister Margaret Thatcher to discuss the next steps in protecting the ozone layer.

Under a treaty signed in Montreal in 1987, which went into effect at the end of the year, use and production of chlorofluorocarbons are frozen at 1986 levels starting this year and are to be reduced by 50 percent worldwide by the end of the century.

HOLE IN OZONE LAYER

But emerging scientific data, including reports of a gaping hole in the ozone layer over Antarctica and the probability of similar losses in the Arctic region, have indicated that such a reduction would be inadequate. Without a complete phaseout, the chemicals would continue to accumulate in the atmosphere and destroy ozone molecules for another century, scientists say.

The parties to the treaty plan to determine in 1990 whether further measures are needed to protect the ozone shield. But in a telephone interview today, Mr. Reilly said that because of the gravity with which the problem is viewed, international action to eliminate the chemicals was possible this year.

He said Mr. Bush's support of a complete ban on the chemicals demonstrated that "the United States is continuing to maintain the leadership position on this issue that we held ever since we phased out aerosols using CFC's in the 1970's."

He also said that to encourage wide participation by other countries, particularly the developing countries, in getting rid of the chemicals, the United States would share its knowledge about substitutes as well as "share our sense of urgency."

Mr. Reilly had strongly urged Mr. Bush to support the elimination of the chemicals. His predecessor at the environmental agency, Lee M. Thomas, called for a ban on the chemicals last September.

URGENCY IS STRESSED

Irving M. Mintzer, a senior associate of the World Resources Institute, a Washington-based research and policy group, said today that it was crucial to provide information on substitutes and the technology to use them to developing countries. Dr. Mintzer is one of the American members of an international panel that will meet in Brussels next week to assess the economic effects of ending the use of the chemicals.

He noted that under the existing treaty, developing countries, that now use very little of the chemicals, are allowed to increase their production and consumption of the chemicals as part of their industrialization projects. But if countries like China, India, Indonesia and Brazil increase use of chlorofluorocarbons as much as permitted by the treaty, he said, the chemicals would continue to accumulate in the atmosphere even if the industrial countries barred them completely.

Signers of the ozone treaty plan to meet in Helsinki in June to review new information and to decide the next steps to take in meeting the threat.

If a decision is reached to take stronger action to eliminate the threat to the ozone shield, no additional approval by Congress is needed as the treaty is written, a State Department spokesman said.

Senators Al Gore, Democrat of Tennessee, and John H. Chafee, Republican of Rhode Island, called Mr. Bush's decision an important step forward and said the chemicals should be eliminated well before the end of the century.

Mr. Gore has introduced legislation that would require the United States to end all production and use of chlorofluorocarbons within five years and would ban imports of the chemical and products that use them. "Each additional year we continue putting these poisons in the environment means an extra 10 years required to remove them," he said.

Mr. Chafee, who has introduced a bill to require a halt in use of the chemicals, said, "No time is too soon to end CFC production and use."

[From the Washington Post, Mar. 6, 1989]

ACCELERATED GOALS URGED ON OZONE

(By Jonathan C. Randal)

LONDON, March 5.—The European Community's environmental commission today proposed advancing by several years the date set only last week by the 12-nation group for a ban on all chemicals harmful to the atmosphere's ozone shield.

Speaking on the opening day of a 124-nation conference to save the ozone, Commissioner Reapa di Meana also advocated providing Third World countries with financial aid and alternative chemicals to replace ozone-depleting chloro-fluoro-carbons (CFCs) — synthetic gases — in refrigerators, air conditioners, aerosol spray propellants, foam insulation and solvents for computers.

Kenya's President Daniel arap Moi, the conference keynote speaker, warned that "the world community, especially the industrialized nations, must help these nations make the right choice and order their priorities properly.

"They must be prepared to bear the burden of conserving the global ozone layer equitably with the less industrialized nations," he said. "They, too, must make sacrifices commensurate in magnitude with those expected from the Third World nations that must forgo the use of these ozone-depleting chemicals."

CFCs do not break down in the atmosphere like other chemicals but erode the gaseous layer of ozone that blocks out harmful sun rays. The compounds are also believed to trap heat in the atmosphere and contribute to the warming of the planet.

The EC last Thursday agreed at a meeting in Brussels to institute a ban on all chemicals that harm the ozone by the end of the century, a significant advance over a 1587 Montreal agreement calling for a 50 percent reduction in CFC production by 1999. Di Meana said last week's decision marked a "turning point" because the United States had "decided to follow" the EC lead.

Di Meana proposed today moving up the ban on all CFC production to "maybe in 1996 or 1997." Meeting the accelerated goal "will require total commitment and concerted cooperation between governments and industry," he said.

William K. Reilly, the U.S. Environmental Protection Agency Administrator, echoed the commitment for financial and technological aid for developing countries and pledged that worldwide environmental problems would be "President Bush's very high priority."

Reilly said recent discussions with officials from E.I. du Pont de Nemours & Co., the world's largest CFC manufacturer, indicated that CFC "substitutes were coming on even faster than expected," with one promising new chemical costing only 5 percent more than CFCs.

British Prime Minister Margaret Thatcher called the three-day conference here in large part to win Third World backing for the ban on CFCs because such major regional powers as Brazil, China and India are only now embarking on large-scale expansion of their refrigeration, air conditioning and electronics and plastic industries.

Di Meana told reporters that the developed countries, which produce an estimated 96 percent of CFCs, should avoid "preaching what is good or bad" to the Third World.

ADDITIONAL COSPONSORS

S. 13

At the request of Mr. CRANSTON, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 13, a bill to amend title 38, United States Code, to increase the rates of disability compensation and dependency and indemnity compensation for veterans and survivors, to increase the allowances paid to disabled veterans pursuing rehabilitation programs and to the dependents and survivors of certain disabled veterans pursuing programs of education, and to improve various programs of benefits and health-care services for veterans; and for other purposes.

S. 15

At the request of Mr. CRANSTON, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 15, a bill to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes.

S. 20

At the request of Mr. LEVIN, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Virginia [Mr. WARNER], and the Senator from California [Mr. WILSON] were added as cosponsors of S. 20, a bill to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes.

At the request of Mr. ROTH, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 20, supra.

S. 38

At the request of Mr. WILSON, the names of the Senator from Delaware [Mr. BIDEN], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 38, a bill to make long-term care insurance available to civilian Federal employees, and for other purposes.

S. 58

At the request of Mr. BOSCHWITZ, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 58, a bill to amend the Housing and Community Development Act of 1987 to improve the enterprise zone development program, to amend the Internal Revenue Code of 1986 to provide tax incentives for investments in enterprise zones, and for other purposes.

S. 89

At the request of Mr. SYMMS, the names of the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Vermont [Mr. JEFFORDS], the Senator from Mississippi [Mr. LOTT], the Senator from Arizona [Mr. MCCAIN], the Senator from Michigan [Mr. LEVIN], the Senator from Montana [Mr. BURNS], the Senator from California [Mr. WILSON], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of S. 89, a bill to delay for 1 year the effective date for section 89 of the Internal Revenue Code of 1986.

S. 135

At the request of Mr. GLENN, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of S. 135, a bill to amend title 5, United States Code, to restore

to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

S. 260

At the request of Mr. MOYNIHAN, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 260, a bill to amend the Internal Revenue Code of 1986 to make the exclusion from gross income of amounts paid for employee educational assistance programs.

S. 269

At the request of Mr. RIEGLE, the names of the Senator from Kentucky [Mr. FORD] and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of S. 269, a bill to prohibit the disposal of solid waste in any State other than the State in which the waste was generated.

S. 335

At the request of Mr. MCCAIN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 335, a bill to amend title XVIII of the Social Security Act and other provisions of law to delay for 1 year the effective dates of the supplemental Medicare premium and additional benefits under part B of the Medicare Program, with the exception of the spousal improverishment benefit.

S. 339

At the request of Mr. BRADLEY, the names of the Senator from Maryland [Mr. SARBANES], the Senator from Alabama [Mr. HEFLIN], the Senator from California [Mr. CRANSTON], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 339, a bill to amend title XIX of the Social Security Act to reduce infant mortality through improvement of coverage of services to pregnant women and infants under the Medicaid Program.

S. 353

At the request of Mr. EXON, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 353, a bill to amend the Internal Revenue Code of 1986 to allow the use of U.S. savings bonds for any individual's higher education expenses to qualify for an income exclusion.

S. 355

At the request of Mr. RIEGLE, the names of the Senator from California [Mr. WILSON], and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of S. 355, a bill to amend the Internal Revenue Code of 1986 to extend through 1992 the period during which qualified mortgage bonds and mortgage credit certificates may be issued.

S. 378

At the request of Mr. ROCKEFELLER, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 378, a bill to extend the Steel Import Stabilization Act for an additional 5 years.

S. 389

At the request of Mr. BOSCHWITZ, the names of the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from Kentucky [Mr. MCCONNELL] were added as cosponsors of S. 389, a bill to amend the Department of Energy Organization Act to establish the position of Assistant Secretary for Natural Gas, and for other purposes.

S. 412

At the request of Mr. PACKWOOD, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 412, a bill to amend the Internal Revenue Code of 1986 to increase the amount of the credit for expenses with respect to child care for dependent children, to make such credit refundable, to amend the Social Security Act to increase the funds for available child care, and for other purposes.

S. 416

At the request of Mr. DOMENICI, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Maryland [Ms. MIKULSKI], the Senator from Rhode Island [Mr. PELL], and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of S. 416, a bill to provide that all Federal civilian and military retirees shall receive the full cost-of-living adjustment in annuities payable under Federal retirement systems for fiscal years 1990 and 1991, and for other purposes.

S. 430

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 430, a bill to amend title XIX of the Social Security Act to provide coverage for certain outreach activities undertaken at the option of a State for the purpose of identifying pregnant women and children who are eligible for medical assistance and assisting them in applying for and receiving such assistance, and for other purposes.

S. 431

At the request of Mr. NUNN, the names of the Senator from Maryland [Mr. SARBANES], the Senator from New York [Mr. MOYNIHAN], and the Senator from Colorado [Mr. WIRTH] were added as cosponsors of S. 431, a bill to authorize funding for the Martin Luther King, Jr., Federal Holiday Commission.

S. 432

At the request of Mr. ROCKEFELLER, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 432, a bill to direct the Secretary of Transportation to identify scenic and historic roads and to develop methods of designating, promoting, protecting, and enhancing roads as scenic and historic roads.

S. 441

At the request of Mr. GRAHAM, the names of the Senator from California [Mr. WILSON] and the Senator from Texas [Mr. GRAMM] were added as cosponsors of S. 441, a bill to amend the Immigration and Nationality Act to make available funds to reimburse localities which are impacted by substantial increases in aliens applying for political asylum.

S. 447

At the request of Mr. BOSCHWITZ, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 447, a bill to require the Congress and the President to use the spending levels for the current fiscal year—without adjustment for inflation—in the preparation of the budget for each new fiscal year in order to clearly identify spending increases from one fiscal year to the next fiscal year.

S. 458

At the request of Mr. DECONCINI, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 458, a bill to provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans and Nicaraguans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans, and for other purposes.

S. 466

At the request of Mr. BIDEN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 466, a bill to amend title 18 of the United States Code to prohibit the use of the mails to sell or solicit the sale of anabolic steroids.

S. 502

At the request of Mr. BAUCUS, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Wisconsin [Mr. KOHL], and the Senator from Washington [Mr. GORTON] were added as cosponsors of S. 502, a bill to extend the application deadline for assistance under the Impact Aid Program.

S. 512

At the request of Mrs. KASSEBAUM, the name of the Senator from Colorado [Mr. ARMSTRONG] was added as a cosponsor of S. 512, a bill to amend the State Dependent Care Development Grants Act to enhance and improve the quality of the child care services provided under such act, and for other purposes.

S. 563

At the request of Mr. MATSUNAGA, the names of the Senator from Mississippi [Mr. LOTT] and the Senator from Alabama [Mr. SHELBY] were added as

cosponsors of S. 563, a bill to amend section 3104 of title 38, United States Code, to permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive retired pay concurrently with disability compensation after a reduction in the amount of retired pay.

S. 564

At the request of Mr. MATSUNAGA, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. 564, a bill to provide for an Assistant Secretary of Veterans' Affairs to be responsible for monitoring and promoting the access of members of minority groups, including women, to service and benefits furnished by the Department of Veterans' Affairs.

S. 565

At the request of Mr. CRANSTON, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 565, a bill to authorize a new corporation to support State and local strategies for achieving more affordable housing; to increase homeownership; and for other purposes.

S. 566

At the request of Mr. CRANSTON, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 566, a bill to authorize a new corporation to support State and local strategies for achieving more affordable housing, to increase homeownership, and for other purposes.

S. 585

At the request of Mr. LAUTENBERG, the names of the Senator from Maine [Mr. COHEN] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 585, a bill to implement the national objective of pollution prevention by establishing a source reduction program at the Environmental Protection Agency, by assisting States in providing information and technical assistance regarding source reduction, and for other purposes.

S. 586

At the request of Mr. KENNEDY, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Vermont [Mr. JEFFORDS], the Senator from Maryland [Ms. MIKULSKI], the Senator from Oregon [Mr. PACKWOOD], the Senator from Oregon [Mr. HATFIELD], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of S. 586, a bill to amend title III of the Public Health Service Act to extend the program relating to certain treatment drugs, and for other purposes.

S. 601

At the request of Mr. DOLE, the names of the Senator from Oregon [Mr. HATFIELD], the Senator from Indiana [Mr. COATS], the Senator from Indiana [Mr. LUGAR], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Colorado [Mr. ARMSTRONG] were added as cosponsors of S. 601, a bill to amend the Internal Revenue Code of 1986 to authorize a child tax credit and refundable child and dependent care tax credit.

S. 602

At the request of Mr. DOLE, the names of the Senator from Oregon [Mr. HATFIELD], the Senator from Indiana [Mr. COATS], the Senator from Indiana [Mr. LUGAR], the Senator from Colorado [Mr. ARMSTRONG], and the Senator from Kentucky [Mr. MCCONNELL] were added as cosponsors of S. 602, a bill to authorize additional appropriations for the Head Start Program.

SENATE JOINT RESOLUTION 24

At the request of Mr. DECONCINI, the names of the Senator from Washington [Mr. ADAMS], the Senator from Colorado [Mr. ARMSTRONG], the Senator from Texas [Mr. BENTSEN], the Senator from Missouri [Mr. BOND], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from New Jersey [Mr. BRADLEY], the Senator from Nevada [Mr. BRYAN], the Senator from North Dakota [Mr. BURDICK], the Senator from Montana [Mr. BURNS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Indiana [Mr. COATS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Kansas [Mr. DOLE], the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Utah [Mr. GARN], the Senator from Tennessee [Mr. GORE], the Senator from Florida [Mr. GRAHAM], the Senator from Alabama [Mr. HEFLIN], the Senator from Pennsylvania [Mr. HEINZ], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUYE], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], the Senator from Wisconsin [Mr. KOHL], the Senator from Michigan [Mr. LEVIN], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Indiana [Mr. LUGAR], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Idaho [Mr. MCCLURE], the Senator from Ohio [Mr. METZENBAUM], the Senator from Maine [Mr. MITCHELL], the Senator from Maryland [Ms. MIKULSKI], the Senator from New York [Mr. MOYNIHAN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Oregon [Mr. PACKWOOD], the Senator from Rhode Island [Mr. PELL], the Senator from South Dakota [Mr. PRESSLER], the Senator from Arkansas [Mr. PRYOR], the Senator from Nevada [Mr. REID], the Senator from Michigan [Mr. RIEGLE], the Senator from Virginia [Mr. ROBB], the Senator from North Carolina [Mr. SANFORD], the Senator from Tennessee [Mr. SASSER], the Senator from Alabama [Mr. SHELBY], the Senator from Illinois [Mr. SIMON], the Senator from Wyoming [Mr. SIMPSON], the Senator from Alaska [Mr. STEVENS], the Senator from South Carolina [Mr. THURMOND], the Senator from Virginia [Mr. WARNER], the Senator from California [Mr. WILSON], and the Senator from Colorado [Mr. WIRTH] were added as cosponsors of Senate Joint Resolution 24, a joint resolution to designate the period commencing on May 1, 1989, and ending on May 7, 1989, as "National Older Americans Abuse Prevention Week."

SENATE JOINT RESOLUTION 42

At the request of Mr. PACKWOOD, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Senate Joint Resolution 42, a joint resolution to designate March 16, 1989, as "Freedom of Information Day."

SENATE JOINT RESOLUTION 54

At the request of Mr. DECONCINI, the names of the Senator from Washington [Mr. ADAMS], the Senator from Delaware [Mr. BIDEN], the Senator from Texas [Mr. BENTSEN], the Senator from Missouri [Mr. BOND], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from New Jersey [Mr. BRADLEY], the Senator from Nevada [Mr. BRYAN], the Senator from Arkansas [Mr. BUMPERS], the Senator from North Dakota [Mr. BURDICK], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Indiana [Mr. COATS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from North Dakota [Mr. CONRAD], the Senator from California [Mr. CRANSTON], the Senator from New York [Mr. D'AMATO], the Senator from Illinois [Mr. DIXON], the Senator from Kansas [Mr. DOLE], the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Utah [Mr. GARN], the Senator from Tennessee [Mr. GORE], the Senator from Alabama [Mr. HEFLIN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Hawaii [Mr. INOUYE], the Senator from Vermont [Mr. JEFFORDS], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Wisconsin [Mr. KOHL], the Senator from Michigan [Mr. LEVIN], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Indiana [Mr. LUGAR], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Ohio [Mr. METZENBAUM], the Senator from Maryland [Ms. MIKULSKI], the Senator from Maine [Mr. MITCHELL], the Senator from New York [Mr. MOYNIHAN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Georgia [Mr. NUNN], the Senator from Oregon [Mr. PACKWOOD], the Senator from Rhode Island

[Mr. PELL], the Senator from South Dakota [Mr. PRESSLER], the Senator from Arkansas [Mr. PRYOR], the Senator from Nevada [Mr. REID], the Senator from Michigan [Mr. RIEGLE], the Senator from Delaware [Mr. ROTH], the Senator from Tennessee [Mr. SASSER], the Senator from Alabama [Mr. SHELBY], the Senator from Alaska [Mr. STEVENS], the Senator from South Carolina [Mr. THURMOND], the Senator from Virginia [Mr. WARNER], and the Senator from California [Mr. WILSON] were added as cosponsors of Senate Joint Resolution 54, a joint resolution to designate the months of April 1989, and 1990, as "National Child Abuse Prevention Month."

SENATE JOINT RESOLUTION 55

At the request of Mr. SIMON, the names of the Senator from Nevada [Mr. REID], the Senator from Missouri [Mr. DANFORTH], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Colorado [Mr. WIRTH], the Senator from North Dakota [Mr. BURDICK], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Joint Resolution 55, a joint resolution to designate the week of October 1, 1989, through October 7, 1989, as "Mental Illness Awareness Week."

SENATE JOINT RESOLUTION 67

At the request of Mr. DOMENICI, the names of the Senator from Montana [Mr. BAUCUS], the Senator from Colorado [Mr. WIRTH], and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of Senate Joint Resolution 67, a joint resolution to commemorate the 25th anniversary of the Wilderness Act of 1964 which established the National Wilderness Preservation System.

At the request of Mr. DOMENICI, the name of the Senator from Utah [Mr. HATCH] was withdrawn as a cosponsor of Senate Joint Resolution 67, supra.

SENATE CONCURRENT RESOLUTION 22

At the request of Mr. GORE, the names of the Senator from Delaware [Mr. ROTH], the Senator from Washington [Mr. GORTON], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of Senate Concurrent Resolution 22, a concurrent resolution to recognize the contributions of C-SPAN on the occasion of its 10th anniversary.

SENATE RESOLUTION 81

At the request of Mr. BOREN, his name was added as a cosponsor of Senate Resolution 81, a resolution relating to the fourth anniversary of the kidnaping of Terry Anderson.

At the request of Mr. MITCHELL, his name was added as a cosponsor of Senate Resolution 81, supra.

SENATE RESOLUTION 82

At the request of Mr. PELL, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of Senate Resolution 82, a resolution expressing the concern of the Senate for the ongoing human rights abuses in Tibet.

At the request of Mr. BOREN, his name was added as a cosponsor of Senate Resolution 82, supra.

SENATE CONCURRENT RESOLUTION 23—PROVIDING FOR A CONDITIONAL RECESS OR ADJOURNMENT OF THE SENATE AND A CONDITIONAL ADJOURNMENT OF THE HOUSE

Mr. MITCHELL submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 23

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Friday, March 17, 1989, it stand recessed or adjourned until 2:15 post meridiem on Tuesday, April 4, 1989, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this resolution; and that when the House adjourns on Thursday, March 23, 1989, or on Friday, March 24, 1989, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12:00 o'clock meridian on Monday April 3, 1989, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this resolution.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and the House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

SENATE CONCURRENT RESOLUTION 24—CALLING FOR AN OPEN PLEBISCITE IN CUBA

Mr. MACK (for himself, Mr. GRAHAM, Mr. WILSON, Mr. BOSCHWITZ, Mr. KASTEN, Mr. ROBB, Mr. HOLLINGS, Mr. DECONCINI, Mr. HATCH, and Mr. DIXON) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 24

Whereas social and political development in Latin America over the past decade has been toward freedom and democracy, and a number of countries in the region have made important strides in fostering full self-government and the rule of law;

Whereas Fidel Castro and the Cuban Communist Party have denied the Cuban people participation in this democratic development and have ruled Cuba for 30 years without allowing Cubans to express their will through a free and open election or plebiscite;

Whereas the recent overthrow of the military government in Paraguay leaves Fidel Castro the longest reigning dictator in Latin America;

Whereas the human rights report of the Cuba Working Group of the United Nations documents widespread incidents of "torture, cruel, inhuman or degrading treatement, missing people, murder . . ." and a "lack of all fundamental liberties" in Cuba;

Whereas the Working Group's report charges that the Cuban Government imposed imprisonment, beatings, and other reprisals on Cuban citizens who testified before the Working Group, in violation of the government's promise not to harass these witnesses;

Whereas according to a State Department human rights report, Cuba ranks with North Korea and Romania as the world's worst violators of human rights;

Whereas the Cuban economy since 1959 has failed to share in the level of economic growth achieved by other Latin American countries, and despite $5 billion a year in direct Soviet economic and military aid, Cuba's gross national product has fallen in each of the last four years, dropping 3.5 percent in 1987 alone;

Whereas the Cuban Government has sent tens of thousands of soldiers to fight in support of regimes in Angola, Ethiopia, Mozambique, and Nicaragua; and

Whereas 169 internationally recognized artists, writers, intellectuals, and human rights activists have called upon Castro to hold a plebiscite to let the Cuban people decide on his rule: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. SHORT TITLE.

This resolution may be cited as the "Resolution on a Plebiscite in Cuba".

SEC. 2. STATEMENT OF POLICY.

It is the sense of Congress that—

(1) after 30 years, Fidel Castro has failed to recognize the basic human rights, aspirations, and freedoms of the Cuban people;

(2) oppressive government policies and economic mismanagement have increased the suffering and hardship on the people of Cuba;

(3) the Cuban people should be allowed to express their view on their country's political future, that the Cuban Communist Party permit a plebiscite, by a secret "yes/no" ballot, of the people's approval of rejection of Castro's continued rule;

(4) in order to guarantee an open and honest plebiscite, the Government of Cuba meet the following conditions—

(A) allow opposition and human rights groups to organize publicly and repeal all laws curtailing freedom of expression and assembly;

(B) grant all opposition groups equal access to national press, radio, and television media;

(C) release all political prisoners; and

(D) invite a neutral, international commission to oversee the voting and ensure the legitimacy of the results;

(5) should the "no" vote on Castro's rule prevail, the regime would respect the will of the people, initiate a period of democratic openness, and hold prompt national elections through which the Cuban people could freely choose their leaders; and

(6) that normalized relations between the Governments of the United States and Cuba should one day be restored, and that a democratic Cuban Government elected by all the people must be an essential condition for such normalization.

● Mr. MACK. Mr. President, today I am submitting a concurrent resolution calling on the Cuban Government to permit a free and open plebiscite on whether the Cuban people wish to

continue to be ruled by Fidel Castro and the Cuban Communist Party. Joining me are Congressman CHUCK DOUGLAS and 52 cosponsors in the House, and Senators GRAHAM, ROBB, WILSON, HOLLINGS, BOSCHWITZ, DECONCINI, and KASTEN.

Mr. President, Fidel Castro is now, following the fall of General Stroessner in Paraguay, the longest reigning dictator in Latin America. Castro is standing increasingly alone in the face of a democratic tide that is sweeping Latin America and the world. At a time when even the Soviet Union is liberalizing, Castro remains a tragic anachronism and a blight on the Cuban people.

The Cuba Plebiscite campaign was initiated by Cuban novelist Reinaldo Arenas last year. By December 1988, over 170 writers, actors, and scientists signed an open letter to Fidel Castro calling on him to hold a plebiscite. The most recent example of such a plebiscite was in Chile on October 5, 1988. In that plebiscite a majority of the Chilean people voted against continuing the rule of Augusto Pinochet. As a result, elections will be held in Chile this year in which General Pinochet will not be a candidate.

This resolution sends a strong message to Cuba and the world that we cannot accept the tyrannical rule of a dictator 90 miles from our shores.

The Cuban people have a right to be heard and determine their form of government. We must stand behind the principle that democracy is the cornerstone of a free open society.

In addition to calling for a plebiscite, the resolution calls on Castro to allow opposition groups to organize publicly; grant opponents equal media access; release all political prisoners and ask that a neutral commission oversee the election.

Mr. President, a United Nations human rights panel has documented in a 400-page report human rights abuses in Cuba. According to a State Department human rights report, Cuba ranks with North Korea and Romania as the world's worst violators of human rights. Now, more than ever, is the time to let the Cuban people decide whether Castro should stay or go.

At this point I would like to ask unanimous consent to print in the RECORD the text of the open letter to Fidel Castro that was published in the New York Times on December 27, 1988.

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

[Advertisement from the New York Times, Dec. 27, 1988]

OPEN LETTER TO FIDEL CASTRO, PRESIDENT OF THE REPUBLIC OF CUBA

On January 1, 1989 you will have been in power for thirty years without having, so far, celebrated elections to determine if the Cuban people do wish you to continue as President of the Republic, President of the Council of Ministers, President of the Council of State and Commander-in-Chief of the Armed Forces.

Following the recent example of Chile, where after fifteen years of dictatorship, the people were able to express their view freely on their country's political future, we request by this letter a plebiscite so that Cubans, by free and secret ballot, could assert simply with a yes or a no their agreement or rejection to your staying in power.

In order to guarantee the impartiality of the plebiscite, it is essential that the following conditions be met:

1. The naming of a neutral international commission to oversee the plebiscite.

2. The freeing of all political prisoners and the suspension of laws that curtail the free expression of public opinion.

3. That all exiles be allowed to return to Cuba and, together with other sectors of the opposition, permitted to campaign using all means of communication (press, radio, television, etc.).

4. The legalization of human rights committees within Cuba.

Should the no prevail, it would be incumbent upon you to respect the will of the majority by giving way to a period of democratic openness and promptly calling an election where the Cuban people could freely elect its leaders.

Josefina Aché Venezuela/diplomat. Pierre Alechinsky France/writer. Néstor Almendros Spain/cineaste, Academy Award for Cinematography. Gustavo Alvarez Gardeazabal Colombia/writer. Vicente Aranda Spain/film director. Fernando Arrabal Spain/playwright. Héctor Babenco Argentina/film director. Stephen Baclu Rumania/poet. Saul Bellow USA/Nobel Prize in Literature. Robert Benton USA/film director, screenwriter, Academy Award winner. Jaime Benitez Puerto Rico/educator. Corbin Bernsen USA/actor.

Maurice Blanchot France/writer. Margarita Camacho Spain/painter. Pureza Canelo Spain/poet. Camilo José Cela Spain/writer. Lucio Colletti Italy/philosopher. José de la Colina Mexico/writer. Alvaro Custodio Spain/playwright-novelist. Pierre Daix. Jean Daniel France/editor of Nouvel Observateur. Jean Dausset France/Nobel Prize in Medicine. Gerard Depardieu France/actor. Jacques Derrida France/critic. Cristian Dobles Costa Rica/artist. Xavier Domingo Spain/writer. Federico Fellini Italy/cineaste. José Ferrater Mora Spain/philosopher.

Ben Ami Fihman Venezuela/writer. Carlos Franzetti Argentina/composer. Luis Garcia Planchard Venezuela/writer. Jaime Gil de Bledman Spain/poet. Pere Gimferrer Spain/poet. Salvador Giner Spain, sociologist. Andre Glucksmann France/philosopher. Juan Goytisolo Spain/writer. Félix Grande Spain/poet. José Luis Guarner Spain/film critic. Eloy Gutiérrez Menoyo Spain-Cuba/former Comandante of the Cuban Revolution. Cristina Guzmán Venezuela/editor. Williams M. Hoffman USA/playwright, author of As If. Sofia Imber Venezuela/journalist. Eugene Ionesco France/writer. Anthony Kerrigan Ireland/translator. John Kobal Canada, writer. Leszek Kolakowsky Poland/essayist. Monique Lange France/writer. Bernard Henri Levy France/philosopher. Jacques Levorf France/writer. Juan Liscano Venezuela/writer. André Lwoff France/Nobel Prize in Medicine. Manuel Malavar Venezuela/editor. Juan Marsé Spain/writer. Ibsen Martínez Venezuela/playwright. Vladimir Maximov USSR/writer. Aharon Megged Israel/writer. Plinio Apuleyo Mendoza Colombia/writer.

Alberto Miguez Spain/writer. Vincente Molina Foix Spain/writer. Yves Montand France/actor. Arturo Morales Carrión Puerto Rico/educator. Jack Nicholson USA/actor, filmmaker. Maurice Ohana France/writer. Octavio Paz Mexico/poet. Leo Petrovic Yugoslavia/writer. Eduard Pignon France/painter. Manuel Pulg Argentina/writer. Valerio Riva Italy/journalist-writer. Jean Francois Revel France/essayist. David Rieff USA/writer. Nelson Rivera Venezuela/literary editor. Arturo Rodriguez Fernández Dominican Republic/film critic. Richard Roud USA/cineaste, film critic-essayist. Isabella Rossellini Italy/actress. Claude Roy France/writer. Xavier Ruber Ventós Spain/writer. Fernando Sabater Spain/writer. Ernesto Sábato Argentina/writer/head of the Tribunal about the desaparecidos. Carlos Semprún Spain/writer. Suzanne Schiffman France/filmmaker. Barbet Schroeder France/film director. Claude Simon France/Nobel Prize in Literature. Phillipe Sollers France/writer. Susan Sontag USA/president USA PEN Club. Rene Tavernier France/essayist/president French PEN Club. Babel Tigrid Czechoslovakia/academician. Salvador Tió Puerto Rico/member Royal Academy of Language. Olivier Todd France/journalist. Fernando Trueba Spain/film director. Javier Tusell Spain/writer. José Miguel Ullán Spain/poet.

José Angel Valente Spain/poet. Mario Vargas Llosa Peru/writer. Jeanine Verdes Leroux France/writer. Chuck Workman USA/Academy Award winner-filmmaker/President International Documentary Association. 1. Yannakakis Poland/historian. Peng Yao China/writer/PEN Club. Gabriel Zaid Mexico/critic. CUBAN SIGNATORTIES: Iván Acosta playwrite. Roberto Agramonte diplomat/former minister of Foreign Relations, first Revolutionary Government. Fernando Alvarez medical doctor. Alberto Aragón advertising. Juan Arcocha writer. Reinaldo Arenas writer. Octavio Armand poet. Maria Badias painter. Vicente Báez editor/leader of the resistance against Batista. Mario Bauzá musician. Antonio Benitez Rojo essayist/academician. Ricardo Bofill human rights activist. Lydia Cabrera writer/etnologist. Guillermo Cabrera-Infante writer. Jorge Camacho painter. Lázaro Carriles photographer. Carlos Castafieda journalist/editor of El Nuevo Dia (San Juan, PR), Natallo Chediak cineaste/director of the Miami Film Festival. Samuel Cherson critic. Raúl Chibás educator/former Comandante of the Rebel Army. Miguel Correa writer. Celia Cruz singer. José Manuel Cubas advertising. Guy Cuevas artist. Bélkis Cuza Malé poet. Siro del Castillo human rights activist.

Tirso del Junco medical doctor. Paquito D'Rivera musician. Roberto Estopiñán sculptor. Daisy Expósito advertising. Hilda Felipe human rights activist/former member of the Communist Party. Joaquin Ferrer painter. Eugenio Florit poet. Carlos Franqui writer/former director of Radio Rebelde and the daily Revolución. Martha Frayde medical doctor/writer/former Cuban representative to UNESCO. Ileana Fuentes art professor. Natividad González Freyre critic. Emilio Guede cineaste/former leader of the anti-Batista struggle. José Guerra-Alemán writer. Andy Garcia actor. Ariel Gutiérrez businessman. Horacio Gutiérrez pianist. Ivette Hernández pianist. Rosario Hiriart writer. León Ichaso film di-

rector. Orlando Jiménez-Leal cineaste/co-director of Improper Conduct. René Jordan film critic. Enrique Labrador Ruiz novelist. Cézar leante writer. Carlos López-Lay attorney. Levi Marrero historian/former ambassador to the OAS in the first Revolutionary Government. Fausto Masó writer. José M. Mijares painter. Marcelino Miyares television producer. Carlos Alberto Montaner writer. Chico O'Farrill musician.

Julian Orbón composer. Herberto Padilla poet. Eduardo Palmer attorney/TV producer. Felipe Pazos economist/former president of the Cuban National Bank in the first Revolutionary Government. Hilda Perera novelist. Daniel Ponce percussionist. Manuel Ray engineer/former minister of Public Works in the first Revolutionary Government. Octavio Roca journalist. Marl Rodriguez-Ichaso journalist. Justo Rodriguez Santos poet. Miguel Sales poet. Pio E. Serrano poet. María Sifonte Vasquez economist. Leonardo J. Soriano writer. Ismsal Suárez de la Paz leader in the anti-Batista struggle. Ramón F. Suárez cinematographer. José Triana playwright. Enrique Trueba businessman. Jorge Ulla cineaste/co-director of Nobody Listened. Roberto Valero poet. Armando Valladres human rights activist/writer/author of Against All Hope. Carlos Verdecia former vice-minister of Trade of the Revolutionary Government/editor of El Nuevo Herald. Camilo Vila film director. Mario Villar Roces writer.

(Sponsored by Committee of La Carta de Los Cien 45 W. 45th St. Suite 206, N.Y., N.Y. 10036)

Paris, December 20, 1988.

After the publication of the Open Letter, the following also called for a plebiscite in Cuba:

Jose Luis de Aranguren Spain, philosopher, Pierre Alechniski France, painter, Fernando Claudin Spain, writer. Jean Ellenstein France, writer. Elena Garro Mexico, writer. Jean Lacouture France, writer. Elaine Parmelain France, writer. Pier Luigi Picci Italy, theater director. Jose Luis Cuevas Mexico, painter. Louis Malle France, film director. Leslie Caron France, actress. Elaine Robb Grillet France, writer. Bertrand Tavenier France, film director. Allen Ginsberg USA, poet. Ana Maria Moix Spain, writer. Julian Rios Spain, philosopher. Vladimir Bukovski USSR, writer. Joseph Brodsky USSR, Nobel Prize in Literature. Elie Wiesel Israel, Nobel Peace Prize. Victoria Abril Spain, actress. Liliane Hasson France, writer. Jorge Edwards Chile, writer. Czeslaw Milozs Czechoslovakia, Nobel Prize in Literature. Paloma Picasso France, designer. Manuel Veacia Altoaguirre Mexico, poet. Ulalume Gonzalez de Leon Mexico, poet. Jose Horacio de Almeida Nascimento Costa Brazil, writer. Hugh Thomas England, historian.●

Mr. GRAHAM. Mr. President, on February 3, of this year, 30 Members of the Senate sent a letter to Cuban leader Fidel Castro, echoing a worldwide sentiment for free elections in Cuba. I am pleased to join with Senator MACK and others in introducing this resolution which more formally expresses our challenge to Fidel Castro. The challenge is a direct and simple one. Let the Cuban people freely decide who they want to lead them.

This summer will mark the 30th anniversary of the Cuban revolution. Those 30 years of dictatorship have not been kind to the Cuban people. Families have been fragmented. Their economy has suffered. Human rights have been callously disregarded.

With the recent departure of Paraguay's Alfredo Stroessner, Cuba has the longest-running dictatorship in the hemisphere.

If a successful revolution reflects the will of the people to recapture their dignity, their free choice, their responsiblity for their own national destiny—how then has Cuba's revolution failed to evolve to free and open elections in 30 years?

Such a dramatic case of arrested development has set Cuba aside from the tide toward democracy which has swept through our hemisphere and indeed through many developing parts of the world.

It has unfairly penalized the Cuban people—denying them the joys and security of a peaceful and prosperous society. Instead they have seen deprivation, political and religious persecution, torture, propaganda campaigns—three decades of their lives bartered for political posturing.

It is time that Cuba rejoins the vital ebb and flow of life in our hemisphere. It is time for the Cuban people to state their choice of leadership clearly and without coercion. It is time that Fidel Castro turn the fragile vessel of his rule to flow with the current of freedom and growth which is gaining in strength all around him.

So, Mr. President, I propose, along with my colleagues who share my concerns about Cuba, the following:

That the people of Cuba should be offered a plebiscite in which they can accept or reject the continuing rule of Fidel Castro.

That these conditions be met to guarantee the impartiality of this plebiscite:

First, the naming of a neutral international commission to oversee the plebiscite.

Second, the freeing of all political prisoners and the suspension of laws that curtail the free expression of public opinion.

Third, the repatriation of all exiles who desire to return to Cuba, together with other sectors of the opposition, and permission for them to campaign using all means of communication.

Fourth, the legalization of human rights committees within Cuba.

The nations of this hemisphere are not blind, nor are the Cuban people blind. After 15 years of dictatorship, Chileans voted overwhelmingly for a democratic future.

After 30 years of dictatorship, Paraguay ousted an authoritarian figure and declared itself ready for democratic elections.

After decades of internal and external political strife, Central Americans have agreed to begin the process to restore peace and democratic freedoms to all their people.

The tide for democracy is rising. Castro would do well to test those waters, to release his tyrannical grip on the Cuban people, before he is swept away by the irresistible longing of the human spirit for freedom.

Mr. President, I would like to ask unanimous consent to print in the RECORD following my statement editorials from the Washington Post and the New York Times supporting the idea of a plebiscite.

I also would like to ask unanimous consent to print in the RECORD a recent letter I wrote to United Nations General Secretary Javier Perez de Cuellar urging him to act quickly on the resolution approved by the U.N. Human Rights Commission on March 9, 1989, and request that the Castro government provide a full explanation of the reprisals carried out against Cuban citizens who testified before the commission study group when it visited Cuba last September to investigate human rights abuses.

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

[From the Washington Post, Dec. 30, 1988]

HOW ABOUT A CUBAN PLEBISCITE?

The longtime rightwing dictator of Chile conducted a vote on his rule, lost and agreed to step down, so why shouldn't Cuba's twice-as-longtime leftwing dictator run and accept the results of a similar plebiscite? This impeccably logical challenge by a group of international writers has now elicited a response from Havana. "The Cuban people held a grand plebiscite concerning their destiny 30 years ago," a spokesman for Fidel Castro actually said, referring to the Communist takeover, "and they repeat that action every day with their decision to continue with socialism".

Fidel Castro is surely the best judge of how he would fare in an honest poll. Nothing on the horizon appears to threaten his power. It is evident all around, however, that his regime is going through a bad patch. The economy has never been harder up to pay for vital imports. Although his defiance of the Americans still warms the Latin left, the contrast between persistance of his police state and the rise of the democratic tide elsewhere in Latin America has never been sharper. His rejection of the reforms now embraced by his Soviet patrons ($6.8 billion in annual subsidies) does not indicate that Moscow is about to dump him but must raise questions about the future.

One sign of Mr. Castro's uneasiness is his bid to improve relations with Washington. He has reinstated the immigration agreement he suspended in 1984, learned to live with the American Radio Marti, opened up to American-stirred international demands to inspect his prisons and released some political prisoners. Cuba's 50,000-man expeditionary force in Angola is now due to be withdrawn on terms that meet some but not all of Havana's earlier demands.

But it would be a mistake to rush on, as some would, toward what has always been for Cuba the great diplomatic prize, lifting the American economic embargo. Some lesser items on the common agenda could

usefully be addressed. Sen. Claiborne Pell, a recent Havana visitor, suggests telephone calls and visas, and cooperative measures in Coast Guard and drug trafficking are also on the list. But as long as Fidel Castro keeps putting Cuban soldiers at imperial Soviet service, provides Moscow military bases and supports armed Latin revolutions, Washington has no interest in dropping the embargo and making it easier for him to build—to rescue—his sort of socialism in Cuba. Of course if he were to run a plebiscite, that might be another story.

[From the New York Times Jan. 2, 1989]

THIRTY YEARS OF FIDEL CASTRO

Thirty years ago on the New Year's Day, Cubans acclaimed Fidel Castro as the youthful liberator who felled the corrupt tyranny of Fulgencio Batista. Today the 62-year-old Mr. Castro himself resembles one of those crabbed caudillos in the novels of his Colombian friend, Gabriel Garcia Márquez.

Last week, an open letter from an international group of 170 writers and actors urged Mr. Castro to hold a plebiscite on his rule. "Absurd and inconceivable," retorted the Cuban Foreign Ministry adding with dictatorial haughtiness: "Our people had a referendum 30 years ago on the day of the triumph of the revolution."

Inconceivable, perhaps, but hardly absurd. After 15 years of military rule, Chile's Augusto Pinochet submitted to a free vote last fall, which he lost. "To say that the Cuban people made their decision 30 years ago is silly and inadmissible," remarked the Mexican poet Octavio Paz, a signer of the letter. "A country does not marry its ruler, as in a religious marriage, forever." It's worth adding that two million Cubans reached a different decision with their feet, choosing exile.

Weighing the good and bad in Mr. Castro's revolution depends on whose scales are used. Sympathizers point to real gains in health standards and literacy, elimination of shaming social and economic inequalities and the assertion of a defiant sovereignty. But Costa Rica, a country with fewer resources, has built as generous a welfare state without sacrificing democracy. And in a turbulent region, Costa Rica took the truly revolutionary step of abolishing its armed forces. Cuba remains an armed camp, despite the security from military attack promised by Washington in 1962 as part of the deal for removing Soviet missiles.

No Latin country has had more long-term political prisoners than Cuba, and few Communist countries boast a more conformist and obsequious press. While reforms sweep the Soviet Union, Cuba remains rooted in stagnation. Mr. Castro opposes even small-scale farmer's markets, and in contrast with Soviet openness, his regime jams Radio Marti, the Voice of America's Cuban service.

True, Mr. Castro has given a small country a global resonance, but at the cost of thousands of casualties in African wars. The island's economy remains shackled to a single crop its old dependence on the U.S. sugar quota has given way to a new reliance on Moscow's willingness to buy at inflated prices.

Cuba after 30 years remains poor, unfree and dependent. And a country whose economy in 1958 was among Latin America's most advanced has skidded to the middle ranks. No wonder this tropical dictator-for-life fears a real popular judgment.

U.S. SENATE,
Washington, DC, March 12, 1989.

HON. JAVIER PEREZ DE CUELLAR,
Secretary General, the United Nations, New York, NY.

DEAR MR. SECRETARY GENERAL: I am writing to urge that you act quickly on the resolution approved by the U.N. Human Rights Commission on March 9, 1989, and request that the Castro government provide a full explanation of the reprisals carried out against Cuban citizens who testified before the Commission study group when it visited Cuba last September to investigate human rights abuses.

I am deeply disappointed that the U.N. Human Rights Commission failed to permit continuing formal monitoring of the human rights situation in Cuba, as called for under a resolution sponsored by the United States. But the Commission did approve a weaker resolution requiring Havana to cooperate with you in settling unresolved issues raised by the human rights study group.

One of those unresolved issues concerns the dozens of people arrested and beaten following their testimony before the study group when it visited Cuba. This harassment took place despite earlier assurances by the Cuban government that no action would be taken against citizens who testified.

The study group complained to the Cuban government, which denied the allegations but maintained that Cubans having contact with the study group "in no sense (are) afforded immunity under the Cuban legal system." The regime, however, refuses to respond officially. The study group has since issued a report that charges the government with reprisals as well as widespread abuse of human rights under Fidel Castro.

Chief U.S. delegate Armando Valladares, citing this harassment, said, "Those who will have serious problems are those who are left behind in Cuba, those who put their faith in the group which went to Cuba and interviewed them."

I share his concern and emphasize the U.N.'s obligation to those who took the risks to bring before the world Castro's systematic abuse of the human rights. These brave citizens of Cuba deserve the U.N.'s continuing involvement, commitment and protection. That is why I urge you to act immediately to guarantee the safety of those who testified.

Sincerely,

BOB GRAHAM,
U.S. Senator.

SENATE RESOLUTION 84—TO COMMEND JO-ANNE COE

Mr. DOLE (for himself, Mr. MOYNIHAN, and Mrs. KASSEBAUM) submitted the following resolution; which was considered and agreed to:

S. RES. 84

Whereas Jo-Anne Coe became an employee of the Senate of the United States on January 3, 1969, and since that date has ably and faithfully upheld the high standards and traditions of the staff of the Senate of the United States for a period that included ten Congresses;

Whereas Jo-Anne Coe has served as Senior Advisor to the Republican Leader from January 6, 1987 until January 31, 1989;

Whereas Jo-Anne Coe served prior to 1987 as Secretary of the Senate, Administrative Director of the Committee on Finance, Administrative Director of the Office of Senator Bob Dole and other posts under Senator Dole;

Whereas Jo-Anne Coe faithfully discharged the difficult duties and responsibilities of her positions on the staff of the Senate of the United States with great efficiency, devotion, and dedication;

Whereas Jo-Anne Coe's clear understanding of the challenges facing the Nation has left her mark on many areas of public life;

Whereas Jo-Anne Coe retired from the Senate of the United States on January 31, 1989; Now, therefore, be it

Resolved, That the Senate of the United States commends Jo-Anne Coe for her exemplary service to the Senate and the Nation, and wishes to express its deep appreciation and gratitude for her long, faithful, and outstanding service.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Jo-Anne Coe.

AMENDMENTS SUBMITTED

WHISTLEBLOWER PROTECTION ACT

LEVIN (AND OTHERS) AMENDMENT NO. 9

Mr. LEVIN (for himself, Mr. GRASSLEY, Mr. PRYOR, Mr. COHEN, Mr. GLENN, Mr. ROTH, Mr. HELMS, and Mr. BENTSEN) proposed an amendment to the bill (S. 20) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes; as follows:

On page 3, line 12, strike out all through line 23 on page 14 and insert in lieu thereof:

(a) MERIT SYSTEMS PROTECTION BOARD.—Chapter 12 of title 5, United States Code is amended—

(1) in section 1201 in the second sentence by striking out "Chairman and";

(2) in the heading for section 1202 by striking out the comma and inserting in lieu thereof a semicolon;

(3) in section 1202(b)—

(A) in the first sentence by striking out "his" and inserting in lieu thereof "the member's"; and

(B) in the second sentence by striking out "of this title";

(4) in section 1203(a) in the first sentence by striking out the comma after "time";

(5) in section 1203(c) by striking out "the Chairman and Vice Chairman" and inserting in lieu thereof "the Chairman and the Vice Chairman";

(6) by redesignating section 1204 as section 1211(b) and inserting such subsection after section 1211(a) (as added in paragraph (11) of this subsection);

(7) by redesignating section 1205 as section 1204, and amending such redesignated section—

(A) by striking out "and Special Counsel", "the Special Counsel," and "of this section" each place such terms appear;

(B) by striking out "subpena" and "subpenaed" each place such terms appear and inserting in lieu thereof "subpoena" and "subpoenaed", respectively;

(C) in subsection (a)(4) by striking out "(e)" and inserting in lieu thereof "(f)";

(D) by amending subsection (b)(2) to read as follows:

"(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

"(A) issue subpoenas requiring the attendance and presentation of testimony of any such individual, and the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

"(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.";

(E) in subsection (c) in the first sentence—

(i) by striking out "(b)(2) of this section," and inserting in lieu thereof "(b)(2)(A) or section 1214(b), upon application by the Board,"; and

(ii) by striking out "judicial";

(F) by redesignating subsections (d) through (k) as subsections (e) through (l), respectively, and inserting after subsection (c) the following new subsection:

"(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.";

(G) in subsection (e) (as redesignated by subparagraph (F) of this paragraph)—

(i) in paragraph (1)—

(I) by redesignating such paragraph as subparagraph (A) of paragraph (1); and

(II) by inserting at the end thereof the following new subparagraph:

"(B)(i) The Merit Systems Protection Board may, during an investigation by the Office of Special Counsel or during the pendency of any proceeding before the Board, issue any order which may be necessary to protect a witness or other individual from harassment, except that an agency (other than the Office of Special Counsel) may not request any such order with regard to an investigation by the Office of Special Counsel from the Board during such investigation.

"(ii) An order issued under this subparagraph may be enforced in the same manner as provided for under paragraph (2) with respect to any order under subsection (a)(2).";

(ii) in paragraph (2)—

(I) by redesignating such paragraph as subparagraph (A) of paragraph (2) and striking out "of this section" in the first sentence therein; and

(II) by inserting at the end thereof the following new subparagraph (B):

"(B) The Board shall prescribe regulations under which any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board to exercise its authority under subparagraph (A).."; and

(iii) in paragraph (3) by inserting "of Personnel Management" after "Office";

(H) in subsection (f) (as redesignated by subparagraph (F) of this paragraph)—

(i) in paragraph (1) in the first sentence by inserting "of the Office of Personnel Management" after "Director", and by striking out "of this title":

(ii) in paragraph (2)—

(I) in the first sentence by inserting a comma after "subsection";

(II) in subparagraph (A) by striking out "of this title"; and

(III) in subparagraph (B) by striking out "of this title"; and

(iii) in paragraph (3)—

(I) in subparagraph (A) by striking out "(A)";

(II) by striking out subparagraph (B); and

(III) by redesignating subparagraph (C) and clauses (i) and (ii) therein as paragraph (4) and subparagraphs (A) and (B), respectively; and

(I) in subsection (j) (as redesignated by subparagraph (F) of this paragraph) in the second sentence by striking out "of this title" after "chapter 33";

(8) by striking out sections 1206 through 1208;

(9) by redesignating section 1209(a) as section 1205, and inserting before such section the following section heading:

"§ 1205. Transmittal of information to Congress";

(10) by redesignating section 1209(b) as section 1206, and inserting before such section the following section heading:

"§ 1206. Annual report";

(11) by inserting after section 1206 (as redesignated in paragraph (10) of this subsection) the following:

"SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

"§ 1211. Establishment

"(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.";

(12) by amending section 1211(b) (as redesignated and inserted by paragraph (6) of this subsection)—

(A) in the first sentence by striking out "of the Merit Systems Protection Board" and "from attorneys";

(B) by striking the second sentence and inserting in lieu thereof "The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term."; and

(C) by adding at the end thereof "The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President."; and

(13) inserting after section 1211 the following:

On page 16, line 15, strike out all after the comma through line 22 and insert in lieu thereof "the Special Counsel may apply to the Merit Systems Protection Board to enforce the subpoena in court pursuant to section 1204(c).".

On page 17, strike out lines 9 through 15.

On page 17, strike out "(d)" and insert in lieu thereof "(c)".

On page 17, line 21, strike out "(A)".

On page 17, line 24, beginning with the comma, strike out all through line 25 and insert in lieu thereof a period.

On page 18, strike out lines 1 through 20.

On page 26, beginning with line 20, strike out all through line 2 on page 27 and insert in lieu thereof the following:

"Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.".

On page 27, line 16, insert "the National Security Advisor," before "the Permanent".

On page 27, line 18, insert a comma before "and the Select".

On page 34, line 6, insert "contributing" before "factor".

On page 34, line 13, beginning with "obtained" strike out all through line 17, and insert in lieu thereof "obtained by any employee, former employee, or applicant for employment adversely affected by such order or decision.".

On page 35, line 12, insert after "Special Counsel" a comma and "after consultation with the Attorney General,".

On page 40, strike out all beginning with line 18 through line 2 on page 41 and insert in lieu thereof:

"§ 1217. Transmittal of information to Congress

"The Special Counsel or any employee of the Special Counsel designated by the Special Counsel, shall transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and the Special Counsel's views on functions, responsibilities, or other matters relating to the Office. Such information shall be transmitted concurrently to the President and any other appropriate agency in the executive branch.

On page 44, line 14, insert "contributing" before "factor".

On page 45, strike out lines 4 through 9 and insert in lieu thereof:

"(g)(1) If an employee, former employee, or applicant for employment is the prevailing party before the Merit Systems Protection Board, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred.

"(2) If an employee, former employee, or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred, regardless of the basis of the decision.

On page 46, beginning with line 8, strike out all before line 11 and insert in lieu thereof:

(b) CONFORMING AMENDMENTS.—(1) The table of chapters for part II of title 5, United States Code, is amended by striking the item relating to chapter 12 and inserting in lieu thereof the following:

"12. Merit Systems Protection Board, Office of Special Counsel, and Individual Right of Action ..... 1201".

(2) The heading for chapter 12 of title 5, United States Code, is amended to read as follows:

"CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION".

(3) The table of sections for chapter 12 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD

"Sec. 1201. Appointment of members of the Merit Systems Protection Board.
"Sec. 1202. Term of office; filling vacancies; removal.
"Sec. 1203. Chairman; Vice Chairman.
"Sec. 1204. Powers and functions of the Merit Systems Protection Board.
"Sec. 1205. Transmittal of information to Congress.
"Sec. 1206. Annual report.

"SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

"Sec. 1211. Establishment.
"Sec. 1212. Powers and functions of the Office of Special Counsel.
"Sec. 1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters.
"Sec. 1214. Investigation of prohibited personnel practices; corrective action.
"Sec. 1215. Disciplinary action.
"Sec. 1216. Other matters within the jurisdiction of the Office of Special Counsel.
"Sec. 1217. Transmittal of information to Congress.
"Sec. 1218. Annual report.
"Sec. 1219. Public information.

"SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES

"Sec. 1221. Individual right of action in certain reprisal cases.
"Sec. 1222. Availability of other remedies.".

(4) Chapter 12 of title 5, United States Code, is further amended by inserting before section 1201 the following subchapter heading:

"SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD".

On page 52, line 21, strike out "and 1993, $20,000,000" and insert in lieu thereof "1993, and 1994, such sums as necessary".

On page 53, lines 1 and 2, strike out "and 1991, $5,000,000" and insert in lieu thereof "1991 and 1992, such sums as necessary".

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Thursday, April 6, 1989, in SR-301, to hold hearings. The committee will receive testimony on the following: the Federal Election Commission's fiscal year 1990 budget authorization request at 9 a.m.; reauthorization of the Civil Achievement Award Program in honor of the Office of the Speaker of the House of Representatives at 9:45 a.m.; and reauthorization of the American Folklife Center at 10:30 a.m.

For further information regarding these hearings, please contact Carole Blessington of the Rules Committee staff on 224-0278.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that field hearings have been scheduled before the Subcommittee on Public Lands, National Parks and Forests.

The purpose of the hearings is to receive testimony on S. 237, a bill to reform the Tongass timber supply fund; and S. 346, the Tongass Timber Reform Act.

The first hearing will take place in Ketchikan, AK, on April 24, 1989. The second hearing will be held in Sitka, AK, on April 25, 1989. The exact location and time of each hearing will be announced in the near future.

Those wishing to testify before the subcommittee at either hearing should call Senator MURKOWSKI's office in Ketchikan at (907) 225-6880 or his office in Juneau at (907) 586-7400 between March 20 and March 31. If you wish to testify you may also send in a written request in the form of a postcard or letter to Senator MURKOWSKI's Ketchikan office at 109 Main Street, Ketchikan, AK 99901 or his Juneau office at Box 1647, Juneau, AK 99802. The card or letter should include your name, address, telephone number and place you wish to testify. All requests must be received by Senator MURKOWSKI's offices by March 31. The subcommittee will then notify each individual who will be on the witness lists.

The subcommittee will make every effort to accommodate as many people as possible in the limited time available. In anticipation of the large number of requests to testify, it may be necessary, in the interest of fairness, to select a portion of the witness list at random through a drawing of names. The subcommittee will make every effort to hear as many perspectives on this important issue as possible.

If you would like to submit a written statement for the hearing record, but do not plan to attend the hearing in person, please send two copies of your statement to the Subcommittee on Public Lands, National Parks and Forests, U.S. Senate, SD-364, Washington, DC 20510.

Those wishing additional information regarding the hearings may call Beth Norcross of the subcommittee staff at (202) 224-7933.

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The hearing will take place on April 5, 1989, beginning at 2 p.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on three bills currently pending before the subcommittee. The measures are:

S. 85, a bill to authorize the acceptance of certain lands for addition to Harpers Ferry National Historical Park, WV;

S. 280, a bill to amend the Wild and Scenic Rivers Act by designating a segment of the Niobarra River in Nebraska as a component of the National Wild and Scenic Rivers System; and

S. 338, a bill to authorize the Secretary of the Interior to provide for the development of a trails interpretation center in the city of Council Bluffs, IA, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the hearing record is welcome to do so. Those wishing to submit written testimony should send two copies to the Subcommittee on Public Lands, National Parks and Forests, SD-364, Washington, DC 20510.

For further information regarding the hearing, please contact Beth Norcross of the subcommittee staff at (202) 224-7933.

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. FORD. Mr. President, I would like to announce for the Senate and the public that a hearing has been scheduled before the Subcommittee on Energy Research and Development on the Committee of Energy and Natural Resources.

The purpose of the hearing is to hear testimony on S. 83, a bill to establish the amount of costs of the Department of Energy's uranium enrichment program that have not previously been recovered from enrichment customers in the charges of the Department of Energy to its customers, and proposed Senate amendment No. 6, to establish a wholly owned Government corporation to manage the Nation's uranium enrichment enterprise, operating as a continuing, commercial enterprise on a profitable and efficient basis.

The hearing will take place on April 19 and 20, 1989, both at 2 p.m. in SD-366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to submit written testimony for the printed hearing record should send it to the Committee on Energy and Natural Resources, Subcommittee on Energy Research and Development, U.S. Senate, Washington, DC 20510. Written comments must be received by May 1, 1989.

For further information, please contact Cheryl Moss or Ben Cooper at (202) 224-7569.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON CHILDREN, FAMILY, DRUGS AND ALCOHOLISM

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Children, Family, Drugs and Alcoholism, of the Committee on Labor and Human Resources, be authorized to meet on Thursday, March 16, 1989, at 10, a.m. during the session

of the Senate to conduct a hearing on "Health Effects of Pesticide Use on Children."

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

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Employment and Productivity, of the Committee on Labor and Human Resources, be authorized to meet during the session of the Senate on Thursday, March 16, 1989, at 10 a.m. to conduct a hearing on "JTPA Youth Employment Amendments of 1989," S. 543.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. MITCHELL. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing and executive session on the nomination of Anthony J. Principi to be Deputy Secretary of Veterans Affairs on Thursday, March 16, 1989, at 9 a.m.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology, and Space, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on March 16, 1989, at 9:30 a.m. to hold a hearing on the President's fiscal year 1990 budget request for the Space Station Freedom Program.

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

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, March 16, 1989, at 9:30 a.m. in open session to vote on the nomination of RICHARD B. CHENEY to be Secretary of Defense.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Thursday, March 16, 1989, at 10 a.m. to continue its oversight hearings on the problems of the Federal Savings and Loan Insurance Corporation.

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

COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on March 16, 1989, at 10 a.m. to hold a hearing on and to consider the nominations of Edith E. Holiday to be General Counsel of the Department of Treasury, and David W. Mullins, Jr., to be an Assistant Secretary (Domestic Finance) of the Department of Treasury.

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

SUBCOMMITTEE ON LABOR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Labor, of the Committee on Labor and Human Resources, be authorized to meet on Thursday, March 16, 1989, at 10:15 a.m. during the session of the Senate to conduct a hearing on "Age Discrimination in Employment Waiver Protection Act of 1989," S. 54.

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

ADDITIONAL STATEMENTS

TRIBUTE TO LOUIS L. RAMSEY, JR.

● Mr. PRYOR. Mr. President, on March 30, patrons of the Arkansas Arts and Science Center will pay tribute to one of Arkansas' most distinguished citizens, Louis Ramsey of Pine Bluff.

Among his many accomplishments, Louis is the only individual to have ever been chosen president of both the Arkansas Bankers Association and the Arkansas Bar Association.

A native of Fordyce, AR, Louis played quarterback for the Arkansas Razorbacks before seeing action as a U.S. Army pilot during World War II. After completing law school, he became associated with the Pine Bluff law firm of Coleman & Gantt, now Ramsey, Cox, Bridgforth, Gilbert, Harrelson & Starling.

In 1970, Louis became president and later chairman of the board of directors of Simmons First National Bank. He has also served as chairman of the Board of Trustees of the University of Arkansas, chairman of the board of trustees at Blue Cross-Blue Shield, and chairman of the Arkansas Sesquicentennial Celebration in 1986.

A tireless and dedicated individual, Louis has always been at the forefront of charity and humanitarian pursuits in Pine Bluff and all across our State.

Our Governor, Bill Clinton, probably said it best when he observed that Louis L. Ramsey, Jr., "represents everything that is best about our State."

Mr. President, I know of no more deserving Arkansan than Louis Ramsey for this honor and evening of tribute from his many friends and business associates. I join them in proudly saluting Louis Ramsey.●

WILD HORSES

● Mr. McCLURE. Mr. President, I would like to take just a moment to talk about wild horses and recognize a recent article found in Wild Times, a game and fish publication distributed to students. As you know, I have always been a strong supporter of developing better management techniques to control competing native species of wildlife.

A more accurate description of "wild" horses is "feral," which means "domestic animals no longer in captivity." Emotionalism has been a main cause of both misinforming the public and allowing feral horse populations to grow out of control. This article clearly explains some of the problems that exist when feral animals are allowed to compete with native wildlife. It replaces legend with fact and romanticism with reality.

Certainly a major part of the solution lies in making people aware of the problems and the facts so that the political decisions can be based on good, scientific data rather than romantic notions, legends, and emotionalism. Few people would like to see all the feral horses removed from our public lands, but common sense tells us that we need to provide for adequate control measures. Federal land managers must be given the tools necessary to ensure that these horses are not allowed to continue to increase their numbers at the expense of native species of wildlife.

Even though this article is targeted for students, its significance warrants a larger audience. For this reason, I ask that the article be printed in the RECORD.

The article follows:

[From the Wild Times, January 1989]

WILD HORSES

Horses played an important part in the history and heritage of the West and, in particular, Wyoming. Horses are a highly romanticized and popular species, what with cowboys and Indians, rustlers, bank robbers, possees, and ranchers. Many famous men who made history during the time the West was settled depended upon horses as their means of transportation. Such men included bad guys Jesse James, Butch Cassidy, Billy the Kid, and good guys like Wyatt Earp. Even now, horses remain an important livestock species for ranch work and rodeos, which commemorate an "Old West" lifestyle.

But sometimes people confuse horses (which are domesticated livestock) with wildlife. Horses, as a wild species, became extinct in North America about 8,000 years ago. Horses were the last common livestock species to be domesticated—about 3,500 years ago. There is today only one species of truly wild horse extant (alive). This species is known as Przewalski's horse—the only survivors of the species are kept in zoos. All other species of horses (besides Przewalski's horses) are domesticated, much like cattle, hogs, chickens, and other barnyard animals. You may have heard about "wild" horses that occur throughout the West, and specif-

ically in the Red Desert of western Wyoming. A more accurate description than "wild" would be "feral," which means "domestic animals no longer in captivity."

It is interesting to note that legend and folklore equate the feral horses that inhabit the Red Desert of Wyoming with descendants of Spanish mustangs that escaped Hernando Cortez's expedition in 1519 near Vera Cruz, Mexico. In truth, these feral horses are descendants of ranch horses released into the wild during World War II. Horses were used extensively (almost exclusively) for ranch work before the war. During the war, few men were available for ranch work, and after the war, automobiles and pickup trucks gradually replaced the horse for most ranch work. As a result, ranchers released their surplus horses onto the desert. Periodically, they conducted roundups to gather horses when they needed them for ranch work and to prevent numbers of feral horses from exceeding the habitat's ability to feed them. Because of confusion over the feral status of these horses (some people are misinformed and believe they are actually wild), a huge political problem developed, and the feral horse population grew out of control.

To more clearly state the problem, feral horses (domestic livestock no longer in captivity) have reproduced in such numbers as to overpopulate the range in some areas. This displaces native ungulates (hooved animals) such as pronghorn antelope, mule deer, and elk on our public lands. Because of the political problem mentioned earlier, feral horse management programs have not effectively addressed the problem of overpopulation.

Most of the feral horses occur on public lands administered by the Bureau of Land Management, or BLM. Much of the land in the Red Desert, as you might guess, does not receive much moisture. Thus, water for drinking is scarce, and the vegetation is sparse. The habitat is only able to support a limited number of animals. Several species of ungulates compete for these resources. Domestic livestock includes cattle, sheep, and feral horses. Native wildlife includes pronghorn antelope, mule deer, and elk. The BLM manages livestock numbers and attempts to control stocking rates so that the range is not overgrazed. The agency's management plans include consideration for native wildlife. Cattle and sheep numbers are most easily controlled and monitored, as stockmen and the BLM cooperate to achieve proper stocking rates. Surplus numbers of native ungulates are harvested during hunting seasons. Feral horses are captured and put up for adoption in the "Adopt-a-Horse" program. These removals of feral horses are in such small numbers that reproduction exceeds their removal rates. Feral horse populations continue to increase. They are a long-lived species, and there are no predators that are consistently capable of taking feral horses.

Another aspect of the problem is in the behavior of horses. They tend to associate in family and social groups known as bands. During certain times of the year, bands of horses join to make herds. They sometimes remain in one area, such as an important watering hole or spring, and exlcude other competing ungulates. There are areas nearly denuded of vegetation in the wake of feral horse concentrations. These areas remain unavailable after the horses move on because, with limited rainfall, desert habitats recover slowly from overgazing.

Political constraints continue to prevent a real solution to the problem—inadequate control and management of feral horse populations. Political decisions are often made because of the emotional aspects of an issue. People in the United States are proud of our Western heritage, and horses were an important part of that era. The issue becomes very emotional because of the popularity of horses. What many people do not understand is that these horses are merely domestic animals that are in captivity. They have been turned loose and have reproduced in numbers that defy existing control measures and are in turn destroying habitat values for our native species of wildlife. Our native wild species are also an important part of our heritage and define who we are in Wyoming. The solution to the problem is in making people aware of the problems and the facts so that the political decisions can be based on good, scientific data, rather then romantic notions, legends, and emotionalism. Few people would like to see the entire feral horse population removed from our public lands. But it only makes good sense to provide for adequate control measures to ensure that feral horses are not allowed to continue to increase their numbers at the expense of native species of wildlife.●

TRIBUTE TO HOWARD UNIVERSITY LAW SCHOOL DEAN WILEY BRANTON

● Mr. PRYOR. Mr. President, when asked about his years of service to the civil rights movement and particularly to the 1957 crisis at Little Rock Central High School, Wiley Branton replied "I was just doing my job." Such a statement was characteristic of Mr. Branton, who is remembered as a hard-working, sincere man. Although a gifted attorney, he was quiet and unassuming. It is his humility and desire to always put the goals of the civil rights movement before self which probably accounts for the fact that Wiley Branton was not more famous than he was.

Wiley Austin Branton was a native of Pine Bluff, AR, and a graduate of Arkansas AM&N College, now the University of Arkansas at Pine Bluff. His career of service to this country began as a member of the U.S. Army in service during World War II in the Pacific. Returning home after the war, Mr. Branton began teaching blacks how to complete an election ballot. He was arrested and convicted for these activities, but he was not deterred.

In 1948, he enrolled at the University of Arkansas Law School, becoming one of the first blacks to attend. After his graduation in 1953, he immediately involved himself in the Little Rock segregation battle. Despite numerous threats to him and his family, Wiley Branton's commitment to this struggle was unwavering.

One of his greatest contributions to the movement was as chief counsel representing the nine black students who were attempting to integrate Little Rock Central. Prior to the events of 1957 which drew national attention to Little Rock, Wiley Branton was already busy fashioning the circumstances surrounding the Little Rock segregation problem as a catalyst for school integration across the country. After the initial suit filed by the students was dismissed, Branton, with NAACP Legal Defense Fund Director Thurgood Marshall, appealed the decision. The two argued that the school board was delaying integration in violation of the 1954 Supreme Court integration order. This appeal was dismissed as well.

Although the opportunity existed to appeal the dismissal to the Supreme Court, and such an appeal would have brought Wiley Branton to the visible forefront of the movement, he chose not to make the appeal. He felt that the risk that such a watered down plan might become the national model was too great, and that the importance of the integration movement must take priority to any career or personal benefits he might receive by making the appeal.

Wiley Branton was named executive director of the President's Council on Equal Opportunity by Vice President Hubert Humphrey in 1965. He served as chief aide to the Vice President and President Johnson and traveled throughout the South registering blacks to vote under the 1965 Voting Rights Act. Mr. Branton also served as special assistant to the Attorney General in his capacity as executive director of the United Planning Organization, the Washington antipoverty agency. Mr. Branton became the eighth dean of the Howard University Law School in 1977. He had served as chairman of the D.C. Judicial Nomination Commission and as vice president of the NAACP Legal Defense Fund. Mr. Branton was also the recipient of numerous awards and honors, including recognition from the Washington Bar Association, the Bar Association of the District of Columbia, the Lawyer's Committee for Civil Rights Under the Law, and the D.C. Public Library.

Certainly the life of Wiley Branton serves as a model for us all. His dedication to the principles of fairness and equality teaches us the importance of commitment and tenacity. His quiet dynamism teaches us the importance of humility and selflessness. His distinguished career in public service teaches us the importance of duty and generosity.

It is my hope that we never forget the lessons of this life given for the benefit of others. Let us rededicate ourselves to those principles for which Wiley Branton lived and for which he will always be remembered.●

NATIONAL AGRICULTURE DAY

● Mr. McCLURE. Mr. President, I stand to voice my salute to all those involved in agriculture, this Nation's

largest and most important industry. Few people realize that the current farm assets of nearly $1 trillion are equal to almost two-thirds of the total capital assets of all manufacturing corporations in the United States. This Nation's food and fiber system alone accounted for 16.6 percent of the total gross national product in 1986. Agriculture is also this Nation's largest employer. Requiring the services of about 18.9 million people to store, transport, process, and merchandise the output of this Nation's 2.3 million farms. Farming itself employs roughly 2.1 million workers, as many as the combined work forces of transportation, the steel industry, and the automobile industry. It is only right that we celebrate "National Agriculture Day" and recognize these agricultural producers and affiliates for their contributions to America.

Some interesting facts show the trends in the increasing efficiency of agricultural production. In 1985, U.S. farmers produced over 40-percent more crop output on an acre of land than they did in 1965. One hour of farm labor produced 7.8 times as much food and other crops in 1985 as it did in 1947. One farmworker now supplies enough food and fiber for 75 people. Only 10 years ago, the farmworker was producing enough for 58. Nowhere else in the world do so few provide so much for so many.

We find ourselves in a time where the agricultural economy as a whole is making real progress in recovering from previous distress. In contrast to the $17.5 billion drop in exports during the 6-year period from 1981 to 1986, our agricultural exports increased $9 billion during the last 3 years. These exports make a substantial net contribution to U.S. trade balance. Land value trends have reversed and are now increasing: up by 3 percent in 1987 and by 6 percent in 1988. Commercial farm lenders have reported stronger loan portfolios in 1988, while the number of delinquent accounts, write-offs, and foreclosures have declined. Changes in Government programs have allowed more competitive pricing of U.S. farm products on the world market. And only about 5 percent of our farm businesses were financially vulnerable a year ago, which is half as many as were in the same position 2 years previous.

The future outlook of agricultural production also appears promising; 1989 agricultural exports are projected to increase $2.5 billion over last year's level. This will help us maintain our position as a reliable supplier in the world market. Net farm income is expected to increase about $5 to $9 billion in 1989. Also, land and other asset values should modestly rise this year.

As you know, Mr. President, agriculture is extremely important to the great State of Idaho. Consequently, Idaho's contributions are important to the Nation's total agricultural economy. I am proud of the fact that Idaho is the No. 1 producer of potatoes, as well as one of the top producers of barley, sugarbeets, hops, and mint.

I realize that any future production performance is sensitive to supply developments in both the United States and overseas. And of course, changing United States and foreign policies as well as general economic conditions also have direct effects on the agricultural industry. These are factors which are difficult to control. But while many of the statistics and trends may look good, we cannot relax our efforts to help the agricultural industry become more efficient. Dependence on Government payments remains fairly high for producers of certain commodities. And there are still a substantial number of financially vulnerable farms. The farm financial crisis of the 1980's in addition to the recent drought has had the effect of forcing rural areas to realize that economic security lies with diversification. By being more aware of agricultural concerns, we can influence even greater efficiency.

Again, I salute all those who are associated with and improve agriculture in this country. Recognizing this "National Agriculture Day" is a way both to celebrate this great industry and to increase our awareness of our current agricultural positions.●

TRIBUTE TO CHRISTOPHER SKINNER

● Mr. PRYOR. Mr. President, recently Christopher McLean Skinner of Little Rock, AR, was awarded the top prize in the 48th annual Westinghouse science talent search.

This competition, the oldest high school scholarship program in existence, draws entries from top science students all across our country.

I am most proud of the accomplishment of this young man—proof that our educational system produces some of the Nation's finest.

The New York Times carried an article on the winners in its March 7 edition. I would like to include that article at this point in the RECORD.

The article follows:

[From the New York Times, Mar. 7, 1989]

ARKANSAS YOUTH WINS THE SCIENCE TALENT SEARCH

WASHINGTON, March 6.—A 16-year-old high school senior from Arkansas today won the 48th annual Westinghouse Science Talent Search, the pre-eminent competition for aspiring scientists.

The winner, Christopher McLean Skinner, first in his class of 428 at Hall High School in Little Rock, was awarded a $20,000 scholarship for his research on number theory. Mr. Skinner, who plans to attend the University of Michigan at Ann Arbor next year, was judged best among 1,461 applicants.

Scholarships of $15,000 for second and third places were presented to Jordan S. Ellenberg, 17, of Potomac, Md., and Richard H. Christie, 15, of Penfield, N.Y. Mr. Ellenberg submitted a mathematics project and Mr. Christie, the youngest of 40 finalists, entered a paper on interactions between the nervous and immune systems.

The event is billed as the oldest high school scholarship competition in the United States. Five former winners later won Nobel Prizes. More than half of the former winners are either teaching or engaged in research at colleges or universities.

FOUR WINNERS FROM NEW YORK STATE

Students from New York State schools won 4 of the top 10 awards. Mr. Skinner's victory marks the first time in 4 years and only the third time in 10 years that the top prize has not gone to a student from a New York City school.

The winners were announced at a banquet here tonight that climaxed a five-day visit for the 40 finalists. They were flown to Washington for the last in a series of judging rounds and for meetings with scientists and members of Congress. President Bush addressed a gathering of the students Friday.

On Sunday, before the awards were announced, the finalists displayed their projects for the public. Mr. Skinner explained how his study of several journal articles and numerical problems prompted him to solve a complex equation in a unique way. "I've been interested in mathematics for a long time, about as far back as I can remember," Mr. Skinner said. He said the project took him six months to complete.

Mr. Ellenberg drew a crowd from among the visitors at the National Academy of Sciences Sunday as he explained his project with the air of an animated auctioneer.

"What is the least common denominator," he shouted, directing the onlookers to numbers scribbled on a board. "Not you," he joked with one woman. "You answer too many questions."

Later Mr. Ellenberg, first in his class of 497 at Winston Churchill High School in Potomac, said he had worked on his project, which centered on the relationship among the numbers 2, 3 and 5, intermittently for four years.

Mr. Christie said his interest in neuroscience began when he was 10 years old, when he took a community college course on the subject. The next year, Mr. Christie went to work in a research lab and became fascinated with the interactions between the nervous and immune systems and the way they affect the brain.

Mr. Christie, who skipped the first and third grades, is a senior at Penfield High School and will attend the Massachusetts Institute of Technology next year.

OTHERS IN TOP 10

The other award winners in the top 10 were, in order:

Stacy E. Benjamin, 16, of Queens ($10,000)

S. Celeste Posey, 17, of Cary, N.C. ($10,000)

Allene M. Whitney, 17, of Helena, Mont. ($10,000)

Kevin N. Heller, 17, of Dix Hills, N.Y. ($7,500)

Andrew W. Jackson, 18, of Medfield, Mass. ($7,500)

Andrew J. Gerber, 16, of Brooklyn ($7,500)

Divya Chander, 17, of River Vale, N.J. ($7,500)

Daniel A. Sherman, 17, of Columbia, MO., and Simon R. Zuckerbraun, 17, of New York City were selected as first, and second alternatives.

Each of the other 30 finalists received a $1,000 scholarship, making the total value of the awards $140,000.

The five days the finalists spent in Washington were filled with a hectic schedule: a series of interviews with a panel of scientists, appointments with Congressmen, two afternoons fielding questions from interested visitors and a number of lectures.

PRESIDENT DRAWS LAUGHS

In his appearance Friday, Mr. Bush boasted jokingly of his technical knowledge of the students' projects. "I've done a lot in the field of the viability of M.V.M. parvovirus," he said, citing a project. "Then at night, I like to curl up with a book on mapping mutants. And every once in a while, when I have some spare time, Barbara and I read aloud about the behavior of the inhibitions of Sialidaeses," referring to a family of insects.

"But I'll tell you," he added, to laughter, "I'm glad there's no quiz."

An award in the talent search can enhance the reputation of a represented school. The New York City Board of Education has encouraged city students to enter the contest and provided them with material explaining the best routine to winning an award.

The Westinghouse Electric Corporation has sponsored the competition since 1942.

Mr. President, again, all of Arkansas is proud of Christopher's showing in this most preeminent of science competitions.●

WILDFIRE SUPPRESSION ASSISTANCE ACT

● Mr. LEAHY. Mr. President, on yesterday Senator MAX BAUCUS introduced S. 575, which would permanently authorize cooperation with Canada and other countries in fighting wildfires is an important piece of legislation. Those of us on the Senate Committee on Agriculture, Nutrition, and Forestry are delighted Senator BAUCUS brought this issue to our attention. It is extremely important that the Congress give the Secretaries of Agriculture and Interior the authority to cooperate with other countries before the summer fire season of 1989.

In introducing this legislation, Senator BAUCUS is already demonstrating his value as a member of our committee. I look forward to working with him on other important forestry issues.●

GREEK INDEPENDENCE DAY

● Mr. BRADLEY. Mr. President, I am honored to join with many of my colleagues in the U.S. Senate to pay tribute to people of Greek descent on the occasion of the 168th anniversary of the beginning of the revolution which gave Greeks their independence. As March 25, 1989 nears I applaud the Greek people in their long struggle for freedom and independence from the Ottoman empire.

Greece was under the Ottoman empire from the fall of Constantinople in 1423 until its declaration of independence in 1821. During this 400-year period the Greek traditions and heritage remained strong. Today we are reminded of the strength of the Greek influence in our everyday lives. Many Greek Americans have risen to prominence in business, law, medicine, politics, education, and entertainment. Their significant contributions have enriched the diversity of American life.

Today it is fitting to remember the importance of Greece in the history of democracy. As Thomas Jefferson said, "* * * to the ancient Greeks * * * we are all indebted for the light which led ourselves out of Gothic darkness." The root of the democratic process, which we all cherish as Americans, lies in the minds and spirits of ancient Greeks. And, we as Americans, contributed to Greek independence when Greek intellectuals translated our Declaration of Independence and used it as their own declaration.

We, as a nation, must not forget our struggle for freedom and on this day of recognition let us rededicate ourselves to the cause of freedom. We stand together with the Greek people who have attained freedom and remember those who are tireless in their efforts to be free.●

EDITORIAL FROM "THE NEW MEXICAN" ON THE CONFIRMATION PROCESS

● Mr. BINGAMAN. Mr. President, Robert McKinney, editor and publisher of "The New Mexican," kindly sent me a copy of the editorial from Tuesday's paper which expresses his opinion of the importance of the confirmation process. I found his comments very interesting. Mr. McKinney has sent copies to a number of other Members of the Senate, but for the benefit of those who might not have received it, I ask that it be included in the RECORD.

The editorial follows:

[From the Santa Fe (NM) New Mexican, Mar. 14, 1989]

LIVE AND LEARN

Last week's dramatic events in Washington has an unforseen outcome.

The events:

The Senate debated and rejected the President's choice for a key post in his cabinet.

Anticipated outcome:

Proof that conflict between a president of one party and a congress controlled by another party would paralyze government.

Actual outcome:

Proof that conflict can strengthen government by improving the caliber of men elevated to high government posts.

Mr. Tower's rejection paralyzed nothing. Within 24 hours the president sent the Senate the name of a replacement nominee; Rep. Richard B. Cheney of Wyoming. Unlike Mr. Tower, Mr. Cheney's conduct and character are beyond question; there are no conflicts of interest. Mr. Cheney's qualifications include six years on White House staffs, two of them as chief of staff to a president. Even his partisan political credentials are strong: five terms as chairman of the House Republican Policy Committee. Senate hearings on Mr. Cheney should be brief; his confirmation could be unanimous.

And the end result of last week's shooting? The country gets a better Secretary of Defense. So much for the episode just ending at the Pentagon.

Now for the coming episode at Foggy Bottom.

James A. Baker (former Treasury Secretary) has been confirmed as Secretary of State. Because Mr. Baker's experience in international affairs is limited, President Bush wisely sought a candidate with wide international experience for the No. 2 post at State. Lawrence S. Eagleburger was nominated for Deputy Secretary. His confirmation hearings will open soon.

On the surface, Mr. Eagleburger appears a good choice; 27 years in the foreign service, three tours of duty at the White House, important posts abroad, a career crowned by two years as Under Secretary of State for Political Affairs.

Since 1984, Mr. Eagleburger has been president of a foreign relations consultant firm, Kissinger Associates Inc. There lies the rub.

Conflict of interest concerns that disqualified Mr. Tower can also be raised about Mr. Eagleburger—raised, perhaps, even more strongly. Kissinger Associates continues in business; the firm would certainly not lose clients if its president were to become Deputy Secretary of State.

Mr. Eagleburger could have heavy sailing in his confirmation hearings. This time, happily, the questions will not be about conduct or character; the questions will be about potential conflicts of interest. What individuals, what corporations, what foreign governments are the firm's clients? What fees do they pay?

And in the background will loom "His Grey Eminence," Henry A. Kissinger, former Secretary of State, now chairman of Kissinger Associates. Will clients of the consulting firm have easy access to decision centers in the State Department while outsiders wander, lost, through the corridors?

For the sake of peace and quiet, one would hope that Mr. Eagleburger's ordeal is brief and that he survives. Nevertheless, the Senate Foreign Relations Committee has a duty and will perform it.

Should Mr. Eagleburger not be confirmed, events might follow the pattern set in Mr. Tower's case: quick replacement by a nominee whom the Senate could confirm in good conscience. Strong Republicans with strong qualifications abound, among them the outgoing Deputy Secretary of State, John C. Whitehead.

These past and prospective confirmation conflicts should persuade President Bush to re-evaluate the White House appointments staff and procedures. Are camels being swallowed while gnats are being strained?●

FOREIGN CURRENCY REPORTS

● In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees

of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard C. Shelby:									
Russia	Dollar		800.00						800.00
Turkey	Lira	452,290	316.00					452,290	316.00
Greece	Drachma	39,812	269.00			51,409	347.36	91,221	616.36
Senator Steve Symms:									
Russia	Dollar		491.50				84.50		576.00
Turkey	Lira	452,290	316.00					452,290	316.00
Greece	Drachma	39,812	269.00			51,409	347.36	91,221	616.36
Senator Phil Gramm:									
Russia	Dollar		800.00						800.00
Turkey	Lira	452,290	316.00					452,290	316.00
Greece	Drachma	39,812	269.00			51,409	347.36	91,221	616.36
Senator Richard C. Shelby:									
South Korea	Won	286,310	396.00					286,310	396.00
	Dollar				358.00				358.00
Taiwan	New Taiwan dollar	11,371	398.00					11,371	398.00
Hong Kong	Dollar	2,636.70	338.00					2,636.70	338.00
Thailand	Baht	11,992	471.00					11,992	471.00
Indonesia	Rupiah	686,760	404.00					686,760	404.00
Total			5,853.50		358.00		1,126.58		7,338.08

SAM NUNN,
Chairman, Committee on Armed Services, Sept. 30, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
John G. Walsh:									
West Germany	Dollar		736.00		709.00				1,445.00
Total			736.00		709.00				1,445.00

WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs,
Oct. 6, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORATION, FOR TRAVEL AUG. 13–30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ernest F. Hollings:									
South Korea	Won	286,310	396.00					286,310	396.00
	Dollar				358.00				358.00
Taiwan	New Taiwan dollar	11,371	398.00					11,371	398.00
Hong Kong	Dollar	2,636.70	338.00					2,636.70	338.00
Thailand	Baht	11,992	471.00					11,992	471.00
Indonesia	Rupiah	686,760	404.00					686,760	404.00
Robert D. Sweet:									
South Korea	Won	286,310	396.00					286,310	396.00
	Dollar				358.00				358.00
Taiwan	New Taiwan dollar	11,371	398.00					11,371	398.00
Hong Kong	Dollar	2,636.70	338.00					2,636.70	338.00
Thailand	Baht	11,992	471.00					11,992	471.00
Indonesia	Rupiah	686,760	404.00					686,760	404.00
Delegation expenses: [1]									
Hong Kong							257.19		257.19
Thailand							1,013.88		1,013.88
Indonesia							1,237.66		1,237.66
South Korea							549.73		549.73
Taiwan							549.72		549.72
Total			4,014.00		715.00		4,208.18		8,938.19

[1] Delegation expenses include direct payments and reimbursements to the Department of State and to the Department of Defense under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

Note.—The following individuals traveled with the delegation under authorization as noted: Senator Richard Shelby, Armed Services Committee; Sally Walsh, majority leader. Reports of their expenditures appear in the report of the authorizing source.

ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation,
Nov. 8, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Chris Van Hollen:									
Turkey	Lira	940,379	594.00					940,379	594.00
United States	Dollar				1,813.80				1,813.80
Cyprus	Pound	179.92	346.00			16.52	34.25	196.44	380.25
Greece	Drachma	93,399.15	633.00	14,170	96.04			10,756.91	729.04
Turkey	Lira	188,931.6	132.00					188,931.6	132.00
United States	Dollar				2,208.00				2,208.00
James O'Connell:									
United Kingdom	Pound	641.51	1,155.00					646.51	1,155.00
United States	Dollar				935.00				935.00
Lenora Odeka:									
Italy	Lire	274,365	195.00					274,365	195.00
South Africa	Rand	1,291.15	527.00					1,291.15	527.00
Botswana	Pula	277.42	142.00					277.42	142.00
Zimbabwe	Dollar		102.00						102.00
Greece	Drachma	21,715	144.00					21,715	144.00
United States	Dollar				821.00				821.00
Barry Sklar:									
[illegible]	Kronor	2,755.40	452.00					2,755.40	452.00
Nancy Stetson:									
Italy	Lire	274,365	195.00					274,365	195.00
South Africa	Rand	1,291.15	527.00					1,291.15	527.00
Botswana	Pula	277.42	142.00					277.42	142.00
Zimbabwe	Dollar		102.00						102.00
Greece	Drachma	21,715	144.00					21,715	144.00
United States	Dollar				821.00				821.00
William Triplett:									
Sweden	Kronor			1,795	314.91			1,795	314.91
Senator Terry Sanford:									
Sweden	Kronor	2,755.40	452.00					2,755.40	452.00
Senator Paul Simon:									
Italy	Lire	274,365	195.00					274,365	195.00
South Africa	Rand	1,291.15	527.00					1,291.15	527.00
Botswana	Pula	277.42	142.00					277.42	142.00
Zimbabwe	Dollar		102.00						102.00
Greece	Drachma	21,715	144.00					21,715	144.00
United States	Dollar				821.00				821.00
Gerald Christianson:									
Mexico	Peso	1,839.55	810.00					1,839.55	810.00
United States	Dollar				453.00				453.00
Peter Galbraith:									
Turkey	Lira	940,379	594.00					940,379	594.00
United States	Dollar				1,813.80				1,813.80
William Green:									
Sweden	Kronor	2,755.40	452.00					2,755.40	452.00
Senator Christopher J. Dodd:									
Mexico	Peso	192.360	84.00					192.360	84.00
Guatemala	Quetzale	486	180.00					486	180.00
Costa Rica	Colone	26,899.84	352.00					26,899.84	352.00
Robert H. Dockery:									
Mexico	Peso	192,360	84.00					192,360	84.00
Guatemala	Quetzale	486	180.00					486	180.00
Costa Rica	Colone	26,899.84	352.00					26,899.84	352.00
Janice M. O'Connell:									
Mexico	Peso	192,360	84.00					192,360	84.00
Guatemala	Quetzale	486	180.00	486	180.00				
Costa Rica	Colone	26,899.84	352.00					26,899.84	352.00
Total			10,798.00		10,097.55		34.25		20,929.80

CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, Oct. 6, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jeanne McNaughton			1,670.00		2,316.84				3,986.84
Marvin Ott			789.00		2,341.80				3,139.00
John [illegible]			566.00		3,174.00				3,740.00
James Martin			496.00		2,465.24				2,961.24
Gerry Montoya			774.00		2,465.24				3,239.24
Gerry Cates			774.00		2,465.24				3,239.24
Gerry Montoya			1,256.00		2,762.00				4,018.00
Gerry Cates			1,256.00		2,762.00				4,018.00
Christopher Straub			684.36		3,323.00				4,007.36
James Dykstra			880.00		3,290.00				4,170.00
David Holiday			1,406.00		5,490.00				6,896.00
John Despres			1,730.00		2,341.00				4,071.00
John Despres			815.00		3,323.00				4,138.00
Senator Arlen Specter			267.00						267.00
Total			13,372.36		38,518.56				51,890.92

DAVID L. BOREN,
Chairman, Select Committee on Intelligence, Sept. 26, 1988.

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE, FOR TRAVEL FROM OCT. 1 TO DEC. 31, 1987

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
David Freshwater:									
United States	Dollar		93.45						93.45
Total			93.45						93.45

PAUL SARBANES,
Chairman, Joint Economic Committee, Sept. 30, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Ruth Kurtz:									
United States	Dollar		90.00				78.50		168.50
Richard Kaufman:									
United States	Dollar		500.00	1,993.00					2,493.00
Total			590.00	1,993.00			78.50		2,661.50

PAUL SARBANES,
Chairman, Joint Economic Committee, Oct. 3, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Daniel Melnick:									
United States	Dollar				2,522.00				2,522.00
Japan	Yen	307,440	2,440.00					307,440	2,440.00
Hunter Monroe:									
United States	Dollar				335.00		465.00		800.00
Stephen Quick:									
United States	Dollar		75.00		599.00				674.00
Mexico	Peso	1,026,000	450.00					1,026,000	450.00
John Starrels:									
United States	Dollar				957.00				957.00
United States	Dollar		600.00		1,000.00				1,600.00
Total			3,565.00		5,413.00		465.00		9,443.00

PAUL SARBANES,
Chairman, Joint Economic Committee, Oct. 3, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Daniel Melnick:									
United States	Dollar				2,495.00				2,495.00
China	Yuan	2,518.25	678.08					2,518.25	678.08
David Freshwater:									
United States	Dollar				1,699.00				1,699.00
United States	Dollar						200.00		200.00
Argentina	Australs	11,578.20	816.00					11,587.20	816.00
Total			1,494.08		4,194.00		200.00		5,888.08

PAUL SARBANES,
Chairman, Joint Economic Committee, Oct. 3, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Mark Meyers:									
United States	Dollar				4,359.00				4,359.00
Pakistan	Rupee	9,548	545.00	800	140.00			10,348	685.00
Switzerland	Franc	13,149	438.30					13,149	438.30
Jerry Tinker:									
United States	Dollar				4,359.00				4,359.00
Pakistan	Rupee	9,548	545.00	800	140.00			10,348	685.00
Switzerland	Franc	13,149	438.30					13,149	438.30
Richard W. Day:									
United States	Dollar				4,251.00				4,251.00
Pakistan	Rupee	9,548	545.00	800	140.00			10,348	685.00
Gregory Craig:									
United States	Dollar				4,359.00				4,359.00
Pakistan	Rupee	9,548	545.00	800	140.00			10,348	685.00
Switzerland	Franc	13,149	438.30					13,149	438.30
Total			3,494.90		17,888.00				21,382.90

JOE BIDEN,
Chairman, Committee on the Judiciary, Sept. 26, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jane S. Fisher:									
Austria	Schilling	22,199	1,692.00					22,199	1,692.00
United States	Dollar				1,281.00				1,281.00
Total			1,692.00		1,281.00				2,973.00

DENNIS DeCONCINI,
Chairman, Commission on Security and Cooperation in Europe,
Sept. 26, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY LEADER FROM JULY 1 TO SEPT. 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Wyche Fowler, Jr.:									
Mexico	Peso	384,384	168.00					384,384	168.00
United States	Dollar				631.00				631.00
Sally Walsh:									
South Korea	Won	286,310	396.00					286,310	396.00
	Dollar				358.00				358.00
Taiwan	New Taiwan dollar	11,371	398.00					11,371	398.00
Hong Kong	Dollar	2,636.70	338.00					2,636.70	338.00
Thailand	Baht	11,992	471.00					11,992	471.00
Indonesia	Rupiah	686,760	404.00					686,760	404.00
Walter J. Stewart:									
People's Republic of China	Yuan	5,970.03	1,608.00					5,970.03	1,608.00
Hong Kong	Dollar	5,981.80	766.50					5,981.80	766.50
Jan Paulk:									
People's Republic of China	Yuan	5,970.03	1,608.00					5,970.03	1,608.00
Hong Kong	Dollar	5,981.80	766.50					5,981.80	766.50
Total			6,924.00		989.00				7,913.00

ROBERT C. BYRD,
Majority Leader, Jan 9, 1989.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM JULY 1 TO SEPT. 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Thomas P. Madine:									
Colombia	Peso	57,952.88	188.00					57,952.88	188.00
Bolivia	Peso	188.42	79.00					188.42	79.00
Peru	Inti	39,816	168.00					39,816	168.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM JULY 1 TO SEPT. 30, 1988—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Steven M. Hilton:									
Columbia	Peso	39,349	127.65					39,349	127.65
Bolivia	Peso	188.41	79.00					188.41	79.00
Peru	Inta	39,816	168.00					39,816	168.00
Senator Robert T. Stafford:									
People's Republic of China	Yuan	5,429.24	1,462.34					5,429.24	1,462.34
Hong Kong	Dollar	5,981.80	766.50					5,981.80	766.50
Neal Houston:									
People's Republic of China	Yuan	5,970.03	1,608.00					5,970.03	1,608.00
Hong Kong	Dollar	5,981.80	766.50					5,981.80	766.50
Total			5,412.99						5,412.99

ROBERT J. DOLE,
Republican Leader, Oct. 3, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM APR. 29 TO MAY 7, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Robert J. Dole:									
Greece	Drachma	47,784	356.59					47,784	356.59
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	226.04	162.00					226.04	162.00
Portugal	Escudo	40,780	297.08					40,700	297.08
Senator Larry Pressler:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Senator Don Nickles:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
JoAnne L. Coe:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Jim Whitehill:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Al Lehn:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Jon Paulk:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Dave Smith:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Tom Curtis:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Dale Tate:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Alan Porter:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Dean Burridge:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Nick Glassmeyer:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Marilyn Seyler:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM APR. 29 TO MAY 7, 1988—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Portugal	Escudo	46,854	342.00					46,854	342.00
Pat Wade:									
Greece	Drachma	57,888	432.00					57,888	432.00
Turkey	Lira	195,000	154.00					195,000	154.00
Switzerland	Franc	293.01	210.00					293.01	210.00
Portugal	Escudo	46,854	342.00					46,854	342.00
Delegation expenses:[1]									
Greece							3,562.71		3,562.71
Turkey							3,215.71		3,215.71
Switzerland							3,905.27		3,905.27
Portugal							10,357.75		10,357.75
Total					16,901.67		21,041.44		37,943.11

[1] Delegation expenses include direct payments and reimbursements to the State Department and to the Defense Department under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95-384, and 179, agreed to May 25, 1977.

ROBERT J. DOLE,
Republican Leader, Oct. 13, 1988.

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1987

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Harkin:									
France	Franc			1,575	262.50			1,575	262.50
Senator Kent Conrad:									
France	Franc			1,575	262.50			1,575	262.50
Kent Hall:									
France	Franc			1,575	262.50			1,575	262.50
Ellen King-Hamtom:									
France	Franc			1,575	262.50			1,575	262.50
Total					1,050.00				1,050.00

PATRICK LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry, July 29, 1988.

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, FOR TRAVEL FROM OCT. 1 TO DEC. 31, 1987

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Charles Rennenschneider:									
England	Pound					22.50	39.47	22.50	39.47
Total							39.47		39.47

PATRICK LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry, July 29, 1988.

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
J. Keith Kennedy:									
Bahrain	Dollar		156.00						156.00
Kuwait	Dollar		228.00						228.00
Israel	Dollar		462.00						462.00

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1988—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Belgium	Dollar		195.00						195.00
Total			1,041.00						1,041.00

JOHN C. STENNIS,
Chairman, Committee on Appropriations, July 12, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Steven Cortese:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Penny Gorman:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Warren W. Kane:									
Peoples Republic of China	Yuan	3,289.50	886.00	627.95	169.13			4,175.50	1,055.13
Hong Kong	Dollar	1,264.70	162.00					1,264.70	162.00
John G. Stasik:									
Peoples Republic of China	Yuan	3,289.50	886.00	627.95	169.13			4,175.50	1,055.13
Hong Kong	Dollar	5,058.90	648.00					5,058.90	648.00
Sue O'Toole:									
Sweden	Dollar		678.00						678.00
Ireland	Dollar		615.00						615.00
Ireland	Dollar		191.00						191.00
Senator Ted Stevens:									
Japan	Dollar		882.00						882.00
Sean O'Keefe:									
Japan	Dollar		882.00						882.00
Maureen Byrnes:									
Sweden	Krona	8,154.98	1,356.00					8,154.98	1,356.00
Total			9,728.00		338.26				10,054.26

JOHN C. STENNIS,
Chairman, Committee on Appropriations, July 14, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bob Graham:									
Brazil	Dollar		188.00						188.00
Venezuela	Dollar		292.00						292.00
Argentina	Dollar		255.00				35.00		290.00
United States	Dollar				2,391.00				2,391.00
Leslie Woolley:									
Brazil	Dollar		188.00						188.00
Venezuela	Dollar		192.00						192.00
Argentina	Dollar		255.00						255.00
United States	Dollar				2,322.00				2,322.00
Lula Rodrigues:									
Brazil	Dollar		188.00						188.00
Venezuela	Dollar		192.00						192.00
Argentina	Dollar		255.00						255.00
United States	Dollar				2,322.00				2,322.00
John C. Dugan:									
Philippines	Dollar		252.00						252.00
Ivory Coast	Dollar		612.00						612.00
United States	Dollar				4,750.00				4,750.00
Martin Gruenberg:									
Ivory Coast	Dollar		1,015.00						1,015.00
United States	Dollar				2,459.00				2,459.00
Steven Harris:									
Ivory Coast	Dollar		1,015.00						1,015.00
United States	Dollar				2,459.00				2,459.00
Jennifer Hillman:									
Ivory Coast	Dollar		1,015.00						1,015.00
United States	Dollar				2,459.00				2,459.00
Carolyn Jordan:									
Ivory Coast	Dollar		612.00						612.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				2,459.00				2,459.00
Patrick Malloy:									
Ivory Coast	Dollar		1,015.00						1,015.00
United States	Dollar				2,459.00				2,459.00
W. Lamar Smith:									
	Dollar		252.00						252.00
Philippines	Dollar		612.00						612.00
Ivory Coast	Dollar				4,572.00				4,572.00
United States									
John Walsh:									
	Dollar		472.00						472.00
Ivory Coast	Dollar				2,487.00				2,487.00
United States									
Total			8,877.00		31,139.00		35.00		40,051.00

WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs,
Sept. 8, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON THE BUDGET, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Douglas M. Cook:									
Sweden	Krona	3,661.20	678.00					3,661.20	678.00
Ireland	Pound	357.55	615.00					357.55	615.00
Ireland	Pound	93.59	191.00					93.59	191.00
Senator Pete W. Domenici:									
	Yen	147,000	1,176.00			250,568	1,967.51	397,568	3,143.51
Taiwan	New Taiwan dollar	13,256	464.00			863	30.14	14,119	494.14
United States	Dollar				3,398.00				3,398.00
Denise Greenlaw:									
	Yen	147,000	1,176.00					147,000	1,176.00
	New Taiwan dollar	13,256	464.00					13,256	464.00
United States	Dollar				3,398.00				3,398.00
K.P. Lau:									
Japan	Yen	147,000	1,176.00					147,000	1,176.00
Taiwan	New Taiwan dollar	13,256	464.00					13,256	464.00
United States	Dollar				3,552.00				3,552.00
Total			6,404.00		10,348.00		1,997.65		18,749.65

LAWTON CHILES,
Chairman, Committee on the Budget, Aug. 29, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Thomas W. Cohen:									
England	Dollar		384.00						384.00
Portugal	Dollar		366.00						366.00
United States	Dollar				1,479.00				1,479.00
Regina M. Keeney:									
England	Dollar		384.00						384.00
Portugal	Dollar		466.00						466.00
United States	Dollar				1,479.00				1,479.00
Ralph B. Everett:									
England	Dollar		384.00						384.00
Portugal	Dollar		466.00						466.00
United States	Dollar				1,479.00				1,479.00
Costa Rica	Colon	19,324.80	268.40					19,324.80	268.40
Guatemala	Quetzal	460.80	184.32			176.25	70.50	637.05	254.82
Senator Ernest F. Hollings:									
Guatemala	Quetzal	192.60	77.04			176.25	70.50	368.85	147.54
David A. Rudd:									
Costa Rica	Colon	19,324.80	268.40					19,324.80	268.40
Guatemala	Quetzal	460.80	184.32			176.25	70.50	637.05	254.82
Robert D. Sneed:									
Costa Rica	Colon	19,324.80	268.40					19,324.80	268.40
Guatemala	Quetzal	460.80	184.32			176.25	70.50	637.05	254.82

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1988—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Total			3,885.20		4,437.00		282.00		8,604.20

ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation,
July 26, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Svend Brandt-Erichsen:									
New Zealand	Dollar		950.00						950.00
United States	Dollar				1,458.00				1,458.00
Total			950.00		1,458.00				2,408.00

ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation,
July 26, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR TRAVEL FROM MAR. 31 TO APR. 10, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator J. Bennett Johnston:									
Soviet Union	Dollar		1,650.00						1,650.00
Senator James A. McClure:									
Soviet Union	Dollar		1,650.00						1,650.00
Senator Frank H. Murkowski:									
Soviet Union	Dollar		1,650.00						1,650.00
Senator Dale Bumpers:									
Soviet Union	Dollar		1,650.00						1,650.00
Senator Pete Wilson:									
Soviet Union	Dollar		1,650.00						1,650.00
Senator Daniel J. Evans:									
Soviet Union	Dollar		1,650.00						1,650.00
Senator Timothy E. Wirth:									
Soviet Union	Dollar		1,650.00						1,650.00
Daryl H. Owen:									
Soviet Union	Dollar		1,650.00						1,650.00
D. Michael Harvey:									
Soviet Union	Dollar		1,650.00						1,650.00
Richard D. Grundy:									
Soviet Union	Dollar		1,650.00						1,650.00
Gary G. Ellsworth:									
Soviet Union	Dollar		1,650.00						1,650.00
Suzanne Massie:									
Soviet Union	Dollar		1,650.00						1,650.00
Delegation expenses: [1]									
Soviet Union	Dollar						8,936.71		8,936.71
Total			19,800.00				8,936.71		28,736.71

[1] Delegation expenses include direct payments and reimbursements to the Department of State and to the Department of Defense under authority of sec. 502(b) of the Mutual Security Act of 1954 as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

Note.—The following individuals traveled with the delegation under authorizations as noted: Senator Brock Adams, Senator Bob Graham, W. Proctor Jones, and Jan Faulk, Majority leader; Senator Alan K. Simpson and Senator Paul S. Trible, Minority leader. Reports of their expenditures appear in the report of the authorizing source.

J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, July 7, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Benjamin S. Cooper:									
Republic of Marshall Islands	Dollar		494.94						494.94
United States	Dollar				2,433.92				2,433.92
James P. Beirne:									
Republic of Marshall Islands	Dollar		673.12						673.12
United States	Dollar				2,856.96				2,856.96
Mary Louise Wagner:									
Republic of Marshall Islands	Dollar		681.06						681.06
United States	Dollar				2,433.92				2,433.92
Frank M. Cushing:									
Republic of Marshall Islands	Dollar		390.31						390.31
United States	Dollar				3,034.96				3,034.96
Leslie G. Black:									
Canada	Dollar		520.87						520.87
United States	Dollar				333.93				333.93
Senator J. Bennett Johnston:									
Japan	Yen	110,250	882.00					110,250	882.00
Federated States of Micronesia	Dollar		300.00						300.00
United States	Dollar				3,442.00				3,442.00
Daryl H. Owen:									
Japan	Yen	110,250	882.00					110,250	882.00
Federated States of Micronesia	Dollar		300.00						300.00
United States	Dollar				3,442.00				3,442.00
Total			5,124.30		17,977.69				23,101.99

J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, July 7, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Curtis A. Moore:									
England	Pound	134.19	251.00					134.19	251.00
Netherlands	Guilder	2,375.10	1,260.00					2,375.10	1,260.00
United States	Dollar				2,065.00				2,065.00
Total			1,511.00		2,065.00				3,576.00

QUENTIN BURDICK,
Chairman, Committee on Environment and Public Works, June 30, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John D. Rockefeller IV:									
Japan	Yen	91,500	732.00	8,500	68.01	16,989	137.01	116,989	937.02
Korea	Won	214,840	288.00	2,500	3.35	14,820	19.86	232,160	311.21
United States	Dollar				4,225.00				4,225.00
Ira Wolf:									
Japan	Yen	152,500	1,220.00	8,500	68.01	16,989	137.01	117,989	1,425.02
Korea	Won	214,840	228.00	2,500	3.35	14,820	19.86	232,160	311.21
United States	Dollar				2,422.00				2,422.00
Total			2,928.00		6,789.72		313.74		9,631.46

LLOYD BENTSEN,
Chairman, Committee on Finance, June 24, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Nancy L. Kassebaum:									
Japan	Yen	113,250	906.00					113,250	906.00
Senator Larry Pressler:									
Thailand	Baht	10,721	428.80	312.50	12.36	5,236.50	209.11	16,270	649.47
Vietnam	Dollar		225.00						225.00
United States	Dollar				4,774.00				4,774.00
David B. Bartel:									
Japan	Yen	176,900	1,415.00					176,900	1,415.00
United States	Dollar				2,334.00				2,334.00
Gerald B. Christianson:									
Switzerland	Franc	581.10	420.00					581.10	420.00
Austria	Schilling	3,607	254.00	600	51.00			3,607	305.00
United States	Dollar				2,317.00				2,317.00
Gerald E. Connolly:									
United Kingdom	Pound	480.56	896.00					480.56	896.00
Ireland	Dollar		699.00						699.00
United States	Dollar				959.00				959.00
Pho Ba Long:									
Thailand	Baht	10,721	428.80	312.50	12.36	5,236.50	209.11	16,270	649.47
Vietnam	Dollar		225.00						225.00
United States	Dollar				4,774.00				4,774.00
Douglas L. Miller:									
Thailand	Baht	10,721	428.80	312.50	12.36	5,236.50	209.11	16,270	649.47
Vietnam	Dollar		225.00						225.00
United States	Dollar				4,774.00				4,774.00
Frank A. Sieverts:									
Thailand	Baht	10,721	428.80	312.50	12.36	5,236.50	209.11	16,270	649.47
Vietnam	Dollar		225.00						225.00
United States	Dollar				4,774.00				4,774.00
Amendment to 1st quarter of 1988:									
Philip Christenson:									
Thailand	Baht	12,110	485.00					12,110	485.00
Indonesia	Rupiah	892,350	540.00		131.23			892,350	671.23
India	Rupee	6,208	474.98					6,208	474.98
Egypt	Dollar		294.00						294.00
Italy	Lire	251,732	206.00	70,008	56.18			321,732	262.18
United States	Dollar				3,069.00				3,069.00
Amendment to 4th quarter of 1987:									
Senator Daniel J. Evans:									
Panama	Dollar		70.40						70.40
Costa Rica	Colone	8,044	121.00					8,044	121.00
Christine L. Dawson:									
Panama	Dollar		70.40						70.40
Costa Rica	Colone	8,044	121.00					8,044	121.00
Amendment to 3d quarter of 1987:									
Philip L. Christenson:									
Soviet Union	Dollar		600.00						600.00
Czechoslovakia	Dollar		294.00						294.00
Hungary	Dollar		202.00						202.00
Belgium	Franc	9,978	266.00					9,978	266.00
United States	Dollar				2,067.00				2,067.00
Total			10,946.78		38,129.85		836.44		41,913.07

CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, July 11, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Daniel F. Rinzel:									
Finland	Finmark	652.05	161.00					622.05	161.00
Germany	Deutsche mark	760.50	450.00					760.50	450.00
Soviet Union	Dollar		732.00		68.00				800.00
United States	Dollar				2,743.00				2,743.00
Mary Vinson:									
Finland	Finmark	652.05	161.00					622.05	161.00
Germany	Deutsche mark	760.50	450.00					760.50	450.00
Soviet Union	Dollar		732.00		68.00				800.00
United States	Dollar				2,743.00				2,743.00
Eleanore J. Hill:									
Finland	Finmark	652.05	161.00					622.05	161.00
Germany	Deutsche mark	760.50	450.00					760.50	450.00
Soviet Union	Dollar		732.00		68.00				800.00
United States	Dollar				2,743.00				2,743.00
John F. Sopko:									
Finland	Finmark	652.05	161.00					622.05	161.00
Germany	Deutsche mark	760.50	450.00					760.50	450.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1988—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Soviet Union	Dollar		732.00		68.00				800.00
United States	Dollar				2,743.00				2,743.00
David S. Buckley:									
Finland	Finnmark	652.05	161.00					652.05	161.00
Germany	Deutsche mark	760.50	450.00					760.50	450.00
Soviet Union	Dollar		732.00		68.00				800.00
United States	Dollar				2,743.00				2,743.00
Total			6,715.00		14,055.00				20,770.00

JOHN GLENN,
Chairman, Committee on Governmental Affairs, Sept. 7, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Barbara Kennerman:									
Mexico	Peso	1,685,519	737.00					1,685,519	737.00
United States	Dollar				1,602.40				1,602.40
Leonard Wilks:									
Mexico	Peso	1,685,519	737.00					1,685,519	737.00
United States	Dollar				1,602.40				1,602.40
Mary K. Vinson:									
Mexico	Peso	1,685,519	737.00					1,685,519	737.00
United States	Dollar				1,602.40				1,602.40
Total			2,211.00		4,807.20				7,018.20

JOHN GLENN,
Chairman, Committee on Governmental Affairs, Sept. 7, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON LABOR AND HUMAN RESOURCES, FOR TRAVEL FROM OCT. 1 TO DEC. 31, 1986

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Michael Pillsbury:									
United States	Dollar				3,624.00				3,624.00
China	Dollar		1,730.00						1,730.00
Hong Kong	Dollar	2,113	272.00	1,448	186.00			3,561	458.00
Total			2,002.00		3,810.00				5,812.00

ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON LABOR AND HUMAN RESOURCES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1987

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Michael Pillsbury:									
United States	Dollar				3,587.00				3,587.00
Russia	Dollar		340.00						340.00
Afghanistan	Dollar		62.50						62.50
China	Dollar		384.00		112.50				496.50
Taiwan	Dollar	5,427	135.00					5,427	
Senator Gordon Humphrey:									
United States	Dollar				3,587.00				3,587.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON LABOR AND HUMAN RESOURCES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1987—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Russia	Dollar		340.00						340.00
Afghanistan	Dollar		62.50						62.50
China	Dollar		384.00		112.50				496.50
Taiwan	Dollar	5,427	135.00					5,427	135.00
Total			1,843.00		7,399.00				9,242.00

EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, July 20, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON LABOR AND HUMAN RESOURCES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Gordon Humphrey:									
United States	Dollar				3,855.00				3,855.00
Pakistan	Dollar		270.00						270.00
Michael Pillsbury:									
United States	Dollar				3,074.00				3,074.00
Pakistan	Dollar		270.00						270.00
Thomas Kleine:									
United States	Dollar				2,999.00				2,999.00
Pakistan	Dollar		270.00						270.00
Kevin McGuiness:									
United States	Dollar				885.00				885.00
Switzerland	Franc	902.15	630.00					902.15	630.00
Total			1,440.00		10,013.00				11,453.00

EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, July 20, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Alan Specter			462.00						462.00
Charles Battaglia			462.00		1,285.00				1,747.00
David Holliday			1,800.00		2,777.00				4,577.00
John Nelson			826.00		3,424.00				4,250.00
Gerry Montoya			1,164.00		3,424.00				4,588.00
Gerry Carter			1,164.00		3,424.00				4,588.00
Total			5,878.00		14,334.00				20,212.00

DAVID L. BOREN,
Chairman, Select Committee on Intelligence, June 29, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY AND THE MINORITY LEADERS, FOR TRAVEL APR. 1-9, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John H. Glenn, Jr.:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Senator Ted Stevens:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY AND THE MINORITY LEADERS, FOR TRAVEL APR. 1–9, 1988—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
[illegible]	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Senator Thad Cochran:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Senator Barbara A. Mikulski:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Senator Harry Reid:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Senator Christopher S. Bond:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Valerie Bebie:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Pat Buckheit:									
Austria	Schilling	4,172.32	356.00					4,172.32	356.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Yvonne L. Hopkins:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Dan Dorrance:									
Austria	Schilling	4,758.32	406.00					4,758.32	406.00
Czechoslovakia	Koruna	1,356	342.00					1,356	342.00
Poland	Zloty	207,234	522.00					207,234	522.00
Donald Wilson:									
Austria	Schilling	3,879.32	331.00					3,879.32	331.00
Czechoslovakia	Koruna	1,275.12	322.00					1,275.12	322.00
Poland	Zloty	199,294	502.00					199,294	502.00
Delegation expenses: [1]									
Austria							6,289.69		6,289.69
Czechoslovakia							2,748.25		2,748.25
Poland							2,981.74		2,981.74
Iceland							2,425.32		2,425.32
Total			13,805.00				14,445.00		28,250.00

[1] Delegation expenses include direct payments and reimbursements to the State Department and to the Defense Department under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

ROBERT C. BYRD,
Majority Leader.
JOHN H. GLENN, JR.,
Delegation Chairman, July 26, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), AUTHORIZED BY THE REPUBLICAN LEADER FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Paul S. Trible:									
Soviet Union	Dollar		1,650.00						1,650.00
Senator Alan K. Simpson:									
Soviet Union	Dollar		1,650.00						1,650.00
Total			3,300.00						3,300.00

ROBERT J. DOLE,
Republican Leader, Sept. 6, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY LEADER FOR TRAVEL FEB. 6–14, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Robert C. Byrd:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Senator Claiborne Pell:									
Germany	Deutsche Mark	299.38	177.15					299.38	177.15
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,627.40	465.83					2,627.40	465.83
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Senator Sam Nunn:									
Germany	Deutsche Mark	199.69	118.16					199.69	118.16
England	Pound	220.25	387.47					220.25	387.47
France	Franc	2,057.16	364.10					2,057.16	364.10
Senator John W. Warner:									
Germany	Deutsche Mark	297.44	176.00					297.44	176.00
England	Pound	253.52	446.00					253.52	446.00
France	Franc	2,491.65	441.00					2,491.65	441.00
Turkey	Lira	137,170	120.00					137,170	120.00
Italy	Lira	458,895	368.00					458,895	368.00
Senator David L. Boren:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	465,131	373.00					465,131	373.00
Walter J. Stewart:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Howard O. Greene, Jr.:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Barbara Videnieks:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Richard D'Amato:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Jeanine Drysdale Lowe:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Linda Peek:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Christina Evans Loescher:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Scott Harris:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
George W. Ashworth:									
Germany	Deutsche Mark	256.50	151.78					256.50	151.78
England	Pound	256.87	452.00					256.87	452.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	469,670	376.64					469,670	376.64
Richard B. Fine:									
England	Pound	256.37	451.00					256.37	451.00
France	Franc	2,339.78	414.12					2,339.78	414.12
Robert F. Bob:									
Germany	Deutsche Mark	255.19	151.00					255.19	151.00
England	Pound	216.01	380.00					216.01	380.00
France	Franc	2,293.90	406.00					2,293.90	406.00
Turkey	Lira	81,160	71.00					81,160	71.00
Italy	Lira	441,438	354.00					441,438	354.00
George Tenent:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Christopher C. Straub:									
France	Franc	1,178.84	190.46					1,178.84	190.46
Turkey	Lira	89,500	78.29					89,500	78.29
Italy	Lira	297,800	238.80					297,800	238.80

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY LEADER FOR TRAVEL FEB. 6-14, 1988—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jan Paulk:									
Germany	Deutsche Mark	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Wendy Deker:									
Germany	Deutsche M	339.69	201.00					339.69	201.00
England	Pound	287.63	506.00					287.63	506.00
France	Franc	2,802.40	496.00					2,802.40	496.00
Turkey	Lira	160,034	140.00					160,034	140.00
Italy	Lira	521,246	418.00					521,246	418.00
Delegation expenses: [1]									
Germany							7,128.21		7,128.21
England							6,018.75		6,018.75
France							4,665.55		4,665.55
Turkey							2,393.64		2,393.64
Italy							4,055.94		4,055.94
Total			30,768.00				24,262.09		55,030.09

[1] Delegation expenses include direct payments and reimbursements to the State Department and to the Defense Department under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95-384, and S. Res. 179, agreed to May 25, 1977.

ROBERT C. BYRD,
Majority Leader, Aug. 8, 1988.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY LEADER, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1988

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Birch Adams:									
Soviet Union	Dollar		1,650.00						1,650.00
Senator Bob Graham:									
Soviet Union	Dollar		1,650.00						1,650.00
W. Proctor Jones:									
Soviet Union	Dollar		1,650.00						1,650.00
Jan Paulk:									
Soviet Union	Dollar		1,339.00						1,339.00
Senator Claiborne Pell:									
Switzerland	Franc	871.60	630.00					871.60	630.00
United States	Dollar				2,193.00				2,193.00
Total			6,919.00		2,193.00				9,112.00

ROBERT C. BYRD,
Majority Leader, July 22, 1988.●

PEG WILSON'S RETIREMENT

● Mr. DODD. Mr. President, when I became a Member of the Congress 15 years ago, I looked forward to the opportunity to work on issues that help America's families. Among the areas in which I have tried to help make a difference are child care, parental leave, reducing infant mortality, and improving educational opportunities. But I rise today to credit someone who has been working on these issues far longer than I and who has influenced me in devoting my time to them. I speak of Peg Wilson, a resident of Norwich, CT, and executive dean of Eastern Connecticut State University.

Peg has been a friend to me and my family for more years than I can count; more important, she has been a fighter for stronger families, healthier babies, more humane health care, and an improved status for the women of this world. She is about to conclude a chapter by retiring after 30 years of work at Eastern, a fine institution. Of the many people I meet in the course of my duties, few can come close to the level of energy and commitment Peg shows every day.

Her retirement will no doubt mean she will have more time to devote to the many interests she has outside her vocation, and I look forward to continuing to work with her, listen to her, and be inspired by her.

I ask that my colleagues indulge me by joining in tribute to Peg Wilson as she turns a page and opens a new chapter. I wish her the best of luck.●

THE RULES OF THE SPECIAL COMMITTEE ON AGING, 101ST CONGRESS

● Mr. PRYOR. Mr. President, pursuant to the requirements of paragraph 2 of Senate rule XXVI, I ask to have printed in the CONGRESSIONAL RECORD the rules of the Special Committee on Aging for the 101st Congress adopted by the committee on January 26, 1989.

The rules are as follows:

I. CONVENING OF MEETING AND HEARINGS

1. *Meetings.* The Committee shall meet to conduct Committee business at the call of the chairman.

2. *Special meetings.* The members of the Committee may call additional meetings as provided in Senate Rule XXVI (3).

3. *Notice and agenda:*

(a) Hearings. The Committee shall make public announcement of the date, place, and subject matter of any hearing at least one week before its commencement.

(b) Meetings. The Chairman shall give the members written notice of any Committee meeting, accompanied by an agenda enumerating the items of business to be considered, at least *5 days* in advance of such meeting.

(c) Shortened notice. A hearing or meeting may be called on not less than 24 hours notice if the Chairman, with the concurrence of the ranking minority member, determines that there is good cause to begin the hearing or meeting on shortened notice. An agenda will be furnished prior to such a meeting.

4. *Presiding officer.* The Chairman shall preside when present. If the Chairman is not present at any meeting or hearing, the ranking majority member present shall preside. Any member of the Committee may preside over the conduct of a hearing.

II. CLOSED SESSIONS AND CONFIDENTIAL MATERIALS

1. *Procedure.* All meetings and hearings shall be open to the public unless closed. To close a meeting or hearing or portion thereof, a motion shall be made and seconded to go into closed discussion of whether the meeting or hearing will concern the matters enumerated in Rule II.3. Immediately after such discussion, the meetings or hearing may be closed by a vote in open session of a majority of the members of the Committee present.

2. *Witness request.* Any witness called for a hearing may submit a written request to the Chairman no later than twenty-four hours in advance for his examination to be in closed or open session. The Chairman shall inform the Committee of any such request.

3. *Closed session subjects.* A meeting or hearing or portion thereof may be closed if the matters to be discussed concern: 1) national security; 2) Committee staff personnel or internal staff management or procedure; 3) matters tending to reflect adversely on the character or reputation or to invade the privacy of the individuals; 4) Committee investigations; 5) other matters enumerated in Senate Rule XXVI (5) (b).

4. *Confidential matter.* No record made of a closed session, or material declared confidential by a majority of the Committee, or report of the proceedings of a closed session, shall be made public, in whole or in part by way of summary, unless specifically authorized by the Chairman and ranking minority member.

5. *Broadcasting:*

(a) Control. Any meeting or hearing open to the public may be covered by television, radio, or still photography. Such coverage must be conducted in an orderly and unobtrusive manner, and the Chairman may for good cause terminate such coverage in whole or in part, or take such other action to control it as the circumstances may warrant.

(b) Request. A witness may request of the Chairman, on grounds of distraction, harassment, personal safety, or physical discomfort, that during his testimony cameras, media microphones, and lights shall not be directed at him.

III. QUORUMS AND VOTING

1. *Reporting.* A majority shall constitute a quorum for reporting a resolution, recommendation or report to the Senate.

2. *Committee business.* A third shall constitute a quorum for the conduct of Committee business, other than a final vote on reporting, providing a minority member is present. One member shall constitute a quorum for the receipt of evidence, the swearing of witnesses and the taking of testimony at hearings.

3. *Polling:*

(a) *Subjects.* The Committee may poll (1) internal Committee matters including those concerning the Committee's staff, records, and budget; (2) other Committee business which has been designated for polling at a meeting.

(b) *Procedure.* The Chairman shall circulate polling sheets to each member specifying the matter being polled and the time limit for completion of the poll. If any member so requests in advance of the meeting, the matter shall be held for meeting rather than being polled. The clerk shall keep a record of polls; if the Chairman determines that the polled matter is one of the areas enumerated in rule II.3, the record of the poll shall be confidential. Any member may move at the Committee meeting following a poll for a vote on the polled decision.

IV. INVESTIGATIONS

1. *Authorization for investigations.* All investigations shall be conducted upon a bipartisan basis by Committee staff. Investigations may be initiated by the Committee staff upon the approval of the Chairman and the ranking Minority Member. Staff shall keep the Committee fully informed of the progress of continuing investigations, except where the Chairman and the ranking Minority member agree that there exists temporary cause for more limited knowledge.

2. *Subpoenas.* Subpoenas for the attendance of witnesses or the production of memoranda, documents, records, or any other materials shall be issued by the Chairman, or by any other member of the Committee designated by him. Prior to the issuance of each subpoena, the ranking minority member, and any other member so requesting, shall be notified regarding the identity of the person to whom the subpoena will be issued and the nature of the information sought, and its relationship to the investigation.

3. *Investigative Reports.* All reports containing findings of recommendations stemming from Committee investigations shall be printed only with the approval of a majority of the members of the Committee.

V. HEARINGS

1. *Notice.* Witnesses called before the committee shall be given, absent extraordinary circumstances, at least forty-eight hours' notice, and all witnesses called shall be furnished with a copy of these rules upon request.

2. *Oath.* All witnesses who testify to matters of fact shall be sworn unless the Committee waives the oath. The Chairman, or any member, may request and administer the oath.

3. *Statement.* Any witness desiring to make an introductory statement shall file 50 copies of such statement with the Chairman or clerk of the Committee 24 hours in advance of his appearance, unless the Chairman and ranking Minority member determine that there is good cause for a witness' failure to do so. A witness shall be allowed no more than ten minutes to orally summarize his prepared statement.

4. *Counsel:*

(a) A witness' counsel shall be permitted to be present during his testimony at any public or closed hearing or deposition or staff interview to advise such witness of his rights, provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Chairman may rule that representation by counsel from the government, corporation, or association creates a conflict of interest, and that the witness shall be represented by personal counsel not from the government, corporation or association.

(b) A witness who is unable for economic reasons to obtain counsel may inform the Committee at least 48 hours prior to the witness' appearance, and it will endeavor to obtain volunteer counsel for the witness. Such counsel shall be subject solely to the control of the witness and not the Committee. Failure to obtain counsel will not excuse the witness from appearing and testifying.

5. *Transcript.* An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. Any witness shall be afforded, upon request, the right to review that portion of such record, and for this purpose, a copy of a witness' testimony in public or closed session shall be provided to the witness. Upon inspecting his transcript, within a time limit set by the committee clerk, a witness may request changes in testimony to correct errors of transcription, grammatical errors, and obvious errors of fact; the Chairman or a staff officer designated by him shall rule on such request.

6. *Impugned persons.* Any person who believes that evidence presented, or comment made by a member of staff, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his character or adversely affect his reputation may;

(a) file a sworn statement of facts relevant to the evidence or comment, which shall be placed in the hearing record;

(b) request the opportunity to appear personally before the Committee to testify in his own behalf; and

(c) submit questions in writing which he requests be used for the cross-examination of other witnesses called by the Committee. The Chairman shall inform the Committee of such requests for appearance or cross-examination. If the Committee so decides, the requested questions, or paraphrased versions or portions of them, shall be put to the other witness by a member or by staff.

7. *Minority witnesses.* Whenever any hearing is conducted by the Committee, the minority on the Committee shall be entitled, upon request made by a majority of the minority members to the Chairman, to call witnesses selected by the minority to testify or produce documents with respect to the measure or matter under consideration during at least one day of the hearing. Such request must be made before the completion of the hearing or, if subpoenas are required to call the minority witnesses, no later than three days before the completion of the hearing.

8. *Conduct of witnesses, counsel and members of the audience.* If, during public or executive sessions, a witness, his counsel, or any spectator conducts himself in such a manner as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of such hearing the Chairman or presiding Member of the Committee present during such hearing may request the Sergeant at Arms of the Senate, his representative or any law enforcement official to eject said person from the hearing room.

VI. DEPOSITIONS AND COMMISSION

1. *Notice.* Notices for the taking of depositions in an investigation authorized by the Committee shall be authorized and issued by the Chairman or by a staff officer designated by him. Such notices shall specify a time and place for examination, and the name of the staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear unless the deposition notice was accompanied by a Committee subpoena.

2. *Counsel.* Witnesses may be accompanied at a deposition by counsel to advise them of their rights, subject to the provisions of Rule V.4.

3. *Procedure.* Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee staff. Objections by the witnesses as to the form of questions shall be noted by the record. If a witness objects to a question and refuses to testify on the basis of relevance or privilege, the Committee staff may proceed with the deposition, or may at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from a member of the Committee. If the member overrules the objection, he may refer the matter to the Committee or he may order and direct the witness to answer the question, but the Committee shall not initiate the procedures leading to civil or criminal enforcement unless the witness refuses to testify after he has been ordered and directed to answer by a member of the Committee.

4. *Filing.* The Committee staff shall see that the testimony is transcribed or electronically recorded. If it is transcribed, the witness shall be furnished with a copy for review. No later than five days thereafter, the witness shall return a signed copy, and the staff shall enter the changes, if any, requested by the witness in accordance with Rule V.6. If the witness fails to return a signed copy, the staff shall note on the transcript the date a copy was provided and the failure to return it. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record to the testimony, and the transcript shall then be filed with the Committee clerk. Committee staff may stipulate with the witness to changes in this procedure; deviations from the procedure which do not substantially impair the reliability of the record shall not relieve the witness from his obligation to testify truthfully.

5. *Commissions.* The Committee may authorize the staff, by issuance of commission, to fill in prepared subpoenas, conduct field hearings, inspect locations, facilities, or systems of records, or accompanied by instructions from the Committee regulating their use.

VII. SUBCOMMITTEES

1. *Establishment.* The Committee will operate as a Committee of the Whole, reserving to itself the right to establish temporary subcommittees at any time by majority vote. The Chairman of the full Committee and the Ranking Minority Member shall be ex-officio members of all subcommittees.

2. *Jurisdiction.* Within its jurisdiction, as described in the Standing Rules of the Senate, each subcommittee is authorized to conduct investigations, including use of subpoenas, depositions, and commissions.

3. *Rules.* A subcommittee shall be governed by the Committee rules, except that its quorum of all business shall be one-third of the subcommittee membership, and for hearings shall be one member.

VIII. REPORTS

Committee reports incorporating Committee findings and recommendations shall be printed only with the prior approval of the Committee, after an adequate period for review and comment. The printing, as Committee documents, of materials prepared by staff for informational purposes, or the printing of materials not originating with the Committee or staff, shall require prior consultation with the minority staff; these publications shall have the following language printed on the cover of the document: "Note: This document has been printed for informational purposes. It does not represent either findings or recommendations formally adopted by the Committee."

IX. AMENDMENT OF RULES

The rules of the Committee may be amended or revised at any time, provided that not less than a majority of the Committee present so determine at a Committee meeting preceded by at least 3 days notice of the amendments or revisions proposed.●

CENTENNIAL CELEBRATION OF MOUNT PLEASANT

● Mr. LEVIN. Mr. President, this week, the city of Mount Pleasant, MI, is celebrating its 100th anniversary. Mount Pleasant is a city with character and charm, a city with many successes to its credit.

In 1855, John Hursh and his family arrived in central Michigan and became the first settlers of what is now Mount Pleasant. Later that year, a treaty between the United States and the Chippewa Indians established Mount Pleasant as an Indian settlement. Mount Pleasant grew rapidly and in 1879, it was connected to the Pere Marquette Railroad, making it a commercial post for farm and timber products. In 1889, Mount Pleasant became a city, and soon after, Central Michigan College was founded there. Central Michigan is now a major university which educates thousands of students each year.

We should certainly thank the residents of Mount Pleasant for making the city what it is today. Those citizens are still showing initiative and breaking new ground. In fact, just 4½ years ago, John Buckley of Mount Pleasant launched his 17-foot canoe from Milwaukee and, in the course of 3 weeks, became the first person to paddle a canoe alone across all five Great Lakes.

I want to congratulate Mayor William McCarthy and the entire Mount Pleasant community on the 100th anniversary of the city.●

ASIAN AMERICANS AND THE MODEL MINORITY LABEL

● Mr. SIMON. Mr. President, throughout this decade Asian Americans have been heralded by teachers, editorial writers, and elected officials as "the model minority." Parents of Asian American students, and the Nation as a whole, stand rightly proud of the Westinghouse Award winners, valedictorians, and military academy graduates.

This title, however, has come to be a mixed blessing. As Virginia Kee, a teacher at the Sun Yat Sen Intermediate School 131 in New York's Chinatown recently told the New York Times, "The stereotype is a compliment, but lots of Asian Americans need lots of help, and the stereotype makes it harder to get the resources to help them."

Some use the term "model minority" to point to Asian Americans as a minority group which has succeeded educationally and economically in this country. They use the success of Asian Americans as a reason for cutting back on affirmative action programs which other Asians and other minorities utilize to improve their status and enter the mainstream. Using the term "model minority" in this way is unfortunate because Asian Americans are not a monolithic group. The broad brush of "model minority" masks the language barriers and impoverished economic conditions of some Asian Americans and health care and housing shortages in Chinatowns and refugee communities. It pits one minority group against another and puts undue pressure on youngsters who are blamed for not fulfilling the "model."

We need to take a closer look at the conditions of Asian Americans in the United States. The Census Bureau recently decided to retain its 1980 census questionnaire which collected information about Asian Americans broken down into nine different subgroups. Information collected in this way will enable policymakers to better define the status of all Asian Americans and address their needs. I hope that in the future we can continue to hail the accomplishments of Asian Americans but do so more realistically without the term "model minority."

Mr. President, I ask that the previously referred to materials from the New York Times be printed in the RECORD.

The materials follows:

MEETING THE NEEDS OF ASIAN-AMERICANS WHO DON'T FIT THE "MODEL MINORITY" MOLD

(By Edward B. Fiske)

Asian-American students are widely viewed as a "model minority" who adapt quickly and successfully to American ways. Students like Richard Yao are the reason why.

A ninth grader at Sun Yat Sen Intermediate School 131 in Chinatown, Mr. Yao was born on a farm outside Canton and arrived in the United States in 1982 at the age of 8. He worked hard at his studies because, as he put it, "our families want others to think well of them." Last year, writing in his second language, he won a prize in the Board of Education's annual poetry contest.

But consider, too, the case of one of his classmates, also a member of the "model minority." She has cut school more than 50 times this year, is failing major subjects and will probably be asked to repeat ninth grade. Teachers say that she has musical talent, but it has gone undeveloped.

The contrast between Mr. Yao and his classmate and others like them is becoming increasingly worrisome to educators working with Asian-American young people. The New York City Board of Education estimates that 13 percent of Asian-American students drop out of high school. While this is half the official overall rate, it contrasts sharply with the popular stereotype that most Asian-American students are valedictorians on their way to Nobel Prizes.

"The stereotype is a compliment," said Virginia Kee, a teacher at Sun Yat Sen. "But lots of Asian-Americans need lots of help, and the stereotype makes it harder to get the resources to help them."

A wide body of research has shown that the academic performance of immigrant children is strongly influenced by family background, parents and the circumstances that led to their arrival on American shores.

Among Hispanic-American people, for example, the children of the middle-class Cubans who fled Fidel Castro's Cuba for political reasons have as a group, fared better academically than the children of poorly educated Mexican farm workers who crossed the river out of economic desperation.

Likewise, the immigrants from Hong Kong and Taiwan, as well as the first boat people from Vietnam, who began creating the "model minority" image in the mid-1970's were for the most part middle-class families who arrived with a passion for education.

Jane Shapiro, the assistant principal, recalls taking a group of students to the Metropolitan Museum and watching them startle bystanders by taking off their shoes. "It was their way of showing how important the museum looked to them," she said.

But recent immigrants have come with different luggage. "The change began when China opened up in the late 1970's," said Betty Lee Sung, a City College sociologist. "Poorly educated students from rural areas of China began to arrive as well as refugees from Southeast Asia. You don't have to be wealthy and educated to flee violence."

These newer immigrants have the problems common to disadvanaged students of all backgrounds as well as a few special ones. With both parents working long hours, the students are frequently left on their own. "The parents want them to do well in school, but since many of them don't speak English, they aren't in a position to be much help," said Archer Wah Dong, principal of Sun Yat Sen.

Some seventh graders arrive with no formal education. For others, schooling involved a few months of sitting on benches listening to moral homilies from itinerant teachers.

In dealing with students who have been taught not to challenge authority, American teachers find it easy to misinterpret a student's silence as comprehension. Likewise, said Mr. Dong, students from a culture that discourages outward displays of emotion "frequently have trouble adapting to a culture where you are supposed to deal with problems in terms of emotion."

Teachers say the anti-intellectual strains of the Cultural Revolution of 1966 to 1976 can be seen in students whose parents attended rural schools at that time. "There's a whole group of young adults in their 30's who did not have much schooling," Ms. Kee said. The flip side is that such students tend to be more assertive in class. "They'll even tell you that your desk is a mess," Ms. Shapiro said.

The staff at Sun Yat Sen has developed techniques to meet these special needs. Newly arrived immigrants are put into a special "Welcome School" with small class and assigned another student as their "buddy" to show them the ropes. Language classes emphasize oral communication, and teachers make use of peer tutoring. Pace University has helped set up an after-school "Stay in School" program that offers counseling and recreational activities.

Teachers at Sun Yat Sen cite Richard Yao, whose parents were farmers with minimal education, as evidence that students from any background can succeed. Their odds are better, though, if the public does not assume that all Asian-Americans fit the "model minority" image.●

TRIBUTE TO FLORETTE ANGEL

● Mr. ROCKEFELLER. Mr. President, today I wish to speak in praise of a fellow West Virginian, a long time colleague and a true friend. I pay tribute to Florette Angel, this year's winner of the Susan B. Anthony Award from West Virginia's chapter of the National Organization of Women. This is a highly deserved recognition of Florette's longstanding leadership and commitment to the people—particularly women and children—of our State and the rest of the Nation.

Florette's unfaltering spirit and voluntarism have been honored many times in the past by both friends and other organizations. But it is especially fitting for her to receive an award named after Susan B. Anthony, one of history's great advocates for women's rights. Over the years, Florette Angel has contributed to many organizations and efforts devoted to advancing the rights and conditions of women. She has raised our consciousness about the problems of women, children, and the poor, and has worked relentlessly to spur changes and solutions to erase those problems.

Florette Angel has that magical ability to aspire to ambitious and bold goals, but at the same time has the discipline and intuition to direct herself and others toward the "art of the possible." Florette doesn't leave only words and wishes in her wake. She leaves tangible improvements and contributions that affect people's lives and attitudes. She knows how to get things done, and she has produced results that are truly impressive.

Her work to date involves numerous organizations, coalitions, and projects that would take pages to list. Her current endeavors signify her commitment to serving others and her special values. Currently, Florette directs the West Virginia Youth Coalition, a voice and force in our State for a generation so often misunderstood or neglected. She also is the West Virginia State Public Affairs Chair for the National Coalition for Jewish Women.

Florette Angel is part of a family who shares values and love that should inspire us all. Married 25 years to Philip Angel, she and her husband have raised three delightful sons, Philip, Emile, and Antony.

I commend my friend and fellow West Virginian, Florette Angel, for her life of public service and accomplishment. Knowing her, I am sure we haven't seen half of the contributions she will make to society. I personally look forward to continuing to work with Florette for many years to come. She is an inspiration to me, and these words of praise today are intended to share that inspiration with many, many others.●

THE NATIONAL DEMOCRATIC INSTITUTE'S REPORT ON ELECTIONS IN EL SALVADOR

● Mr. MOYNIHAN. Mr. President, on March 19 the voters of El Salvador will elect a new President. This most important event is the subject of a report issued by the National Democratic Institute for International Affairs, an organization that has done much to promote democratization around the world. Indeed, the nonpartisan political development programs NDI has conducted in Chile, Pakistan, the Philippines, and elsewhere exemplify why this organization merits our continued support.

"The 1989 Salvadoran Election: Challenges and Opportunities" concludes that the election may well lead to a lawful and orderly transfer of power, an important step toward the consolidation of democracy in El Salvador. More specifically, the NDI report concludes, in response to the questions that had been raised in the past few weeks, that—

The process established by laws and regulations for the conduct of the March 19 presidential election in El Salvador is basically sound.

Mr. President, a brief word about the provenance of this judgment. The National Democratic Institute is the nonprofit international affairs institute associated with the Democratic Party which conducts nonpartisan political development programs abroad. Working with political parties and other institutions, NDI seeks to promote, maintain, and strengthen demo-

cratic institutions and pluralism in new and emerging democracies.

Although NDI's work is supported by private contributions, it also receives public funds—which suggests that the Congress should inform itself as to the work NDI performs. Senators will be familiar with NDI's important work in Chile, the Philippines, Pakistan, and Northern Ireland, among its numerous programs. In the case of this report on the upcoming Salvadoran election, it is fair to say that NDI has performed an important service for the international community.

The report is based on the findings of an international team of independent experts in election law, who contributed their expertise and their time on a pro bono basis. The team included: Jorge Mario Garcia LaGuardia, alternate magistrate of the Constitutional Tribunal of Guatemala; Enrique Raven, director of operations, Supreme Electoral Council of Venezuela; Samuel Quinones, director of the Center for Electoral Studies for the State Election Commission, in the Commonwealth of Puerto Rico; Eva Loser, research associate at the Center for Strategic and International Studies, in Washington; George Vickers, director of the Institute for Central American Studies at the City University of New York. The project director for NDI was Stephen J. Del Rosso, who was assisted by Michael Stoddard.

This team visited El Salvador February 18 to 23 and conducted interviews with elections officials, leading members of all parties, civic leaders, and independent analysts. The examination focused on the newly enacted electoral code reforms, the administration preparations for the election, the campaign climate, and recent proposals by the Farabundo Marti National Liberation Front [FMNLN] as they relate to the electoral process.

The team determined that the Salvadoran electoral system has, overall, accommodated the basic needs of the political parties and the electorate. Despite the country's politically polarized atmosphere and increasing climate of violence, the following conclusions were set forth:

A comprehensive framework for a procedurally correct election has been devised;

Remaining concerns about the impact of certain electoral code reforms do not undermine the basic integrity of the electoral process;

The central election council has thus far fulfilled its responsibilities in a generally fair and expeditious manner;

The contending parties themselves are satisfied with the commitment of the authorities to the electoral process, and they do not view present conditions as an insurmountable obstacle to their participation in the election;

Although general preparations for the election appear, by and large, to be progressing smoothly, an extension of the deadline for delivery of voting cards would have allowed a greater number of Salvadorans to exercise their right vote;

Unless carefully scrutinized, the electoral reforms contained in the FMLN proposals could cause considerable problems in their implementation.

These are important observations to have before us as election day approaches, all the more valuable because they come from a group of independent and recognized experts in the field of elections law in Latin America.

The most important assessment of the Salvadoran electoral process, however, as NDI notes in its conclusion, will be made by the people of El Salvador on election day and in the days that follow. We are all better able to understand their situation, as we develop our own response and policies, thanks to the good work of the National Democratic Institute for International Affairs.

Mr. President, I ask that the executive summary and conclusion of the report I have cited be printed at this point in the RECORD.

The material follows:

[National Democratic Institute for International Affairs]

THE 1989 SALVADORAN ELECTION: CHALLENGES AND OPPORTUNITIES

(A Pre-Election Survey Report February 18–23, 1989)

EXECUTIVE SUMMARY

An international delegation, sponsored by the National Democratic Institute for International Affairs (NDI), visited El Salvador February 18-23, 1989 to review the legal and administrative framework for the March 19 presidential election. The delegation met with a variety of government and non-government officials, including representatives of the Central Election Council, the Supreme Court, the political parties, the Catholic Church, human rights groups, the Ministry of Defense, labor organizations, lawyer federations and the academic community.

Given NDI's continuing interest in supporting democratic institutions, including electoral systems, the delegation focused its efforts on the newly-enacted Electoral Code reforms, the administrative preparations for the election, the campaign climate and the recent proposals by the Farabundo Marti National Liberation Front (FMLN) as they relate to the electoral process.

Based on the information received while in El Salvador, the delegation offers the following summary conclusions:

The process established by laws and regulations for the conduct of the March 19 election is basically sound. A comprehensive framework for a procedurally correct election has been devised.

The Central Election Council has thus far fulfilled its responsibilities in a generally fair and expeditious manner.

The actual implementation of the legal and administrative procedures in the period preceding, during and after election day will determine the ultimate fairness of the election.

Observations on the specific issues reviewed are as follows:

Electoral code reforms

A recent agreement between the executive and legislative branches formally resolved a three-month dispute over reforms to the Electoral Code. Remaining concerns about the impact of certain reforms do not undermine the basic integrity of the electoral system.

Administrative process

General preparations for the election appear, by and large, to be progressing smoothly. Nevertheless, concerns were raised that as many as 15 percent of the eligible electorate would not be able to vote because of problems with the processing and delivery of voting cards. Analysis of the electoral results may indicate whether the delays were the consequence of bureaucratic problems or an attempt to disenfranchise certain segments of the population for political reasons, or some combination of the two.

The campaign climate

The electoral campaign has occurred within a climate of increasing violence. Despite the undeniable hardship this situation has created, the contending parties are generally satisfied with the commitment of the authorities to the electoral process, and they do not view present conditions as an insurmountable obstacle to their participation.

FMLN reforms

The electoral reforms contained in the recent FMLN proposals—relating to the extension of the vote to Salvadorans living outside of the country, the expansion of the Central Election Council, and the role of the military in the electoral process—merit appropriate study and consideration. The FMLN claims the proposals are designed to increase participation and confidence in the process. However, unless carefuly scrutinized, they could cause considerable problems in their implementation.

In summation, the delegation concludes that, despite current circumstances in El Salvador, the electoral system has accommodated the basic needs of the political parties and the electorate. Thus, the potential exists for a free and fair presidential election. The delegation hopes that all Salvadorans will recognize that a vibrant democratic system offers the best means for resolving societal conflicts, and for resisting the challenges posed by extremists who take up arms to advance their cause.

CONCLUSION

El Salvador's electoral system is a product of the country's developing democracy. Still young and largely untested, its deficiencies are well known to those familiar with it. However, as described in this report, the system, by and large, has proven responsive to the basic needs of the political parties and the electorate. Thus, the potential exists for a free and fair presidential election. Although a free and fair election can play a vital role in promoting a stable and democratic transfer of power, post-election developments will ultimately determine whether Salvadoran democracy can be sustained.

It is hoped that this report will assist prospective election observers by shedding light on certain aspects of the electoral process. Such information can help provide a basis for evaluating the legitimacy of the election. The final judgment, however, must be

made by the Salvadoran people who will live with its consequences.●

A VIEW FROM THE MIT PRESSURE COOKER

● Mr. KERRY. Mr. President, I want to insert into the RECORD an interview in the Wall Street Journal with a leader in the academic community, Dr. Paul Gray, president of the Massachusetts Institute of Technology.

Throughout the 1980's, Paul Gray has proven to be a leader of great insight. In this interview, as in his actions as president of MIT, Dr. Gray recognizes America's need to improve international competitiveness, and particularly to increase productivity. As a leading member of the academic community, he speaks with great authority on the increasing importance of precollege education in math and the sciences, and accurately points out the benefits which American society will receive if we pay more attention to educating our children.

Additionally, Dr. Gray addresses the increasing problem of global warming. He agrees that we must raise national awareness of the problem and increase our conservation efforts.

The interview follows:

A VIEW FROM THE MIT PRESSURE COOKER

(By Gary Putka)

Paul Gray has been president of the Massachusetts Institute of Technology throughout the 1980's. His term has seen recognition for MIT's role in stimulating local prosperity, and many attempts to replicate this elsewhere. Some 460 Massachusetts companies were started by MIT graduates or faculty, the largest being Digital Equipment Corp.

As president, Mr. Gray also headed a U.S. technological temple during the first period of doubt about American scientific primacy. This month, Mr. Gray said he would resign in July to become chariman of the school's governing board, MIT Corp. In this Cambridge, Mass., office, Mr. Gray answered questions on a wide range of topics. Here are edited excerpts:

What's your assessment of U.S. competitiveness in the 10 years since you became president?

There's been a transition from a period in which our competitiveness in international markets was declining to one in which we have made changes [that will make] us more competitive. Through most of the '60s and '70s, we were increasing manufacturing productivity less than our competitors. That caused us to lose markets—consumer electronics being the most conspicuous example—and it caused us a lot of pain in areas like automobiles.

The problem was not really understood until some time in the '80s. And we now have seen efforts to turn this situation around. There has been a concerted effort by automobile manufacturers to make products that are more attractive, which are more reliable and which can be made less expensively. We are now the world's low-cost producers in many grades of steel. So I think there has begun to be some attention to these problems.

What more needs to be done?

We need to pay considerably more attention to the first 12 years of school, particularly to achieve higher competence in math and science. Youngsters all study math up to about the eighth grade, and [then] about half drop out each year, so by 12th grade, only a very small fraction have studied enough math to be able to use it in their employment. Therefore they have difficulty adapting to techniques that the Japanese have pioneered—in which the manufacturing worker becomes an important resource to the company. [Such a worker] understands the nature of the manufacturing process, suggests improvements and sees ways in which quality can be improved or costs can be reduced.

We also need to pay more attention to the education of [engineers and managers]. In engineering schools generally, the focus has been on underlying science, the basic principles of the field and design. There has been very little attention paid to the manufacturing process. There needs to be recognition that someone who makes a manufacturing line run well has a skill that needs to be rewarded.

There's also been concern about fewer U.S. engineering degrees.

If we were to expect of all of our high school graduates considerably more understanding of mathematics, and somewhat more understanding of science, the possibilities of a career in engineering would at least be open to a youngster. As it is now, that future is almost foreclosed to them.

Do you see dangers in the increasing closeness between business and higher education? Haven't research scandals grown as business has been more involved on campus?

I believe that's mostly coincidence. If you look at the kind of competition in academic research that has led to misrepresentation—even outright fraud—those people were not motivated by the possibility for commercial gain. They may have been motivated by desire for the Nobel Prize. The spinoff of industry from academics does not get you into tensions. The place where tensions arise is when an industry sponsors research on campus. It is perfectly possible in that circumstance to work out common ground rules that do not breach moral or ethical responsibilities.

You've talked in the past about global warming. How worried should we be?

I think that global warming is inevitable simply because we are pumping large quantities of gas into the atmosphere. Only in doubt is what the detailed consequences will be. Politicians and industrialists [must] recognize that actions have to be taken now [or] the world will be a lot less pleasant place for our grandchildren. We have to put a lot more emphasis on conservation. We need to consider alternatives to fossil fuels. Nuclear power needs to be one of those alternatives.

Do you have some ideas about the promotion of safer nuclear energy?

I believe the present generation of nuclear reactors can be operated safely. But—a big but—the public are not persuaded that these reactors with their multiply-redundant safety systems can be operated safely. It's possible to conceptualize, design and build a different kind of reactor, smaller in size, with a different structure of fuel, different mode of cooling, different design. The advantage is you can pull out all the control rods, take the entire staff and walk away, and it won't damage itself. If you build a reactor that is what scientists call "passively safe," you have some chance of persuading the public that the hazard of a meltdown is not what they think it is.

Why doesn't MIT build it?

You're talking about an investment of tens of billions of dollars—and no one wants to make that investment. The government isn't interested in it at the moment. The nuclear power industry isn't going to get burned again, having been burned at Seabrook, Shoreham and other places.

There have been some well-publicized cases of student suicides here in your tenure. Is MIT a pressure cooker?

Looking at it over 25 years, we're just about at the norm in suicides for colleage-age students. It nonetheless is a high-pressure environment. The youngsters who come here have all done extremely well. The freshman class of about 1,000 includes about 300-350 valedictorians. Ninety percent have been in the top 10% of their high school. They come here and one of the first great discoveries is that there's a bottom half of the class. The social and intellectual adjustment to knowing you [will] not be in the top 10% of class anymore is a tough one. I said in my inaugural remarks that the place would be better off if we turned the throttle back a little. I was not talking about making the place Suntan U, but simply turning the throttle back a little. Did I succeed? No. I never even laid a glove on it.●

GREEK INDEPENDENCE DAY

● Mr. SIMON. Mr. President, on March 25, citizens of Greece and Greek Americans will be commemorating the 168th anniversary of the start of the revolution for Greek independence. I am proud to be cosponsoring the resolution honoring Greek Independence Day, because Greece and Greek Americans have given us so much.

Few other nations have had such an overwhelming effect on Western civilization than has Greece. I am in complete agreement with Percy Bysshe Shelly's famous quotation: "We are all Greeks! Our laws, our literature, our religion, our art, have their roots in Greece."

On March 25, 1821, the Greek nation proclaimed its independence from the Ottoman Empire and began its hard-fought and bloody war of independence from the Ottomans. Just as we looked to ancient Greece for inspiration and for a model for our new Nation during our struggle for independence, the 19th-century Greeks held our young Nation and the American Revolution as their model for struggle and their ideal nation-state. Greek commander in chief, Petros Mavromichalis, said at the time, addressing the United States, "having formed the resolution to live or die for freedom, we are drawn toward you by a just sympathy since it is in your land that liberty has fixed her abode, and by you that she is prized as by our fathers. Hence, honoring her name, we invoke yours at the same time, trusting that in imitating you, we shall imitate our ancestors and be thought

worthy of them if we succeed in resembling you. * * *"

Today, democracy in Greece is alive and vibrant and Greeks continue to contribute importantly to Western society both in Greece and abroad. During the early 1900's, many Greeks emigrated to the United States to begin a new life and they and their families made a strong and positive impact in this country. The contributions Greek Americans have made to this country in the fields of politics, religion, popular culture and entertainment, science, medicine, and the arts have been significant and beneficial. The United States and Greece have enjoyed an exemplary and mutually profitable relationship.

It is with distinct pleasure that I join in this celebration of Greek Independence Day, a celebration in large part of democracy itself.●

RULES OF THE SELECT COMMITTEE ON ETHICS

● Mr. HEFLIN. Mr. President, in accordance with rule XXVI of the Standing Rules of the Senate, I ask that the Rules of Procedure of the Select Committee on Ethics, which were adopted February 23, 1978, be printed in the CONGRESSIONAL RECORD for the 101st Congress.

The material follows:

RULES OF THE SELECT COMMITTEE ON ETHICS

(Adopted February 23, 1978)

PART I:—ORGANIC AUTHORITY

Subpart A—S. Res. 338 as amended

Resolved, That (a) there is hereby established a permanent select committee of the Senate to be known as the Select Committee on Ethics[1] (referred to hereinafter as the "Select Committee") consisting of six Members of the Senate, of whom three shall be selected from members of the majority party and three shall be selected from members of the minority party. Members thereof shall be appointed by the Senate in accordance with the provisions of Paragraph 1 of Rule XXIV of the standing rules for the Senate at the beginning of each Congress.[1] For purposes of paragraph 4 of rule XXV of the Standing Rules of the Senate, service of a Senator as a member or chairman of the Select Committee shall not be taken into account.

(b) Vacancies in the membership of the Select Committee shall not affect the authority of the remaining members to execute the functions of the committee, and shall be filled in the same manner as original appointments thereto are made.

(c)(1) A majority of the Members of the Select Committee shall constitute a quorum for the transaction of business involving complaints and allegations of misconduct, including the consideration of matters involving sworn complaints, unsworn allegations or information, resultant preliminary inquiries, initial reviews, investigations, hearings, recommendations or reports and matters relating to Senate Resolution 400, agreed to May 19, 1976.

(2) Three Members shall constitute a quorum for the transaction of routine business of the Select Committee not covered by the first paragraph of this subparagraph, including requests for opinions and interpretations concerning the Code of Official Conduct or any other statute or regulation under the jurisdiction of the Select Committee, if one Member of the quorum is a Member of the Majority Party and one Member of the quorum is a Member of the Minority Party. During the transaction of routine business any Member of the Select Committee constituting the quorum shall have the right to postpone further discussion of a pending matter until such time as a majority of the Members of the Select Committee are present.

(3) The Select Committee may fix a lesser number as a quorum for the purpose of taking sworn testimony.[2]

[2] "(d)(1) A member of the Select Committee shall be ineligible to participate in any initial review or investigation relating to his own conduct, the conduct of any officer or employee he supervises, or the conduct of any employee of any officer he supervises, or relating to any complaint filed by him, and the determinations and recommendations of the Select Committee with respect thereto. For purposes of this subparagraph, a Member of the Select Committee and an officer of the Senate shall be deemed to supervise any officer or employee consistent with the provision of paragraph 11 of rule XXXVII of the Standing Rules of the Senate.

"(2) A member of the Select Committee may, at his discretion, disqualify himself from participating in any initial review or investigation pending before the Select Committee and the determinations and recommendations of the Select Committee with respect thereto. Notice of such disqualification shall be given in writing to the President of the Senate.

"(3) Whenever any member of the Select Committee is ineligible under paragraph (1) to participate in any initial review or investigation or disqualifies himself under paragraph (2) from participating in any initial review or investigation, another Member of the Senate shall, subject to the provisions of subsection (d), be appointed to serve as a member of the Select Committee solely for purposes of such initial review or investigation and the determinations and recommendations of the Select Committee with respect thereto. Any Member of the Senate appointed for such purposes shall be of the same party as the Member who is ineligible or disqualifies himself."

Sec. 2. (a) It shall be the duty of the Select Committee to—

(1) receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct[4] and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate, or as officers or employees of the Senate, and to make appropriate findings of fact and conclusions with respect thereto;

(2) recommend to the Senate by report or resolution by a majority vote of the full committee disciplinary action (including, but not limited to, in the case of a Member: censure, explusion, or recommendation to the appropriate party conference regarding such Member's seniority or positions of responsibility; and, in the case of an officer or employee: suspension or dismissal)"[5] to be taken with respect to such violations which the Select Committee shall determine, after according to the individuals concerned due notice and opportunity for hearing, to have occurred;

(3) recommend to the Senate, by report or resolution, such additional rules or regulations as the Select Committee shall determine to be necessary or desirable to insure proper standards of conduct by Members of the Senate, and by officers or employees of the Senate, in the performance of their duties and the discharge of their responsibilities; and

(4) report violations by a majority vote of the full committee of any law to the proper Federal and State authorities.

"(b)(1) Each sworn complaint filed with the Select Committee shall be in writing, shall be in such form as the Select Committee may prescribe by regulation, and shall be under oath.

"(2) For purposes of this section, 'sworn complaint' means a statement of facts within the personal knowledge of the complainant alleging a violation of law, the Senate Code of Official Conduct, or any other rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as Members, officers, or employees of the Senate.

"(3) Any person who knowingly and willfully swears falsely to a sworn complaint does so under penalty of perjury, and the Select Committee may refer any such case to the Attorney General for prosecution.

"(4) For the purposes of this section, 'investigation' is a proceeding undertaken by the Select Committee after a finding, on the basis of an initial review, that there is substantial credible evidence which provides substantial cause for the Select Committee to conclude that a violation within the jurisdiction of the Select Committee has occurred.

"(c)(1) No investigation of conduct of a Member or officer of the Senate, and no report, resolution, or recommendation relating thereto, may be made unless approved by the affirmative recorded vote of not less than four members of the Select Committee.

"(2) No other resolution, report, recommendation, interpretative ruling, or advisory opinion may be made without an affirmative vote of a majority of the members of the Select Committee voting.

"(d)(1) When the Select Committee receives a sworn complaint against a Member or officer of the Senate, it shall promptly conduct an initial review of that complaint. The initial review shall be of duration and scope necessary to determine whether there is substantial credible evidence which provides substantial cause for the Select Committee to conclude that a violation within the jurisdiction of the Select Committee has occurred.

"(2) If as a result of an initial review under paragraph (1), the Select Committee determines by a recorded vote that there is not such substantial credible evidence, the Select Committee shall report such determination to the complainant and to the party

[1] Changed by Section 102 of S. Res. 4 (February 4, 1977).

[2] Changed by S. Res. 78 (February 24, 1981).

[3] Added by S. Res. 110 (April 2, 1977).

[4] Added by section 201 of S. Res. 110 (April 2, 1977).

[5] Added by Section 205 of S. Res. 110 (April 2, 1977).

charged together with an explanation of the basis of such determination.

"(3) If as a result of an initial review under paragraph (1), the Select Committee determines that a violation is inadvertent, technical or otherwise of a *de minimus* nature, the Select Committee may attempt to correct or prevent such a violation by informal methods.

"(4) If as a result of an initial review under paragraph (1), the Select Committee determines that there is such substantial credible evidence but that the violation, if proven, is neither of a de minimus nature nor sufficiently serious to justify any of the penalties expressly referred to in subsection (a)(2), the Select Committee may propose a remedy it deems appropriate. If the matter is thereby resolved, a summary of the Select Committee's conclusions and the remedy proposed shall be filed as a public record with the Secretary of the Senate and a notice of such filing shall be printed in the Congressional Record.

"(5) If as the result of an initial review under paragraph (1), the Select Committee determines that there is such substantial credible evidence, the Select Committee shall promptly conduct an investigation if (A) the violation, if proven, would be sufficiently serious, in the judgment of the Select Committee, to warrant imposition of one or more of the penalties expressly referred to in subsection (a)(2), or (B) the violation, if proven, is less serious, but was not resolved pursuant to paragraph (4) above. Upon the conclusion of such investigation, the Select Committee shall report to the Senate, as soon as practicable, the results of such investigation together with its recommendations (if any) pursuant to subsection (a)(2).

"(2) Upon the conclusion of any other investigation respecting the conduct of a Member or officer undertaken by the Select Committee, the Select Committee shall report to the Senate, as soon as practicable, the results of such investigation together with its recommendations (if any) pursuant to subsection (a)(2).

"(e) When the Select Committee receives a sworn complaint against an employee of the Senate, it shall consider the complaint according to procedures it deems appropriate. If the Select Committee determines that the complaint is without substantial merit, it shall notify the complainant and the accused of its determination, together with an explanation of the basis of such determination.

"(f) The Select Committee may, in its discretion, employ hearing examiners to hear testimony and make findings of fact and/or recommendations to the Select Committee concerning the disposition of complaints.

"(g) Notwithstanding any other provision of this section, no initial review or investigation shall be made of any alleged violation of any law, the Senate Code of Official Conduct, rule, or regulation which was not in effect at the time the alleged violation occurred. No provisions of the Senate Code of Official Conduct shall apply to or require disclosure of any act, relationship, or transaction which occurred prior to the effective date of the applicable provision of the Code. The Select Committee may conduct an initial review or investigation of any alleged violation of a rule or law which was in effect prior to the enactment of the Senate Code of Official Conduct if the alleged violation occurred while such rule or law was in effect and the violation was not a matter resolved on the merits by the predecessor Select Committee.

"(h) The Select Committee shall adopt written rules setting forth procedures to be used in conducting investigations of complaints."[6]

[7] (i) The Select Committee from time to time shall transmit to the Senate its recommendation as to any legislative measures which it may consider to be necessary for the effective discharge of its duties.

SEC. 3. (a) The Select Committee is authorized to (1) make such expenditures; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony orally or by deposition; (7) employ and fix the compensation of *a staff director, a counsel, an assistant counsel, one or more investigators, one or more hearing examiners,*[8] and such technical, clerical, and other assistants and consultants as it deems advisable; and (8) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, by contract as independent contractors or, in the case of individuals, by employment at daily rates of compensation not in excess of the per diem equivalent of the highest rate of compensation which may be paid to a regular employee of the Select Committee.[9]

[10] (b)(1) The Select Committee is authorized to retain and compensate counsel not employed by the Senate (or by any department or agency of the executive branch of the Government) whenever the Select Committee determines that the retention of outside counsel is necessary or appropriate for any action regarding any complaint or allegation, which, in the determination of the Select Committee is more appropriately conducted by counsel not employed by the Government of the United States as a regular employee.

"(2) Any investigation conducted under section 2 shall be conducted by outside counsel as authorized in paragraph (1), unless the Select Committee determines not to use outside counsel."; and

[11] "(c) With the prior consent of the department or agency concerned, the Select Committee may (1) utilize the services, information and facilities of any such department or agency of the Government," and (2) employ on a reimbursable basis or otherwise the services of such personnel of any such department or agency as it deems advisable.

With the consent of any other committee of the Senate, or any subcommittee thereof, the Select Committee may utilize the facilities and the services of the staff of such other committee or subcommittee whenever the chairman of the Select Committee determines that such action is necessary and appropriate.

"(d) Subpoenas may be issued (1) by the Select Committee or (2) by the chairman and vice chairman, acting jointly. Any such subpoena shall be signed by the chairman or the vice chairman and may be served by any person designated by such chairman or vice chairman. The chairman of the Select Committee or any member thereof may administer oaths to witnesses." [12]

[13] "(e)(1) The Select Committee shall prescribe and publish such regulations as it feels are necessary to implement the Senate Code of Official Conduct.

"(2) The Select Committee is authorized to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction.

"(3) The Select Committee shall render an advisory opinion, in writing within a reasonable time, in response to a written request by a Member or officer of the Senate or a candidate for nomination for election, or election to the Senate, concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

"(4) The Select Committee may in its discretion render an advisory opinion in writing within a reasonable time in response to a written request by any employee of the Senate concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

"(5) Notwithstanding any provision of the Senate Code of Official Conduct or any rule or regulation of the Senate, any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of paragraphs (3) and (4) and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction by the Senate.

"(6) Any advisory opinion rendered by the Select Committee under paragraphs (3) and (4) may be relied upon by (A) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered: *Provided, however,* That the request for such advisory opinion included a complete and accurate statement of the specific factual situation; and, (B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

"(7) Any advisory opinion issued in response to a request under paragraph (3) or (4) shall be printed in the Congressional Record with appropriate deletions to assure the privacy of the individual concerned. The Select Committee shall, to the extent practicable, before rendering an advisory opinion, provide any interested party with an opportunity to transmit written comments to the Select Committee with respect to the request for such advisory opinion. The advisory opinions issued by the Select Committee shall be compiled, indexed, reproduced, and made available on a periodic basis.

"(8) A brief description of a waiver granted under paragraph 2(c) of rule XXXIV or

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[6] Added by Section 202 of S. Res. 110 (April 2, 1977).

[7] Changed by Section 202 of S. Res. 110 (April 2, 1977).

[8] Added by Section 204 of S. Res. 110 (April 2, 1977).

[9] Added by S. Res. 230 (July 25, 1977).

[10] Added by Section 204 of S. Res. 110 (April 2, 1977).

[11] Changed by Section 204 of S. Res. 110 (April 2, 1977).

[12] Section added by S. Res. 312 (Nov. 1, 1977).

[13] Section added by Section 205 of S. Res. 110 (April 2, 1977).

paragraph 1 of rule XXXV of the Standing Rules of the Senate shall be made available upon request in the Select Committee office with appropriate deletions to assure the privacy of the individual concerned."

"SEC. 4. The expenses of the Select Committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the Select Committee.

SEC. 5. As used in this resolution, the term "officer or employee of the Senate" means—

(1) an elected officer of the Senate who is not a Member of the Senate;

(2) an employee of the Senate, any committee or subcommittee of the Senate, or any Member of the Senate;

(3) the Legislative Counsel of the Senate or any employee of his office;

(4) an Official Reporter of Debates of the Senate and any person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties;

(5) a member of the Capitol Police force whose compensation is disbursed by the Secretary of the Senate;

(6) an employee of the Vice President if such employee's compensation is disbursed by the Secretary of the Senate; and

(7) an employee of a joint committee of the Congress whose compensation is disbursed by the Secretary of the Senate.

Subpart B—Public Law 93-191—Franked mail, provisions relating to the select committee

SEC. 6. (a) The Select Committee on Standards and Conduct of the Senate shall provide guidance, assistance, advice and counsel, through advisory opinions or consultations, in connection with the mailing or contemplated mailing of franked mail under section 3210, 3211, 3212, 3218(2) or 3218, and in connection with the operation of section 3215, of title 39, United States Code, upon the request of any Member of the Senate or Member-elect, surviving spouse of any of the foregoing, or other Senate official, entitled to send mail as franked mail under any of those sections. The select committee shall prescribe regulations governing the proper use of the franking privilege under those sections by such persons.

(b) Any complaint filed by any person with the select committee that a violation of any section of title 39, United States Code, referred to in subsection (a) of this section is about to occur or has occurred within the immediately preceding period of 1 year, by any person referred to in such section (a), shall contain pertinent factual material and shall conform to regulations prescribed by the select committee. The select committee, if it determines there is reasonable justification for the complaint, shall conduct an investigation of the matter, including an investigation of reports and statements filed by that complainant with respect to the matter which is the subject of the complaint. The committee shall afford to the person who is the subject of the complaint due notice and, if it determines that there is substantial reason to believe that such violation has occurred or is about to occur, opportunity for all parties to participate in a hearing before the select committee. The select committee shall issue a written decision on each complaint under this subsection not later than thirty days after such a complaint has been filed or, if a hearing is held, not later than thirty days after the conclusion of such hearing. Such decision shall be based on written findings of fact in the case by the select committee. If the select committee finds, in its written decision, that a violation has occurred or is about to occur, the committee may take such action and enforcement as it considers appropriate in accordance with applicable rules, precedents, and standing orders of the Senate, and such other standards as may be prescribed by such committee.

(c) Notwithstanding any other provision of law, no court or administrative body in the United States or in any territory thereof shall have jurisdiction to entertain any civil action of any character concerning or related to a violation of the franking laws or an abuse of the franking privilege by any person listed under subsection (a) of this section as entitled to send mail as franked mail, until a complaint has rendered a decision under subsection (b) of this section.

(d) The select committee shall prescribe regulations for the holding of investigations and hearings, the conduct of proceedings, and the rendering of decisions under this subsection providing for equitable procedures and the protection of individual, public, and Government interests. The regulations shall, insofar as practicable, contain the substance of the administrative procedure provisions of sections 551-559 and 701-706 of title 5, United States Code. These regulations shall govern matters under this subsection subject to judicial review thereof.

(e) The select committee shall keep a complete record of all its actions, including a record of the votes on any questions on which a record vote is demanded. All records, data and files of the select committee shall be the property of the Senate and shall be kept in the offices of the select committee or such other places as the commitee may direct.

Subpart C—Standing orders of the Senate regarding unauthorized disclosure of intelligence, information, S. Res. 400, 94th Congress, provisions relating to the select committee

SEC. 8. * * *

(c)(1) No information in the possession of the select committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed, shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee which, receives any information under this subsection, shall disclose such information except in a closed session of the Senate.

(d) It shall be the duty of the Select Committee on Standards and Conduct to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

Subpart D—Public Law 95-105, section 515, relating to receipt and disposition of foreign gifts and decorations received by Members, officers and employees of the Senate or their spouses or dependents, provisions relating to the Select Committee on Ethics

SEC. 515. (a)(1) Section 7342 of title 5, United States Code, is amended to read as follows:

§ 7342. Receipt and disposition of foreign gifts and decorations.

"(a) For the purpose of this section—

* * * * *

"(6) 'employing agency' means—

"(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e), and (g)(2)(B) shall be carried out by the Clerk of the House;

"(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate;

"(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

"(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

"(b) An employee may not—

"(1) request or otherwise encourage the tender of a gift or decoration; or

"(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

"(c)(1) The Congress consents to—

"(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

"(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

"(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

"(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the em-

ploying agency and any regulations which may be prescribed by the employing agency.

"(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

"(A) deposit the gift for disposal with his or her employing agency; or

"(B) subject to the approval of the employing agency, deposit the gift with that agency for official use. Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e).

"(3) When an employee deposits a gift of more than a minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegation containing the information prescribed in subsection (f) for that gift.

"(d) The Congress consents to the accepting, retraining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of accepting, with the employing agency for official use or forwarding to the Administrator of General Services for disposal in accordance with subsection (e).

"(e) Gifts and decorations that have been deposited with an employing agency for disposal shall be (1) returned to the donor, or (2) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

"(f)(1). Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

"(2) Such listings shall include for each tangible gift reported—

"(A) the name and position of the employee;

"(B) a brief description of the gift and the circumstances justifying acceptance;

"(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

"(D) the date of acceptance of the gift;

"(E) the estimated value in the United States of the gift at the time of acceptance; and

"(F) disposition or current location of the gift.

"(3) Such listings shall include for each gift of travel or travel expenses—

"(A) the name and position of the employee;

"(B) a brief description of the gift and the circumstances justifying acceptance; and

"(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

"(4) In transmitting, such listing for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

"(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

"(2) Each employing agency shall—

"(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

"(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

"(C) take any other actions necessary to carry out the purpose of this section.

"(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.

"(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host government that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

"(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

"(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(2) The amendment made by paragraph (1) of this subsection shall take effect on January 1, 1978.

SELECT COMMITTEE ON ETHICS

Rule I. General procedures

(a) Officers: The Committee shall select a Chairman and a Vice Chairman from among its members. In the absence of the Chairman, the duties of the Chair shall be filled by the Vice Chairman or, in the Vice Chairman's absence, a Committee member designated by the Chairman.

(b) Procedural Rules: The basic procedural rules of the Committee are stated as a part of the Standing Orders of the Senate in Senate Resolution 338, 88th Congress, as amended, as well as other resolutions and laws. Supplementary Procedural Rules are stated herein and are hereinafter referred to as the Rules. The Rules shall be published in the Congressional Record not later than thirty days after adoption, and copies shall be made available by the Committee office upon request.

(c) Meetings:

(1) The regular meeting of the Committee shall be the first Thursday of each month while the Congress is in session.

(2) Special meetings may be held at the call of the Chairman or Vice Chairman if at least forty-eight hours notice is furnished to all members. If all members agree, a special meeting may be held on less than forty-eight hours notice.

(3)(A) If any member of the Committee desires that a special meeting of the Committee be called, the member may file in the office of the Committee a written request to the Chairman or Vice Chairman for that special meeting.

(B) Immediately upon the filing of the request the Clerk of the Committee shall notify the Chairman and Vice Chairman of the filing of the request. If, within three calendar days after the filing of the request, the Chairman or the Vice Chairman does not call the requested special meeting, to be held within seven calendar days after the filing of the request, any three of the members of the Committee may file their written notice in the office of the Committee that a special meeting of the Committee will be held at a specified date and hour; such special meeting may not occur until forty-eight hours after the notice is filed. The Clerk shall immediately notify all members of the Committee of the date and hour of the special meeting. The Committee shall meet at the specified date and hour.

(d) Quorum:

(1) A majority of the members of the Select Committee shall constitute a quorum for the transaction of business involving complaints and allegations of misconduct, including the consideration of matters involving sworn complaints, unsworn allegations or information, resultant preliminary inquiries, initial reviews, investigations, hearings, recommendations or reports and matters relating to Senate Resolution 400, agreed to May 19, 1976.

(2) Three members shall constitute a quorum for the transaction of the routine business of the Select Committee not covered by the first subparagraph of this paragraph, including requests for opinions and interpretations concerning the Code of Official Conduct or any other statute or regulation under the jurisdiction of the Select Committee, if one member of the quorum is a Member of the Majority Party and one member of the quorum is a Member of the Minority Party. During the transaction of routine business any member of the Select Committee, constituting the quorum shall have the right to postpone further discussion of a pending matter until such time as a majority of the members of the Select Committee are present.

(3) The Select Committee may fix a lesser number as a quorum for the purpose of taking sworn testimony.

(e) Order of Business: Questions as to the order of business and the procedure of the Committee shall in the first instance be decided by the Chairman and Vice Chairman, subject to reversal by a vote by a majority of the Committee.

(f) Hearings Announcements: The Committee shall make public announcement of the date, place and subject matter of any hearing to be conducted by it at least one week before the commencement of that hearing, and shall publish such announcement in the Congressional Record. If the

Committee determines that there is good cause to commence a hearing at an earlier date, such notice will be given at the earliest possible time.

(g) Open and Closed Committee Meetings: Meetings of the Committee shall be open to the public or closed to the public (executive session), as determined under the provisions of paragraphs 5(b) to (d) of Rule XXVI of the Standing Rules of the Senate. Executive session meetings of the Committee shall be closed except to the members and the staff of the Committee. On the motion of any member, and with the approval of a majority of the Committee members present, other individuals may be admitted to an executive session meeting for a specified period or purpose.

(h) Record of Testimony and Committee Action: An accurate stenographic or transcribed electronic record shall be kept of all Committee proceedings, whether in executive or public session. Such record shall include Senators' votes on any question on which a recorded vote is held. The record of a witness' testimony, whether in public or executive session, shall be made available for inspection to the witness or his counsel under Committee supervision; a copy of any testimony given by that witness in public session, or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness if he so requests. (See Rule 6 on Procedures for Conducting Hearings.)

(i) Secrecy of Executive Testimony and Action and of Complaint Proceedings:

(1) All testimony and action taken in executive session shall be kept secret and shall not be released outside the Committee to any individual or group, whether governmental or private, without the approval of a majority of the Committee.

(2) All testimony and action relating to a sworn complaint shall be kept secret and shall not be released by the Committee to any individual or group, whether governmental or private, except the respondent, without the approval of a majority of the Committee, until such time as a report to the Senate is required under Senate Resolution 338, 88th Congress, as amended, or unless otherwise permitted under these Rules. (See Rule 9 on Procedures for Handling Committee Sensitive and Classified Materials.)

(j) Release of Reports to Public: No information pertaining to, or copies of any Committee report, study, or other document which purports to express the view, findings, conclusions or recommendations of the Committee in connection with any of its activities or proceedings may be released to any individual or group whether governmental or private, without the authorization of the Committee. Whenever the Chairman or Vice Chairman is authorized to make any determination, then the determination may be released at his or her discretion. Each member of the Committee shall be given a reasonable opportunity to have separate views included as part of any Committee report. (See Rule 9 on Procedures for Handling Committee Sensitive and Classified Materials.)

(k) Ineligibility or Disqualification of Members and Staff:

(1) A member of the Committee shall be ineligible to participate in any Committee proceeding that relates specifically to any of the following:

(A) The member's own conduct;

(B) The conduct of any employee or officer that the member supervises, as defined in paragraph 11 of Rule XXXVII of the Standing Rules of the Senate;

(C) The conduct of any employee or any officer that the member supervises; or

(D) A complaint, sworn or unsworn, that was filed by a member, or by any employee or officer that the member supervises.

(2) If any Committee proceeding appears to relate to a member of the Committee in a manner described in subparagraph (1) of this paragraph, the staff shall prepare a report to the Chairman and Vice Chairman. If either the Chairman or the Vice Chairman concludes from the report that it appears that the member may be ineligible, the member shall be notified in writing of the nature of the particular proceeding and the reason that it appears that the member may be ineligible to participate in it. If the member agrees that he or she is ineligible, the member shall so notify the Chairman or Vice Chairman. If the member believes that he or she is not ineligible, he or she may explain the reasons to the Chairman and Vice Chairman, and if they both agree that the member is not ineligible, the member shall continue to serve. But if either the Chairman or Vice Chairman continues to believe that the member is ineligible, while the member believes that he or she is not ineligible, the matter shall be promptly referred to the Committee. The member shall present his or her arguments to the Committee in executive session. Any contested questions concerning a member's eligibility shall be decided by a majority vote of the Committee, meeting in executive session, with the member in question not participating.

(3) A member may also disqualify himself from participating in a Committee proceeding in other circumstances not listed in subparagraph (k)(1).

(4) The President of the Senate shall be given written notice of the ineligibility or disqualification of any member from any initial review, investigation, or other proceeding requiring the appointment of another member in accordance with subparagraph (k)(5).

(5) Whenever a member of the Committee ineligible to participate in or disqualifies himself from participating in any initial review, investigation, or other substantial Committee proceeding, another Member of the Senate who is of the same party shall be appointed by the Senate in accordance with the provisions of paragraph 1 of Rule XXIV of the Standing Rules of the Senate, to serve as a member of the Committee solely for the purposes of that proceeding.

(6) A member of the Committee staff shall be ineligible to participate in any Committee proceeding that the staff director or outside counsel determines relates specifically to any of the following:

(A) the staff member's own conduct;

(B) the conduct of any employee that the staff member supervises;

(C) the conduct of any Member, officer or employee for whom the staff member has worked for any substantial period; or

(D) a complaint, sworn or unsworn, that was filed by the staff member. At the direction or with the consent of the staff director or outside counsel, a staff member may also be disqualified from participating in a Committee proceeding in other circumstances not listed above.

(l) Recorded Votes: Any member may require a recorded vote on any matter.

(m) Proxies; Recording Votes of Absent Members:

(1) Proxy voting shall not be allowed when the question before the Committee is the initiation or continuation of an initial review or an investigation, or the issuance of a report or recommendation related thereto concerning a Member or officer of the Senate. In any such case an absent member's vote may be announced solely for the purpose of recording the member's position and such announced votes shall not be counted for or against the motion.

(2) On matters other than matters listed in paragraph (m)(1) above, the Committee may order that the record be held open for the vote of absentees or recorded proxy votes if the absent Committee member has been informed of the matter on which the vote occurs and has affirmatively requested the Chairman or Vice Chairman in writing that he be so recorded.

(3) All proxies shall be in writing, and shall be delivered to the Chairman or Vice Chairman to be recorded.

(4) Proxies shall not be considered for the purpose of establishing a quorum.

(n) Approval of Blind Trusts and Foreign Travel Requests Between Sessions and During Extended Recesses:

During any period in which the Senate stands in adjournment between sessions of the Congress or stands in a recess scheduled to extend beyond fourteen days, the Chairman and Vice Chairman, or their designees, acting jointly, are authorized to approve or disapprove blind trusts under the provision of Rule XXXIV, and to approve or disapprove foreign travel requests which require immediate resolution.

(o) Committee Use of Services or Employees of Other Agencies and Departments:

With the prior consent of the department or agency involved, the Committee may (1) utilize the services, information, or facilities of any such department or agency of the Government, and (2) employ on a reimbursable basis or otherwise the services of such personnel of any such department or agency as it deems advisable. With the consent of any other committee of the Senate, or any subcommittee, the Committee may utilize the facilities and the services of the staff of such other committee or subcommittee whenever the Chairman and Vice Chairman of the Committee, acting jointly, determine that such action is necessary and appropriate.

Rule 2: Procedures for sworn complaints

(a) Sworn Complaints: Any person may file a sworn complaint with the Committee, alleging that any Senator, or officer, or employee of the Senate has violated a law, the Senate Code of Official Conduct, or any rule or regulation of the Senate relating to the conduct of any individual in the performance of his or her duty as a Member, officer, or employee of the Senate, or has engaged in improper conduct which may reflect upon the Senate.

(b) Form and Content of Complaints: A complaint filed under paragraph (a) shall be in writing and under oath, and shall set forth in simple, concise and direct statements:

(1) The name and legal address of the party filing the complaint (hereinafter, the complainant);

(2) The name and position or title of each Member, officer, or employee of the Senate who is specifically alleged to have engaged in the improper conduct or committed the violation (hereinafter, the respondent);

(3) The nature of the alleged improper conduct or violation, including if possible, the specific provision of the Senate Code of

Official Conduct or other law, rule, or regulation alleged to have been violated.

(4)(A) A statement of the facts within the personal knowledge of the complainant that are alleged to constitute the improper conduct or violation.

(B) The term "personal knowledge" is not intended to and does not limit the complainant's statement to situations that he or she personally witnessed or to activities in which the complainant was a participant.

(C) Where allegations in the sworn complaint are made upon the information and belief of the complainant, the complaint shall so state, and shall set forth the basis for such information and belief.

(5) The complainant must swear that all of the information contained in the complaint either (a) is true, or (b) was obtained under circumstances such that the complainant has sufficient personal knowledge of the source of the information reasonably to believe that it is true. The complainant may so swear either by oath or by solemn affirmation before a notary public or other authorized official.

(6) All documents in the possession of the complainant relevant to or in support of his or her allegations may be appended to the complaint.

(c) Processing of Sworn Complaints:

(1) When the Committee receives a sworn complaint against a Member, officer or employee of the Senate, it shall determine by majority vote whether the complaint is in substantial compliance with paragraph (b) of this rule.

(2) If it is determined by the Committee that a sworn complaint does not substantially comply with the requirements of paragraph (b), the complaint shall be returned promptly to the complainant, with a statement explaining how the complaint fails to comply and a copy of the rules for filing sworn complaints. The complainant may resubmit the complaint in the proper form. If the complaint is not revised so that it substantially complies with the stated requirements, the Committee may in its discretion process the complaint in accordance with Rule 3.

(3) A sworn complaint against any Member, officer, or employee of the Senate that is determined by the Committee to be in substantial compliance shall be transmitted to the respondent within five days of that determination. The transmittal notice shall include the date upon which the complaint, was received, a statement that the complaint conforms to the applicable rules, a statement that the Committee will immediately begin an initial review of the complaint, and a statement inviting the respondent to provide any information relevant to the complaint to the Committee. A copy of the Rules of the Committee shall be supplied with the notice.

Rule 3: Procedures on receipt of allegations other than a sworn complaint; preliminary inquiry

(a) Unsworn Allegations or Information: Any member or staff member of the Committee shall report to the Committee, and any other person may report to the Committee, any credible information available to him or her that indicates that any named or unnamed Member, officer or employee of the Senate may have—

(1) violated the Senate Code of Official Conduct;

(2) violated a law;

(3) violated any rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as Members, officers, or employees of the Senate; or

(4) engaged in improper conduct which may reflect upon the Senate. Such allegations or information may be reported to the Chairman, the Vice Chairman, a Committee member, or a Committee staff member.

(b) Sources of Unsworn Allegations or Information: The information to be reported to the Committee under paragraph (a), may be obtained from a variety of sources, including but not limited to the following:

(1) sworn complaints that do not satisfy all of the requirements of Rule 2;

(2) anonymous or informal complaints, whether or not satisfying the requirements of Rule 2;

(3) information developed during a study or inquiry by the Committee or other committees or subcommittees of the Senate, including information obtained in connection with legislative or general oversight hearings;

(4) information reported by the news media; or

(5) information obtained from any individual, agency or department of the executive branch of the Federal Government.

(c) Preliminary Inquiry:

(1) When information is presented to the Committee pursuant to paragraph (a), it shall immediately be transmitted to the Chairman and the Vice Chairman, for one of the following actions.

(A) The Chairman and Vice Chairman, acting jointly, may conduct or may direct the Committee staff to conduct, a preliminary inquiry.

(B) The Chairman and Vice Chairman, acting jointly, may present the allegations or information received directly to the Committee for it to determine whether an initial review should be undertaken. (See paragraph (d).)

(2) A preliminary inquiry may include any inquiries or interviews that the Chairman and the Vice Chairman deem necessary or appropriate. In particular, the preliminary inquiry may seek independent credible evidence that tends to corroborate the information received and may also include discussions or correspondence with the complainant, if any, and the respondent, if any.

(3) At the conclusion of a preliminary inquiry, the Chairman and Vice Chairman shall receive a full report of its findings. The Chairman and Vice Chairman, acting jointly, shall then determine what further action, if any, is appropriate in the particular case, including any of the following:

(A) No further action is appropriate, because the alleged improper conduct or violation is clearly not within the jurisdiction of the Committee;

(B) No further action is appropriate, because there is no reason to believe that the alleged improper conduct or violation may have occurred; or

(C) The unsworn allegations or information, and a report on the preliminary inquiry, should be referred to the Committee, to determine whether an initial review should be undertaken. (See paragraph (d).)

(4) If the Chairman and the Vice Chairman are unable to agree on a determination at the conclusion of a preliminary inquiry, then they shall refer the allegations or information to the Committee, with a report on the preliminary inquiry, for the Committee to determine whether an initial review should be undertaken. (See paragraph (d).)

(5) A preliminary inquiry shall be completed within sixty days after the unsworn allegations or information were received by the Chairman and Vice Chairman. The sixty day period may be extended for a specified period by the Chairman and Vice Chairman, acting jointly. A preliminary inquiry is completed when the Chairman and the Vice Chairman have made the determination required by subparagraphs (3) and (4) of this paragraph.

(d) Determination Whether to Conduct an Initial Review: When information or allegations are presented to the Committee by the Chairman and the Vice Chairman, the Committee shall determine whether an initial review should be undertaken.

(1) An initial review shall be undertaken when—

(A) there is reason to believe on the basis of the information before the Committee that the possible improper conduct or violation may be within the jurisdiction of the Committee; and

(B) there is reason to believe on the basis of the information before the Committee that the improper conduct or violation may have occurred.

(2) The determination whether to undertake an initial review shall be made by recorded vote within thirty days following the Committee's receipt of the unsworn allegations or information from the Chairman or Vice Chairman, or at the first meeting of the Committee thereafter if none occurs within thirty days, unless this time is extended for a specified period by the Committee.

(3) The Committee may determine that an initial review is not warranted because (a) there is no reason to believe on the basis of the information before the Committee that the improper conduct or violation may have occurred, or (b) the improper conduct or violation, even if proven, is not within the jurisdiction of the Committee.

(A) If the Committee determines that an initial review is not warranted, it shall promptly notify the complainant, if any, and any known respondent.

(B) If there is a complainant, he or she may also be invited to submit additional information, and notified of the procedures for filing a sworn complaint. If the complainant later provides additional information, not in the form of a sworn complaint, it shall be handled as a new allegation in accordance with the procedures of Rule 3. If he or she submits a sworn complaint, it shall be handled in accordance with Rule 2.

(4)(A) The Committee may determine that there is reason to believe on the basis of the information before it that the improper conduct or violation may have occurred and may be within the jurisdiction of the Committee, and that an initial review must therefore be conducted.

(B) If the Committee determines that an initial review will be conducted, it shall promptly notify the complainant, if any, and the respondent, if any.

(C) The notice required under subparagraph (B) shall include a general statement of the information or allegations before the Committee, and a statement that the Committee will immediately begin an initial review of the complaint. A copy of the Rules of the Committee shall be supplied with the notice.

(5) If a member of the Committee believes that the preliminary inquiry has provided sufficient information for the Committee to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred, the member may move

that the Committee dispense with the initial review and move directly to the determinations described in Rule 4(f). The Committee may adopt such a motion by majority vote of the full Committee.

Rule 4: Procedures for conducting an initial review

(a) Basis for Initial Review: The Committee shall promptly commence an initial review whenever it has received either (1) a sworn complaint that the Committee has determined is in substantial compliance with the requirements of Rule 2, or (2) unsworn allegations or information that have caused the Committee to determine in accordance with Rule 3 that an initial review must be conducted.

(b) Scope of Initial Review:

(1) The initial review shall be of such duration and scope as may be necessary to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.

(2) The initial review may include any inquiries or interviews that the Committee deems appropriate to obtain the evidence upon which to make the determination required by subparagraph (1), including the taking of sworn statements and the use of subpoenas.

(c) Opportunity for Response: An initial review may include an opportunity for any known respondent or his designated representative, to present either a written or oral statement, or to respond orally to questions from the Committee. Such an oral statement or answers shall be transcribed and signed by the person providing the statement or answers.

(d) Status Reports: The Committee staff or outside counsel shall periodically report to the Committee in the form and according to the schedule prescribed by the Committee. The reports shall be confidential.

(e) Final Report: When the initial review is completed, the staff or outside counsel shall make a confidential report to the Committee on findings and recommendations.

(f) Committee Action: As soon as practicable following submission of the report on the initial review, the Committee shall determine by a recorded vote whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred. The Committee may make any of the following determinations:

(1) The Committee may determine that there is no such substantial credible evidence. In this case, the Committee shall report its determination to the complainant, if any, and to the respondent, together with an explanation of the basis for the determination. The explanation may be as detailed as the Committee desires, but it is not required to include a complete discussion of the evidence collected in the initial review.

(2) The Committee may determine that there is such substantial credible evidence, but that the alleged violation is inadvertent, technical, or otherwise of a de minimis nature. In this case, the Committee may attempt to correct or to prevent such violation by informal methods. The Committee's final determination in this matter shall be reported to the complainant, if any, and to the respondent, if any.

(3) The Committee may determine that there is such substantial credible evidence, but that the alleged violation, if proven, although not of a de minimis nature, would not be sufficiently serious to justify the severe disciplinary actions specified in Senate Resolution 338, 88th Congress, as amended (i.e., for a Member, censure, expulsion, or recommendation to the appropriate party conference regarding the Member's seniority or positions of responsibility; or for an officer or employee, suspension or dismissal). In this case, the Committee, by the recorded affirmative vote of at least four members, may propose a remedy that it deems appropriate. If the respondent agrees to the proposed remedy, a summary of the Committee's conclusions and the remedy proposed and agreed to shall be filed as a public record with the Secretary of the Senate and a notice of the filing shall be printed in the CONGRESSIONAL RECORD.

(4) The Committee may determine, by recorded affirmative vote of at least four members, that there is such substantial credible evidence, and also either:

(A) that the violation, if proved, would be sufficiently serious to warrant imposition of one of the severe disciplinary actions listed in paragraph (3); or

(B) that the violation, if proven, is less serious, but was not resolved pursuant to the procedure in paragraph (3). In either case, the Committee shall order that an investigation promptly be conducted in accordance with Rule 5.

Rule 5: Procedures for conducting an investigation

(a) Definition of Investigation: An "investigation" is a proceeding undertaken by the Committee, by recorded affirmative vote of at least four members, after a finding on the basis of an initial review that there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within its jurisdiction has occurred.

(b) Scope of Investigation: When the Committee decides to conduct an investigation, it shall be of such duration and scope as is necessary for the Committee to determine whether a violation within its jurisdiction has occurred. In the course of the investigation, designated outside counsel, or if the Committee determines not to use outside counsel, the Committee or its staff, may conduct inquiries or interviews, take sworn statements, use compulsory process as described in Rule 7, or take any other actions that the Committee deems appropriate to secure the evidence necessary to make this determination.

(c) Notice to Respondent: The Committee shall give written notice to any known respondent who is the subject of an investigation. The notice shall be sent to the respondent no later than five working days after the Committee has voted to conduct an investigation. The notice shall include a statement of the nature of the possible violation, and a description of the evidence indicating that a possible violation occurred. The Committee shall offer the respondent an opportunity to present a statement or to respond to questions from members of the Committee, the Committee staff, or outside counsel.

(d) Right to a Hearing: The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate.

(e) Progress Reports to Committee: The Committee staff or outside counsel shall periodically report to the Committee concerning the progress of the investigation. Such reports shall be delivered to the Committee in the form and according to the schedule prescribed by the Committee, and shall be confidential.

(f) Report of Investigation:

(1) Upon completion of an investigation, including any hearings held pursuant to Rule 6, the outside counsel or the staff shall submit a confidential written report to the Committee, which shall detail the factual findings of the investigation and which may recommend disciplinary action, if appropriate. Findings of fact of the investigation shall be detailed in this report whether or not disciplinary action is recommended.

(2) The Committee shall consider the report of the staff or outside counsel promptly following its submission. The Committee shall prepare and submit a report to the Senate, including a recommendation to the Senate concerning disciplinary action, if appropriate. A report shall be issued, stating in detail the Committee's findings of fact, whether or not disciplinary action is recommended. The report shall also explain fully the reasons underlying the Committee's recommendation concerning disciplinary action, if any. No recommendation or resolution of the Committee concerning the investigation of a Member, officer or employee of the Senate may be approved except by the affirmative recorded vote of not less than four members of the Committee.

(3) Promptly, after the conclusion of the investigation, the Committee's report and recommendation shall be forwarded to the Secretary of the Senate, and a copy shall be provided to the complainant and the respondent. The full report and recommendation shall be printed and made public, unless the Committee determines by majority vote that it should remain confidential.

Rule 6: Procedures for hearings

(a) Right to Hearing: The Committee may hold a public or executive hearing in any inquiry, initial review, investigation, or other proceeding. The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate. (See Rule 5(e).)

(b) Non-public Hearings: The Committee may at any time during a hearing determine in accordance with paragraph 5(b) of Rule XXVI of the Standing Rules of the Senate whether to receive the testimony of specific witnesses in executive session. If a witness desires to express a preference for testifying in public or in executive session, he or she shall so notify the Committee at least five days before he or she is scheduled to testify.

(c) Adjudicatory Hearings: The Committee may, by majority vote, designate any public or executive hearing as an adjudicatory hearing; and, any hearing which is concerned with possible disciplinary action against a respondent or respondents designated by the Committee shall be an adjudicatory hearing. In any adjudicatory hearing, the procedures described in paragraph (j) shall apply.

(d) Subpoena Power: The Committee may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such correspondence, books, papers, documents or other articles as it deems advisable. (See Rule 7.)

(e) Notice of Hearings: The Committee shall make public an announcement of the date, place, and subject matter of any hearing to be conducted by it, in accordance with Rule 1(f).

(f) Presiding Officer: The Chairman shall preside over the hearings, or in his absence the Vice Chairman. If the Vice Chairman is also absent, a Committee member designated by the Chairman shall preside. If an oath or affirmation is required, it shall be administered to a witness by the Presiding Officer, or in his absence, by any Committee member.

(g) Witnesses:

(1) A subpoena or other request to testify shall be served on a witness sufficiently in advance of his or her scheduled appearance to allow the witness a reasonable period of time, as determined by the Committee, to prepare for the hearing and to employ counsel if desired.

(2) The Committee may, by majority vote, rule that no member of the Committee or staff or outside counsel shall make public the name of any witness subpoenaed by the Committee before the date of that witness' scheduled appearance, except as specifically authorized by the Chairman and Vice Chairman, acting jointly.

(3) Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the Committee at least two working days in advance of the hearing at which the statement is to be presented. The Chairman and Vice Chairman shall determine whether such statements may be read or placed in the record of the hearing.

(4) Insofar as practicable, each witness shall be permitted to present a brief oral opening statement, if he or she desires to do so.

(h) Right to Testify: Any person whose name is mentioned or who is specifically identified or otherwise referred to in testimony or in statements made by a Committee member, staff member or outside counsel, or any witness, and who reasonably believes that the statement tends to adversely affect his or her reputation may—

(1) Request to appear personally before the Committee to testify in his or her own behalf; or

(2) File a sworn statement of facts relevant to the testimony or other evidence or statement of which he or she complained.

Such request and such statement shall be submitted to the Committee for its consideration and action.

(i) Conduct of Witnesses and Other Attendees: The Presiding Officer may punish any breaches of order and decorum by censure and exclusion from the hearings. The Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(j) Adjudicatory Hearing Procedures:

(1) Notice of Hearings: A copy of the public announcement of an adjudicatory hearing, required by paragraph (e), shall be furnished together with a copy of these Rules to all witnesses at the time that they are subpoenaed or otherwise summoned to testify.

(2) Preparation for Adjudicatory Hearings:

(A) At least five working days prior to the commencement of an adjudicatory hearing, the Committee shall provide the following information and documents to the respondent, if any:

(i) a list of proposed witnesses to be called at the hearing;

(ii) copies of all documents expected to be introduced as exhibits at the hearing; and

(iii) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(B) At least two working days prior to the commencement of an adjudicatory hearing, the respondent, if any, shall provide the information and documents described in divisions (i), (ii) and (iii) of subparagraph (A) to the Committee.

(C) At the discretion of the Committee, the information and documents to be exchanged under this paragraph shall be subject to an appropriate agreement limiting access and disclosure.

(D) If a respondent refuses to provide the information and documents to the Committee (see (A) and (B) of this subparagraph), or if a respondent or other individual violates an agreement limiting access and disclosure, the Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(3) Swearing of Witnesses: All witnesses who testify at adjudicatory hearings shall be sworn unless the Presiding Officer, for good cause, decides that a witness does not have to be sworn.

(4) Right to Counsel: Any witness at an adjudicatory hearing may be accompanied by counsel of his or her own choosing, who shall be permitted to advise the witness of his or her legal rights during the testimony.

(5) Right to Cross-Examine and Call Witnesses:

(A) In adjudicatory hearings, any repondent who is the subject of an investigation, and any other person who obtains the permission of the Committee, may personally or through counsel cross-examine witnesses called by the Committee and may call witnesses in his or her own behalf.

(B) A respondent may apply to the Committee for the issuance of subpoenas for the appearance of witnesses or the production of documents on his or her behalf. An application shall be approved upon a concise showing by the respondent that the proposed testimony or evidence is relevant and appropriate, as determined by the Chairman and Vice Chairman.

(C) With respect to witnesses called by a respondent, or other individual given permission by the Committee, each such witness shall first be examined by the party who called the witness or by that party's counsel.

(D) At least one working day before a witness' scheduled appearance, a witness or a witness' counsel may submit to the Committee written questions proposed to be asked of that witness. If the Committee determines that it is necessary, such questions may be asked by any member of the Committee, or by any Committee staff member if directed by a Committee member. The witness or witness' counsel may also submit additional sworn testimony for the record within twenty-four hours after the last day that the witness has testified. The insertion of such testimony in that day's record is subject to the approval of the Chairman and Vice Chairman acting jointly within five days after the testimony is received.

(6) Admissibility of Evidence:

(A) The object of the hearing shall be to ascertain the truth. Any evidence that may be relevant and probative shall be admissible, unless privileged under the Federal Rules of Evidence. Rules of evidence shall not be applied strictly, but the Presiding Officer shall exclude irrelevant or unduly repetitious testimony. Objections going only to the weight that should be given evidence will not justify its exclusion.

(B) The Presiding Officer shall rule upon any question of the admissibility of testimony or other evidence presented to the Committee. Such rulings shall be final unless reversed or modified by a majority vote of the Committee before the recess of that day's hearings.

(7) Supplementary Hearing Procedures: The Committee may adopt any additional special hearing procedures that it deems necessary or appropriate to a particular adjudicatory hearing. Copies of such supplementary procedures shall be furnished to witnesses and respondents, and shall be made available upon request to any member of the public.

(k) Transcripts:

(1) An accurate stenographic or recorded transcript shall be made of all public and executive hearings. Any member of the Committee, Committee staff member, outside counsel retained by the Committee, or witness may examine a copy of the transcript retained by the Committee of his or her own remarks and may suggest to the official reporter any typographical or transcription errors. If the reporter declines to make the requested corrections, the member, staff member, outside counsel or witness may request a ruling by the Chairman and Vice Chairman, acting jointly. Any member or witness shall return the transcript with suggested corrections to the Committee offices within five working days after receipt of the transcript, or as soon thereafter as is practicable. If the testimony was given in executive session, the member of witness may only inspect the transcript at a location determined by the Chairman and Vice Chairman, acting jointly. Any questions arising with respect to the processing and correction of transcripts shall be decided by the Chairman and Vice Chairman, acting jointly.

(2) Except for the record of a hearing which is closed to the public, each transcript shall be printed as soon as is practicable after receipt of the corrected version. The Chairman and Vice Chairman, acting jointly, may order the transcript of a hearing to be printed without the corrections of a member or witness if they determine that such member or witness has been afforded a reasonable time to correct such transcript and such transcript has not been returned within such time.

(3) The Committee shall furnish each witness, at no cost, one transcript copy of that witness' testimony given at a public hearing. If the testimony was given in executive session, then a transcript copy shall be provided upon request, subject to appropriate conditions and restrictions prescribed by the Chairman and Vice Chairman. If any individual violates such conditions and restrictions, the Committee may recommend by majority vote that he or she be cited for contempt of Congress.

Rule 7: Subpoenas

(a) Procedure: Subpoenas may be issued either—

(1) by majority vote of the Committee, or

(2) by the Chairman and Vice Chairman, acting jointly.

All subpoenas shall be signed by the Chairman or the Vice Chairman and may be served by any person eighteen years of age or older, who is designated by the Chairman or Vice Chairman. Each subpoena shall be served with a copy of the Rules of the Committee and a brief statement of the purpose of the initial review, investigation, or other proceeding.

(b) Subpoena Power: Pursuant to Federal law (2 U.S.C. 190(b)), the Committee is authorized to sit and act at such times and

places during the sessions, recesses, and adjourned periods of the Senate at it deems advisable. The Committee is similarly authorized to require by subpoena or otherwise the attendance of such witnesses or the production of such correspondence, books, papers, documents, or other articles as it deems advisable.

(c) Withdrawal of Subpoena: The Committee may, by majority vote, withdraw any subpoena issued by it or issued by the Chairman and Vice Chairman, acting jointly.

The Chairman and Vice Chairman, acting jointly, may withdraw any subpoena issued by them.

Rule 8: Violations of Law; perjury; legislative recommendations; and applicable rules and standards of conduct

(a) Violations of Law: Whenever the Committee determines by majority vote that there is reason to believe that a violation of law may have occurred, it shall report such possible violation to the proper state and federal authorities.

(b) Perjury: Any person who knowingly and willfully swears falsely to a sworn complaint or any other sworn statement to the Committee does so under penalty of perjury. The Committee may refer any such case to the Attorney General for prosecution.

(c) Legislative Recommendations: The Committee shall recommend to the Senate by report or resolution such additional rules, regulations, or other legislative measures as it determines to be necessary or desirable to ensure proper standards of conduct by Members, officers, or employees of the Senate. The Committee may conduct such inquiries as it deems necessary to prepare such a report or resolution, including the holding of hearings in public or executive session and the use of subpoenas to compel the attendance of witnesses or the production of materials. The Committee may make legislative recommendations as a result of its findings in an initial review, investigation, or other proceeding.

(d) Applicable Rules and Standards of Conduct:

(1) No initial review or investigation shall be made of an alleged violation of any law, rule, regulation, or provision of the Senate Code of Official Conduct which was not in effect at the time the alleged violation occurred. No provision of the Senate Code of Official Conduct shall apply to, or require disclosure of any act, relationship, or transaction which occurred prior to the effective date of the applicable provision of the Code.

(2) The Committee may conduct an initial review or investigation of an alleged violation of a rule or law which was in effect prior to the enactment of the Senate Code of Official Conduct if the alleged violation occurred while such rule or law was in effect and the violation was not a matter resolved on the merits by the predecessor Committee.

Rule 9: Procedures for handling committee sensitive and classified materials

(a) Procedures for Handling Committee Sensitive Materials:

(1) Committee Sensitive information or material is information or material in the possession of the Select Committee on Ethics which pertains to illegal or improper conduct by a present or former Member, officer, or employee of the Senate; to allegations or accusation of such conduct; to any resulting preliminary inquiry, initial review, or investigation by the Select Commttee on Ethics into such allegations or conduct; to the investigative techniques and procedures of the Select Committee on Ethics; or to other information or material designated by the staff director, or outside counsel designated by the Chairman and Vice Chairman.

(2) The Chairman and Vice Chairman of the Committee shall establish such procedures as may be necessary to prevent the unauthorized disclosure of Committee Sensitive information in the possession of the Committee or its staff. Procedures for protecting Committee Sensitive materials shall be in writing and shall be given to each Committee staff member.

(b) Procedures for Handling Classified Materials:

(1) Classified information or material is information or material which is specifically designated as classified under the authority of Executive Order 11652 requiring protection of such information or material from unauthorized disclosure in order to prevent damage to the United States.

(2) The Chairman and Vice Chairman of the Committee shall establish such procedures as may be necessary to prevent the unauthorized disclosure of classified information in the possession of the Committee or its staff. Procedures for handling such information shall be in writing and a copy of the procedures shall be given to each staff member cleared for access to classified information.

(3) Each member of the Committee shall have access to classified material in the Committee's possession. Only Committee staff members with appropriate security clearances and a need-to-know, as approved by the Chairman and Vice Chairman, acting jointly, shall have access to classified information in the Committee's possession.

(c) Procedures for Handling Committee Sensitive and Classified Documents:

(1) Committee Sensitive and classified documents and materials shall be segregated in secure filing safes. Removal from the Committee offices of such documents or materials is prohibited except as necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, or as otherwise specifically approved by the staff director or by outside counsel designated by the Chairman and Vice Chairman.

(2) Each member of the Committee shall have access to all materials in the Committee's possession. The staffs of members shall not have access to Committee Sensitive or classified documents and materials without the specific approval in each instance of the Chairman, and Vice Chairman, acting jointly. Members may examine such materials in the Committee's offices. If necessary, requested materials may be taken by a member of the Committee staff to the office of a member of the Committee for his or her examination, but the Committee staff member shall remain with the Committee Sensitive or classified documents or materials at all times except as specifically authorized by The Chairman or Vice Chairman.

(3) Any Member of the Senate who is not a member of the Committee and who seeks access to any Committee Sensitive or classified documents or materials, other than documents or materials which are matters of public record, shall request access in writing. The Committee shalli decide by majority vote whether to make documents or materials available. If access is granted, the Member shall not disclose the information except as authorized by the Committee.

(4) Whenever the Committee makes Committee Sensitive or classified documents or materials available to any Member of the Senate who is not a member of the Committee, or to a staff person of a Committee member in response to a specific request to the Chairman and Vice Chairman, a written record shall be made identifying the Member of the Senate requesting such documents or materials and describing what was made available and to whom.

(d) Non-disclosure Policy and agreement:

(1) Except as provided in the last sentence of this paragraph, no member of the Select Committee on Ethics, its staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics shall release, divulge, publish, reveal by writing, word, conduct, or disclose in any way, in whole, or in part, or by way of summary, during tenure with the Select Committee on Ethics or anytime thereafter, any testimony given before the Select Committee on Ethics in executive session (including the name of any witness who appeared or was called to appear in executive session), any classified or Committee Sensitive information, document or material, received or generated by the Select Committee on Ethics or any classified or Committee Sensitive information which may come into the possession of such person during tenure with the Select Committee on Ethics or its staff. Such information, documents, or material may be released to an official of the executive branch properly cleared for access with a need-to-know, for any purpose or in connection with any proceeding, judicial or otherwise, as authorized by the Select Committee on Ethics, or in the event of termination of the Select Committee on Ethics, in such a manner as may be determined by is successor or by the Senate.

(2) No member of the Select Committee on Ethics staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics, shall be granted access to classified or Committee Sensitive information or material in the possession of the Select Committee on Ethics unless and until such person agrees in writing, as a condition of employment, to the non-disclosure policy. The agreement shall become effective when signed by the Chairman and Vice Chairman on behalf of the Committee.

Rule 10: Broadcasting and news coverage of committee proceedings

(a) Whenever any hearing or meeting of the Committee is open to the public, the Committee shall permit that hearing or meeting to be covered in whole or in part, by television broadcast, radio broadcast, still photography, or by any other methods of coverage, unless the Committee decides by majority vote that such coverage is not appropriate at a particular hearing or meeting.

(b) Any witness served with a subpoena by the Committee may request not to be photographed at any hearing or to give evidence or testimony while the broadcasting, reproduction, or coverage of that hearing, by radio, television, still photography, or other methods is occurring. At the request of any such witness who does not wish to be subjected to radio, television, still photography, or other methods of coverage, and subject to the approval of the Committee, all lenses shall be covered and all microphones used for coverage turned off.

(c) If coverage is permitted, it shall be in accordance with the following requirements:

(1) Photographers and reporters using mechanical recording, filming, or broadcasting

apparatus shall position their equipment so as not to interfere with the seating, vision, and hearing of the Committee members and staff, or with the orderly process of the meeting or hearing.

(2) If the television or radio coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(3) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(4) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery Committee of Press Photographers.

(5) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and the coverage activities in an orderly and unobtrusive manner.

Rule 11: Procedures for advisory opinions

(a) When Advisory Opinions are Rendered:

(1) The Committee shall render an advisory opinion, in writing within a reasonable time, in response to a written request by a Member or officer of the Senate or a candidate for nomination for election, or election to the Senate, concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(2) The Committee may issue an advisory opinion in writing within a reasonable time in response to a written request by any employee of the Senate concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(b) Form of Request: A request for an advisory opinion shall be directed in writing to the Chairman of the Committee and shall include a complete and accurate statement of the specific factual situation with respect to which the request is made as well as the specific question or questions which the requestor wishes the Committee to address.

(c) Opportunity for Comment:

(1) The Committee will provide an opportunity for any interested party to comment on a request for an advisory opinion—

(A) which requires an interpretation on a significant question of first impression that will affect more than a few individuals; or

(B) when the Committee determines that comments from interested parties would be of assistance.

(2) Notice of any such request for an advisory opinion shall be published in the Congressional Record, with appropriate deletions to insure confidentiality, and interested parties will be asked to submit their comments in writing to the Committee within ten days.

(3) All relevant comments received on a timely basis will be considered.

(d) Issuance of an Advisory Opinion:

(1) The Committee staff shall prepare a proposed advisory opinion in draft form which will first be reviewed and approved by the Chairman and Vice Chairman, acting jointly, and will be presented to the Committee for final action. If (A) the Chairman and Vice Chairman cannot agree, or (B) either the Chairman or Vice Chairman requests that it be taken directly to the Committee, then the proposed advisory opinion shall be referred to the Committee for its decision.

(2) An advisory opinion shall be issued only by the affirmative recorded vote of a majority of the members voting.

(3) Each advisory opinion issued by the Committee shall be promptly transmitted for publication in the Congressional Record after appropriate deletions are made to insure confidentiality. The Committee may at any time revise, withdraw, or elaborate on any advisory opinion.

(e) Reliance on Advisory Opinions:

(1) Any advisory opinion issued by the Committee under Senate Resolution 338, 88th Congress, as amended, and the rules may be relied upon by—

(A) Any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered if the request for such advisory opinion included a complete and accurate statement of the specific factual situation; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of Senate Resolution 338, 88th Congress, as amended, and of the rules, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction by the Senate.

Rule 12: Procedures for interpretative rulings

(a) Basis for Interpretative Rulings: Senate Resolution 338, 88th Congress, as amended, authorizes the Committee to issue interpretative rulings explaining any clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction. The Committee also may issue such rulings clarifying or explaining any rule or regulation of the Select Committee on Ethics.

(b) Request for Ruling: A request for such a ruling must be directed in writing to the Chairman or Vice Chairman of the Committee.

(c) Adoption of Ruling:

(1) The Chairman and Vice Chairman, acting jointly, shall issue a written interpretative ruling in response to any such request, unless—

(A) they cannot agree,

(B) it requires an interpretation of a significant question of first impression, or

(C) either requests that it be taken to the Committee, in which event the request shall be directed to the Committee for a ruling.

(2) A ruling on any request taken to the Committee under subparagraph (1) shall be adopted by a majority of the members voting and the ruling shall then be issued by the Chairman and Vice Chairman.

(d) Publication of Rulings: The Committee will publish in the Congressional Record, after making appropriate deletions to ensure confidentiality, any interpretative rulings issued under this Rule which the Committee determines may be of assistance or guidance to other Members, officers or employees. The Committee may at any time revise, withdraw, or elaborate on interpretative rulings.

(e) Reliance on Rulings: Whenever an individual can demonstrate to the Committee's satisfaction that his or her conduct was in good faith reliance on an interpretative ruling issued in accordance with this Rule, the Committee will not recommend sanctions to the Senate as a result of such conduct.

(f) Rulings by Committee Staff: The Committee staff is not authorized to make rulings or give advice, orally or in writing, which binds the Committee in any way.

Rule 13: Procedures for complaints involving improper use of the mailing frank

(a) Authority to Receive Complaints: The Committee is directed by section 6(b) of Public Law 93-191 to receive and dispose of complaints that a violation of the use of the mailing frank has occurred or is about to occur by a Member or officer of the Senate or by a surviving spouse of a Member. All such complaints will be processed in accordance with the provisions of these Rules, except as provided in paragraph (b).

(b) Disposition of Complaints:

(1) The Committee may dispose of any such complaint by requiring restitution of the cost of the mailing if it finds that the franking violation was the result of a mistake.

(2) Any complaint disposed of by restitution that is made after the Committee has formally commenced an initial review or investigation, must be summarized, together with the disposition, in a notice promptly transmitted for publication in the CONGRESSIONAL RECORD.

(3) If a complaint is disposed of by restitution, the complainant, if any, shall be notified of the disposition in writing.

(c) Advisory Opinions and Interpretative Rulings: Requests for advisory opinions or interpretative rulings involving franking questions shall be processed in accordance with Rules 11 and 12.

Rule 14: Procedures for waivers

(a) Authority for Waivers: The Committee is authorized to grant a waiver under the following provisions of the Standing Rules of the Senate:

(1) Section 101(h) of the Ethics in Government Act of 1978, as amended (Rule XXXIV), relating to the filing of financial disclosure reports by individuals who are expected to perform or who have performed the duties of their offices or positions for less than one hundred and thirty days in a calendar year;

(2) Section 102(a)(2)(D) of the Ethics in Government Act, as amended (Rule XXXIV), relating to the reporting of gifts;

(3) Paragraph 1 of Rule XXXV relating to acceptance of gifts; or

(4) Paragraph 5 of Rule XLI relating to applicability of any of the provisions of the Code of Official Conduct to an employee of the Senate hired on a per diem basis.

(b) Requests for Waivers: A request for a waiver under paragraph (a) must be directed to the Chairman or Vice Chairman in writing and must specify the nature of the waiver being sought and explain in detail the facts alleged to justify a waiver. In the case of a request submitted by an employee, the views of his or her supervisor (as determined under paragraph 11 of Rule XXXVII of the Standing Rules of the Senate) should be included with the waiver request.

(c) Ruling: The Committee shall rule on a waiver request by recorded vote, with a majority of those voting affirming the decision.

(d) Availability of Waiver Determinations: A brief description of any waiver granted by the Committee, with appropriate deletions to ensure confidentiality, shall be made available for review upon request in the

Committee office. Waivers granted by the Committee pursuant to the Ethics in Government Act of 1978, as amended, may only be granted pursuant to a publicly available request as required by the Act.

Rules 15: Definition of "officer or employee"

(a) As used in the applicable resolutions and in these rules and procedures, the term "officer or employee of the Senate" means:

(1) An elected officer of the Senate who is not a Member of the Senate;

(2) An employee of the Senate, any committee or subcommittee of the Senate, or any Member of the Senate;

(3) The Legislative Counsel of the Senate or any employee of his office;

(4) An Official Reporter of Debates of the Senate and any person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties;

(5) A member of the Capitol Police force whose compensation is disbursed by the Secretary of the Senate;

(6) An employee of the Vice President, if such employee's compensation is disbursed by the Secretary of the Senate;

(7) An employee of a joint committee of the Congress whose compensation is disbursed by the Secretary of the Senate;

(8) An officer or employee of any department or agency of the Federal Government whose services are being utilized on a full-time and continuing basis by a Member, officer, employee, or committee of the Senate in accordance with Rule XLI(3) of the Standing Rules of the Senate; and

(9) Any other individual whose full-time services are utilized for more than ninety days in a calendar year by a Member, officer, employee, or committee of the Senate in the conduct of official duties in accordance with Rule XLI(4) of the Standing Rules of the Senate.

Rule 16: Committee staff

(a) Committee Policy:

(1) The staff is to be assembled and retained as a permanent, professional, nonpartisan staff.

(2) Each member of the staff shall be professional and demonstrably qualified for the position for which he or she is hired.

(3) The staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner.

(4) No member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(5) No member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the Committee without specific advance permission from the Chairman and Vice Chairman.

(6) No member of the staff may make public, without Committee approval, any Committee Sensitive or classified information, documents, or other material obtained during the course of his or her employment with the Committee.

(b) Appointment of Staff:

(1) The appointment of all staff members shall be approved by the Chairman and Vice Chairman, acting jointly.

(2) The Committee may determine by majority vote that it is necessary to retain staff members, including a staff recommended by a special counsel, for the purpose of a particular initial review, investigation, or other proceeding. Such staff shall be retained only for the duration of that particular undertaking.

(3) The Committee is authorized to retain and compensate counsel not employed by the Senate (or by any department or agency of the Executive Branch of the Government) whenever the Committee determines that the retention of outside counsel if necessary or appropriate for any action regarding any complaint or allegation, initial review, investigation, or other proceeding, which in the determination of the Committee, is more appropriately conducted by counsel not employed by the Government of the United States as a regular employee. The Committee shall retain and compensate outside counsel to conduct any investigation undertaken after an initial review of a sworn complaint, unless the Committee determines that the use of outside counsel is not appropriate in the particular case.

(c) Dismissal of Staff: A staff member may not be removed for partisan, political reasons, or merely as a consequence of the rotation of the Committee membership. The Chairman and Vice Chairman, acting jointly, shall approve the dismissal of any staff member.

(d) Staff Works for Committee as Whole: All staff employed by the Committee or housed in Committee offices shall work for the Committee as a whole, under the general direction of the Chairman and Vice Chairman, and the immediate direction of the staff director or outside counsel.

(e) Notice of Summons to Testify: Each member of the Committee staff shall immediately notify the Committee in the event that he or she is called upon by a properly constituted authority to testify or provide confidential information obtained as a result of and during his or her employment with the Committee.

Rule 17: Changes in supplementary procedural rules

(a) Adoption of Changes in Supplementary Rules: The Rules of the Committee, other than rules established by statute, or by the Standing Rules and Standing Orders of the Senate, may be modified, amended, or suspended at any time, pursuant to a majority vote of the entire membership taken at a meeting called with due notice when prior written notice of the proposed change has been provided each member of the Committee.

(b) Publication: Any amendments adopted to the Rules of the Committee shall be published in the Congressional Record not later than thirty days after adoption.

PART III—SUBJECT MATTER JURISDICTION

Following are sources of the subject matter jurisdiction of the Select Committee:

(a) The Senate Code of Official Conduct approved by the Senate in Title I of S. Res. 110, 95th Congress, April 1, 1977, and stated in Rules 34 through 42 of the Standing Rules of the Senate;

(b) Senate Resolution 338, 88th Congress, as amended, which states, among others, the duties to receive complaints and investigate allegations of improper conduct which may reflect on the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of rules and regulations of the Senate; recommend disciplinary action; and recommended additional Senate Rules or regulations to insure proper standards of conduct;

(c) Residual portions of Standing Rules 41, 42, 43 and 44 of the Senate as they existed on the day prior to the amendments made by Title I of S. Res. 110;

(d) Public Law 93-191 relating to the use of the mail franking privilege by Senators, officers of the Senate; and surviving spouses of Senators;

(e) Senate Resolution 400, 94th Congress, Section 8, relating to unauthorized disclosure of classified intelligence information in the possession of the Select Committee on Intelligence.

(f) Public Law 95-105, Section 515, relating to the receipt and disposition of foreign gifts and decorations received by Senate members, officers and employees and their spouses or dependents;

(g) Preamble to Senate Resolution 266, 90th Congress, 2d Session, March 22, 1968; and

(h) The Code of Ethics for Government Service, H. Con. Res. 175, 85th Congress, 2d Session, July 11, 1958 (72 Stat. B12).

Except that S. Res. 338, as amended by Section 202 of S. Res. 110 (April 2, 1977), provides:

"(g) Notwithstanding any other provision of this section, no initial review or investigation shall be made of any alleged violation of any law, the Senate Code of Official Conduct, rule or regulation which was not in effect at the time the alleged violation occurred. No provision of the Senate Code of Official Conduct shall apply to or require disclosure of any act, relationship, or transaction which occurred prior to the effective date of the applicable provision of the Code. The Select Committee may conduct an initial review or investigation of any alleged violation of a rule or law which was in effect prior to the enactment of the Senate Code of Official Conduct if the alleged violation occurred while such rule or law was in effect the violation was not a matter resolved on the merits by the predecessor Select Committee.

APPENDIX A—OPEN AND CLOSED MEETINGS

Paragraphs 7 (b) to (d) of Rule XXVI of the Standing Rules of the Senate read as follows:

(b) Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by a committee or a subcommittee thereof on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in classes (1) through (6) would require the meeting to be closed followed immediately by a record vote in open session by a majority of the members of the committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

(c) Whenever any hearing conducted by any such committee or subcommittee is open to the public, that hearing may be broadcast by radio or television, or both, under such rules as the committee or subcommittee may adopt.

(d) Whenever disorder arises during a committee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the Chairman to enforce order on his own initiative and without any point of order being made by a Senator. When the Chair finds it necessary to maintain order, he shall have the power to clear the room, and the committee may act in closed session for so long as there is doubt of the assurance of order.

APPENDIX B—"SUPERVISORS" DEFINED

Paragraph 11 of Rule XXXVII of the Standing Rules of the Senate reads as follows:

For purposes of this rule—

(a) a Senator or the Vice President is the supervisor of his administrative, clerical, or other assistants;

(b) a Senator who is the chairman of the committee is the supervisor of the professional, clerical, or other assistants to the committee except that minority staff members shall be under the supervision of the ranking minority Senator on the committee;

(c) a Senator who is a chairman of the subcommittee which has its own staff and financial authorization is the supervisor of the professional, clerical, or other assistants to the subcommittee except that minority staff members shall be under the supervision of the ranking minority Senator on the subcommittee;

(d) the President pro tempore is the supervisor of the Secretary of the Senate, Sergeant at Arms and Doorkeeper, the Chaplain, and Legislative Counsel, and the employees of the Office of the Legislative Counsel;

(e) the Secretary of the Senate is the supervisor of the employees of his office;

(f) the Sergeant at Arms and Doorkeeper is the supervisor of the employees of his office;

(g) the Majority Whips are the supervisors of the research, clerical, or other assistants assigned to their respective offices;

(h) the Majority Leader is the supervisor of the Secretary for the Majority and the Secretary for the Majority is the supervisor of the employees of his office; and

(i) the Minority Leader is the supervisor of the Secretary for the Minority and the Secretary for the Minority is the supervisor of the employees of his office.●

ARCHBISHOP IAKOVOS

● Mr. D'AMATO. Mr. President, April 1 marks a signifcant date for those of the Greek Orthodox faith, and for people of all faiths as well. On this day, we will commemorate the 30th anniversary of the enthronement of Archbishop Iakovos as primate of the Greek Orthodox Archdiocese of North and South America.

While the archbishop is obviously a spiritual leader of millions of Greek Orthodox, the entire world has benefited from his work. Internationally recognized as an advocate for human and civil rights, justice and freedom, Archbishop Iakovos and his work have made the world a better place.

Baptized as Demetrios Coucouzis, Archbishop Iakovos was born on the Island of Imbros, Turkey. Prior to his ordination in 1934, he earned degrees from Ecumenical Patriarchate's Theological School and Harvard University-School of Divinity. He had served the Greek Orthodox faithful throughout the United States for years when elected Bishop of Melita in 1954. On February 14, 1959, he was elected archbishop of North and South America by the Holy Synod of the Ecumenical Patriarchate of Constantinople. On April 1, he was enthroned as archbishop in the Americas, and soon afterward named primate.

In addition to his duties as primate, Archbishop Iakovos is Exarch of the Ecumenical Patriarchate of Constantinople; president, board of education, Greek Orthodox Archdiocese of North and South America; founder and chairman, Standing Conference of Canonical Orthodox Bishops in the Americas [SCOBA]; chairman, SCOBA "Ecumenical Commission for Dialogue" with Roman Catholic Bishops' Committee for Ecumenical and Interreligious Affairs; honorary board, Advisory Council on Religious Rights in Eastern Europe and the Soviet Union—United States Senate Foreign Relations Committee; among other influential positions.

His ecumenical activities and achievements are also numerous. From 1955 to 1959 he was a personal representative of the ecumenical patriarch of Constantinople at the World Council of Churches in Geneva, Switzerland. Archbishop Iakovos has worked hard to bring the Greek Orthodox and Roman Catholic Churches closer together. As the first Greek Orthodox archbishop to visit the Pope in 350 years, he was received in private audience by Pope John XXIII at the Vatican in 1959. He accompanied Patriarch Athenagoras to Jersualem for the historic meeting with Pope Paul VI in 1965. Pope Paul VI received Archbishop Iakovos in private audience twice—once in 1965, and also in 1967.

He has tirelessly worked to improve relations and communications with other religions, as well. He initiated and established dialogs between the Greek Orthodox Church and Judaism, Anglicans, Lutherans, Southern Baptists and black church leaders. The archbishop has worked for human rights for all people. As an outspoken religious leader, he strongly supported the American civil rights movement, and joined the late Dr. Martin Luther King, Jr., to march in Selma, AL. In 1974 he initiated a campaign to assist Greek Cypriot refugees following the invasion of Cyprus by Turkish Armed Forces. Speaking out for those who cannot speak for themselves, he has fought human rights violators, religious persecutors, and oppressive governments throughout the world.

He is a world traveler, speaks four languages, authored "Faith for a Lifetime: A Spiritual Journey" and numerous articles. Various organizations have recognized Archbishop Iakovos and his achievements—he has received over 20 awards, medals, and honors, and over 35 honorary degrees.

For over 50 years, Archbishop Iakovos has been a world-renown and beloved spiritual leader. Tirelessly, he labors to help bring freedom and civil liberty to those who suffer in tyranny. He has brought the grace of the Eastern Orthodox Church to millions of faithful in the Americas and beyond. I salute Archbishop Iakovos on his courage, dedication, and lifetime of accomplishments. Mr. President, I am sure all of my colleagues join me in congratulating him on the 30th anniversary of his enthronement. I wish Archbishop Iakovos many more years of success.●

AMERICA'S RELATIONSHIP WITH JAPAN

● Mr. DASCHLE. Mr. President, "In many respects, we hold in our hands jointly the future of the Pacific Basin—which could well determine over a period of time, the future of the rest of the world," former Ambassador to Japan, Mike Mansfield, reflecting on the changing and challenging relationship of two powerful countries—the United States and Japan.

Mr. President, I would like to take a moment to address a subject which has increasingly been on the public mind in this country—namely, the economic and military obligations of the evolving relationship between the United States and Japan.

As policymakers struggle with the vexing imperatives of the budget and trade deficits, many citizens in my State of South Dakota and across the country pursue their personal aspirations on a treadmill of illusion as their purchasing power declines and economic uncertainty looms ahead. In such times, some measure of diversion can often be found in the specter of

external forces which present convenient targets on which to vent frustration and anger.

I understand the concern of those Americans who fear the impact of the growing economic reach of Japan and other Pacific rim countries. I also agree that our allies around the globe should both assume a greater share of the defense burden of the free world, and that all countries should seriously evaluate the short-term cost of their trade policies against the longer-term benefits of fair trade. At the same time, however, U.S. policymakers must approach these complex issues with a clear and objective mind, paying attention to both the immediate and longer-term implications of our policy toward our allies.

Consider the case of Japan and her impact on the United States economy.

Japan is undeniably a formidable economic power. Her economic strength is reflected in the country's 10 percent share of the world's gross national product [GNP] and the fact that she is the world's number one creditor country. Moreover, Japan's GNP is estimated to be 365 trillion yen in 1988—$2.84 trillion American. Many American observers interpret those figures as a danger to the American economy. We do have cause for concern about certain Japanese trade policies. We should aggressively pursue resolution of our grievances in bilateral and multilateral negotiations. But to let our legitimate concerns blind us to the potential for clear benefits to the United States from her growing relationship with Japan would be shortsighted.

For example, the United States, embattled by fiscal exigencies at home, is hampered in its efforts to provide economic assistance to Third World countries. Japan is in a position to assume a greater role in international efforts to meet important global developmental objectives.

We should not lose sight of the fact that the level of cooperation between the United States and Japan has never been greater. It is in our mutual interest to continue working together, for, together, our nations account for nearly half of the global GNP.

At a farewell address last year, former Ambassador to Japan, Mike Mansfield, offered the official American perspective on how United States-Japan relations stood as President-elect Bush prepared to take office. Ambassador Mansfield said that the Reagan administration left office with a strong sense of satisfaction that United States-Japan relations are stronger and more vital than they have ever been. He noted resolution of many of our most important trade issues and cited progress in bringing financial and investment patterns more into line with the times. Much still remains to be done, but the foundation has been laid.

By all accounts, the Bush administration is attempting to build on this foundation. The President's recent trip to Japan for Emperor Hirohito's funeral is an indication of the importance of this relationship to the new administration. While in Japan, Prime Minister Takeshita and President Bush reaffirmed that Japan and the United States should work to promote policy coordination for world peace and prosperity.

Japan's spectacular economic success is well-known, but its progress with regard to burden-sharing—both military and economic—has often been overlooked by critics who demand more effort by the Japanese Government. In fairness, this progress should be noted when assessing the United States-Japanese relationship.

Japan has done more in recent years to improve its own defense capabilities than any other U.S. ally and has set impressive goals for the future. Japan has almost 60 destroyers in its self-defense force stationed in the Northwest Pacific—the United States has 25 destroyers in the Pacific at present—and by 1990, Japan hopes to have 100 antisubmarine aircraft deployed—the United States has 23 antisubmarine aircraft deployed in the Pacific.

Japan currently spends more on defense than our traditional allies in Europe. Japan's military budget has risen at an average of 5 percent a year for the last 8 years. The New York Times recently reported that this year, when Pentagon spending is expected to be frozen, Japan's military outlays will rise 5.9 percent, to $31.4 billion.

Japan pays almost 40 percent of the costs associated with the stationing of United States Armed Forces in Japan. The New York Times reported that Japan pays about $1.3 billion of the more than $6 billion it costs for housing, feeding and training American forces in Japan: "including other payments, like rent subsidies on some installations, the Japanese contribute about $2.8 billion, a figure far higher than the support NATO countries offer American forces." And, Japanese officials have expressed a willingness to be more actively involved in sharing these costs.

Furthermore, Japan contributes the world's largest amount of foreign assistance to developing countries. In the past, criticism has been focused on Japan's choices for the recipients of this aid. Today, Japan's assistance focuses less on Asian countries and conditions less aid on specific trade relationships. Japan's official development assistance [ODA] budget for fiscal year 1989 is up by 7.8 percent, the highest increase rate among all Japanese budget items. Moreover, the Government of Japan plans to increase the aggregate amount of ODA during 1988–92 to more than $50 billion, thus more than doubling that of ODA disbursed in the past 5 years.

In just over 40 years, Japan has grown to become America's major economic partner. What nation can better assist those countries that are still growing and developing?

While it is fair to evaluate the actions of our allies with a critical eye, it is also important to acknowledge that while the United States deals with its huge budget and trade deficits and decreases its foreign aid expenditures, Japan is making a serious and admirable effort to commit much-needed resources to international development assistance. Contrary to popular assumptions, there is a surprising level of mutuality to the United States-Japan relationship.

The United States buys 36.5 percent of Japan's exports, and Japan is best customer for United States agricultural products. Japan's imports from the United States increased by more than $10 billion in 1988, resulting in a 9-percent decrease in Japan's trade surplus with the United States. And Japan is projecting an increase in global imports to $202 billion in fiscal year 1989. The imbalance is still significant, but the ratio of surplus to GNP has gone down steadily since 1986. We should work with Japanese leaders to bring it down further.

Our relationship with Japan as a comparable economic power is new. If we understand that relationship and foster a spirit of mutual respect and cooperation, we can develop an attitude over time that will not only benefit our two countries, but the world. It is important to promote our national interest as it has evolved in the 1980's and will evolve in the 1990's, not as it was defined in the 1950's and 1960's.

As we must acknowledge Japan's increased presence in the world market, so must Japan accept the responsibility of her role. The world is open to Japan, and Japan should make herself open to the world. Japan's increased economic strength has taken her from a developing country to an industrial power. It has opened doors into the Third World, creating the potential for many of those countries to learn from Japan's post-war experience.

The newly opened door between the United States and Japan must swing both ways. We should recognize Japan's advancement and maturity. However, with maturity comes responsibility—not just for the assumption of more economic and military burden-sharing, but also for an enlightened role in global leadership.

We should be willing to discuss with Japanese leaders the whole range of issues affecting our countries—from our concerns about their trade policies, to proposals relating to the Inter-

national Monetary Fund, to strategies that will meet global security needs. As two world powers, the United States and Japan should try to define their fundamental interests within an international as well as national framework.

Mr. President, the American relationship with Japan is strong and growing. One can hope that wise leadership, and a clear vision, in the United States and Japan will build on this foundation for the benefit of both countries and the world.●

HISTORIC PRESERVATION IN SILVER CITY, NM

● Mr. DOMENICI. Mr. President, New Mexico's cultural heritage has long been recognized as a great strength to our States, as well as to the Nation. New Mexico, historically, has been a crossroads of many varying cultures, each of which has left distinct impressions on the people and the land.

The March/April edition of "Historic Preservation" contains a fascinating article to the efforts to increase the awareness of the exciting history of Silver City, NM. With the assistance of the National Trust's Main Street Program, and enthusiastic support of many residents, Silver City is restoring its downtown area to the splendor of the era when silver was mined in the hills outside town.

Fortunately early planners enforced strict building codes, ones that enabled Silver City to avoid the decay that has, sadly afflicted many western boom towns.

The article does not mention that Silver City is also the hometown of my colleague from New Mexico, Senator BINGAMAN. I know that he is delighted with the efforts of the citizens of Silver City, particularly in light of the recent hardships many experienced due to the depressed copper industry, which provides much of the employment in that area of New Mexico.

Mr. President, I ask that a copy of the article in Historic Preservation be included in the RECORD following my remarks. I hope that in recognizing the success of the programs in Silver City, we will encourage other similar programs in other cities of the West.

The article follows:

THE DREAMERS OF SILVER CITY—HOW A NEW MEXICO MINING TOWN IS RECAPTURING ITS HERITAGE—AND ITS VITALITY

(By Lawrence W. Cheek)

Even in their advancing age, the mining towns in the mountains of the West are steeped in dreams. The old dreams are frozen in the architecture—visions of sudden, extravagant wealth; fantasies of instant civilization imposed on a rude wilderness. The new ones are born in the ruins of the old, and often inspired by them.

Mark Wilson is one of the dreamers. He studied architecture in Seattle, then nine years ago came to Silver City, N.M., to try life as a painter. "Every artist's prime concern is low rent, so Silver City is ideal," Wilson says. He rents a studio in the shell of a Mission Revival-style theater for $35 a month.

Julie Good is another dreamer. Two years ago she paid $24,000 for an antique Conoco station on downtown's edge, dressed it in scandalous pinks, mauves and maroons and reopened it as the Last Ditch Café. "For me, this building was love at first sight," she explains.

I'm just visiting Silver City, and unlike Wilson and Good, I'm not yet bewitched by it. I'm looking at buildings with Sandy Solenberger, manager of the National Trust's Main Street revitalization program here, and my mood is fluttering between ebullience and annoyance. There's a lot of wonderful architecture in Silver City, along with a lot of dumb, thoughtless renovations from the 1960s and '70s.

Yet I dream a little, too. We stop at the Texas-New Mexico Power Company building, a diminutive jewel with windows of Beaux-Arts aspirations and terra-cotta curlicues dancing on its parapet. It's in decent condition, but I fantasize perfection. I rip out the aluminum casements, replace that strange and garish steel awning over the entrance and burn the sign that juts perpendicularly from the large arched window. That's all the exterior preservation it needs.

And why not, Solenberger says. "The neat thing abut working here is that often $2,000 or $3,000 can make a big difference on the facade of a building. So many of the problems here are manageable."

Silver City was founded 119 years ago in a frenzy typical of mining towns. John Bullard, a farmer and prospector, was hunting for gold when he stumbled across several hills rich instead with silver ore. Word spread rapidly, and miners thronged to the area. In less than a year a newspaper reported that Silver City had grown from a cluster of three huts to "a town of over eighty nice shingle-roofed, eastern-looking buildings * * * full of live, energetic, and intelligent men who have come there to stay." This report sounds tinted with hype, but it wasn't.

"It was a different kind of community from the beginning," says Susan Berry, director of the Silver City Museum and the preeminent local historian. "It was more family-oriented than most mining communities. It had the first independent school district in New Mexico and the first brick school. It attracted people of strong character. The women here were extraordinarily spunky; they couldn't vote, yet they lobbied the territorial legislature for funds to build the hospital and normal school."

In 1880 the town enacted an ordinance that further insured its stability: Every new building would be of masonry. This law spared the city from the fires that routinely ravaged other mining towns. And over time it also created a texture that indeed implied a place of "intelligent men who have come to stay." Other mining towns—Bisbee, Ariz., for example—today appear funky and engaging raffish, like adolescents who never grew up.

Berry says the quick fortunes all were made before the 1890s, when the bottom fell out of the silver-mining economy. Ever since, the community has persevered through cyclic booms and busts. For a decade or two in the early 1900s it was a mecca for tuberculosis patients. The normal school grew into Western New Mexico University, which now has 1,600 students. Nevertheless, the town gradually drifted into an economic snooze that still is apparent today.

Beginning in the 1930s many of the mansions were remodeled, not elegantly, into apartment houses. In the 1950s downtown began to skid toward dereliction. "By the beginning of the 1980s there hadn't been any money invested in downtown in 20 or 30 years," says Solenberger. "It looked incredibly shabby—there were stores where you couldn't decide whether they were in business or not, the window displays looked so poor." It took the convergence of several forces to begin turning things around.

One, says Berry, was the demolition of some treasured buildings in the 1970s, most notably the 1915 Santa Fe depot. That prompted the Silver City Museum to adopt preservation as a mission. Volunteers assembled slide programs and staged preservation conferences, and in 1979 they undertook a historic-buildings survey that landed three districts on the National Register. In 1984 a family of lawyers did a good exterior restoration of the Bell Block, a downtown office building with an exuberant cast-iron Italianate facade a full block long. That helped trigger other restorations. Then in 1985 Silver City entered the National Trust's Main Street program.

Part of Solenberger's Main Street efforts are in the form of festivals and street fairs designed to get Silver Cityans once again equating downtown with good times. Another is cajoling building owners to part with some loose change and spiff things up. In this she has had to be grateful for small improvements—a Victorian cornice uncovered and painted or a regiment of cast-iron Corinthian pilasters repaired. This is the not-so-neat thing about preservation in Silver City: The rents are so low (typically $140 to $300 for a downtown store) that they won't justify complete and meticulous renovations.

"If the entire building is worth only $20,000 to $30,000, the owner can't spend $20,000 on the facade," says Solenberger. Not, at least, unless they're willing to dream.

It's just after dawn on a clear, cold winter morning, and I'm climbing the spine of one of the low mountains that cradle Silver City. These environs are lovely. The gray-green mountains are dotted with rotund juniper and scrub oak as well as cholla cacti and daggerbladed yucca; it's a schizy biological zone that can't decide whether it's forest or desert. Five or six miles in any direction but south are the towering evergreens of Gila National Forest, which boasts the first designated wilderness (1924) in the United States. Forty-five miles north are the Gila Cliff Dwellings, abandoned by the Mogollon in the 14th century.

I reach the summit and study the city below. Its cottonwood trees, bare for the winter, wear coats of frost that shimmer in the early light—like silver.

I spend the day walking the historic districts, checking out the 42 buildings covered in three walking-tour brochures available at City Hall, as well as dozens more detailed in *Built to Last*, a thorough architectural history co-authored by Susan Berry. It proves rewarding. Silver City is not a cavalcade of spectacles like, say, Galveston, Tex. But one of the joys of studying architecture is that you learn to read the cultural history of a community even in its most modest buildings.

For example, in La Capilla, an old Hispanic neighborhood, the Julian Esquibel house (1902-11) is an adobe cottage in the very simple Mexican vernacular style—adorned only with an intricate, spindly wooden ve-

randa. I like to think Esquibel was declaring his aspiration to share in the wealth being generated across town, for in Mexican tradition a homeowner would not make such an extravagant gesture on the outside of his house.

Across town, where extravagance is equivalent to good taste, I detect a 10-to-20-year lag between the peaks of certain styles elsewhere, such as the Second Empire, and their appearance in Silver City. This too makes sense: Pioneer miners and entrepreneurs came to this remote town, worked ferociously for 10 or 20 years to make their money, then built what they remembered.

I inspect, a little sadly, the Neoclassical 1923 bank building that now serves as City Hall. It was designed by Henry Trost of El Paso, arguably the Southwest's best architect between 1900 and the Depression. It's ornamented in wonderfully busy terracotta tracery bursting with seashells, fleurs-de-lis and coiled garlands. It's in good condition, but Trost's artistry has been distorted by a bureaucrat's pre-Main Street vision of adaptive use—once again, aluminum casements and interior partitions of rumpus-room paneling.

But this damage isn't irreversible, and I think of something interesting that Susan Berry told me earlier: "The visitors who most appreciate Silver City are the ones who can see things in the past and future tenses." Especially the future. Silver Cityans expect mining to continue to decline, but what once was just a trickle of tourists, artists and retirees is increasing. That translates into more incentives and more resources for restoration. Says Berry, "Silver City is still attracting people of strong character."

Brandon Beard, an old-house buff and former mayor, has a more dramatic dream. "I see Silver City," he says, "as a future Santa Fe."

(Lawrence W. Cheek is a freelance writer and photographer from Tucson, Ariz., who specializes in architecture. He is an honorary member of the American Institute of Architects.)●

A NOTABLE 100TH ANNIVERSARY

● Mr. PELL. Mr. President, this year marks the 100th anniversary of the founding of a remarkable retail merchandise business that has become a central part of the history and traditions of the city of Woonsocket, RI.

It was 100 years ago that James M. McCarthy opened the McCarthy Dry Goods Co. in a 40-by-60-foot salesroom on Main Street in Woonsocket.

Through the past 100 years, McCarthy Dry Goods has not only survived, but thrived. Through wars, recessions, and the Great Depression; through good times and bad; through periods of takeovers and mergers, and through revolutionary changes in the marketing and retailing industries, McCarthy Dry Goods has continued to serve the people of the Woonsocket area.

Remarkably, in a time when retailing is dominated by large chains, McCarthy Dry Goods remains an independent, family owned store. The business today is headed by William L. McCarthy, grandson of the founder, who serves as chairman of the board; and by James L. Kane, Jr., president and treasurer, and Tessa L. Jannoli, vice president.

Today, McCarthy Dry Goods serves its customers from a large modern facility at Walnut Plaza in Woonsocket, having moved there from its long-time home in a five-story building at Main and Court Streets in Woonsocket.

I am pleased to extend to McCarthy Dry Goods, to the McCarthy family, and to company's employees my hearty congratulations on their 100th anniversary of the founding of the company, and my best wishes for the future.●

TOWN OF IRONDEQUOIT

● Mr. D'AMATO. Mr. President, I offer my congratulations to the town of Irondequoit, NY on the occasion of its sesquicentennial celebration.

The city of Rochester almost "lost" the suburb of Irondequoit several times. In the early 1800's, the settlers of the future town built several bridges over the Genesee River to Rochester, but all of these bridges subsequently collapsed. Finally, the Driving Park Bridge opened in 1890, and remains standing today.

Irondequoit has become famous throughout the world for its melons and peaches. New York's Waldorf-Astoria, London's Savoy, and even wealthy homes in the Swiss Alps have all served the Irondequoit melon as a delicacy.

Irondequoit Bay remains central to Rochester area boating activity. Numerous marianas and clubs are found here, and offer races and other water sports. In fact, the Newport Yacht Club boasts the second largest Lightning sailboat fleet in the United States.

Though over the past 150 years Irondequoit has grown in population and economic development, its sense of community pride has remained strong. I salute the residents of Irondequoit on their sesquicentennial celebration. I am sure my colleagues will join me in sending our warmest wishes to them on this occasion, and best of luck for another successful 150 years.●

NATIONAL WEEK OF RECOGNITION AND REMEMBRANCE FOR THOSE WHO SERVED IN THE KOREAN WAR

● Mr. GLENN. Mr. President, I am pleased to join my distinguished colleague from Colorado, Mr. ARMSTRONG, in again sponsoring legislation to designate a national week of recognition and remembrance for those who served in the Korean War. That war has often been referred to as America's "forgotten war," however, I can confidently predict that the millions of Americans who served there will never forget it. It was a tough little war and I have nothing but the most profound admiration for those with whom I served in Korea. I believe that their sacrifices, their bravery deserve to be remembered with gratitude by all who cherish freedom. Hence I am proud to be associated with the effort to establish a Korean War Memorial down on the Mall in our Nation's Capital and with this resolution to set aside a week to recognize and remember the contributions of all who served the cause of freedom in the Korean war. I hope that all my colleagues will join the Senator from Colorado and myself in honoring our Korean war veterans by cosponsoring this resolution.●

GREEK INDEPENDENCE DAY

● Mr. HEINZ. Mr. President, we Americans enjoy strong ethnic and cultural ties to many countries of Europe. But our ties to one country, Greece, go beyond mere blood kinship. Our form of government, the very word for it, "democracy," we owe to Greek civilization.

March 25, 1989, will mark the 168th anniversary of Greek independence, when Greece threw off the Ottoman yoke. We owe much to Greek political history, but in this case we were able to contribute as well, for the American Revolution is one of the events that inspired the Greek people in their quest for independence early in the last century.

Greek independence was not just an issue of the 19th century. After World War II, Greece was the first West European battleground in the cold war. The Greek conflict against Communist rebels gave birth to the Truman doctrine, and paved the way to the successful American strategy of protecting Western Europe from Soviet ambitions and allowing it to recover and rebuild.

Mr. President, the deities of our political culture are the Greeks who pioneered the concepts of democracy. Greek Americans can be very proud of their heritage and its connection to our way of life, and all Americans can take satisfaction in the way our two cultures have inspired and helped each other.●

GREEK INDEPENDENCE DAY—A NATIONAL DAY OF CELEBRATION OF GREEK AND AMERICAN DEMOCRACY

● Mr. ROTH. Mr. President, sad to say, the vast majority of men and women who come into this world are not destined to live under a democratic system of government. According to the widely respected institution, Freedom House, only 36.1 percent of the world's population live in freedom. This is the largest proportion in 15

years of recordkeeping, but before we celebrate, we should remember that, according to the same institution, 39.3 percent of the world's population have no measure of freedom and 23.6 percent live under systems classified as only partly free.

Indeed, Mr. President, freedom is a precious commodity and it is with this in mind that we celebrate March 25 as a salute both to Greek and American democracy. All free nations celebrate their original independence in some form, and it is doubly appropriate that we should join in the celebration of Greek Independence Day because not only does this day commemorate the emergency of a modern state, it also honors that nation as the fount of all democracies, as the nation where the concept of democracy first took hold and from whence it spread. And let us not forget that, to date, the democratic political system is the only one which has proven capable of guaranteeing the freedom of the men and women who live under it.

When this Nation first came to chart its political destiny it looked, first and foremost, to the example of ancient Greece. Thomas Jefferson himself acknowledged that all Americans were indebted to the Ancient Greeks, "for the light which led ourselves out of the gothic darkness." Similarly, James Madison and Alexander Hamilton utilized the Federalist Papers to point out American debts to the Greek example, "among the confederacies of antiquity the most considerable was that of the Grecian republics * * * from the best accounts transmitted of this celebrated institution it bore a very instructive analogy to the present confederation of the American states."

This historical tie has stood the test of time and persisted to the present day. As they fought for their own independence, Greek intellectuals translated our own declaration of independence and used it as their own declaration. During the early years of this century, one in every four Greek males left his native country for these shores and during the dark years of World War II, over 600,000 Greeks died fighting for the allied cause. None of these phenomena or sacrifices can, or should, be brushed aside. Rather, they should be publicized and commemorated. Thus, it was with great pleasure that I cosponsored the resolution to designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."●

CERTIFICATION OF MEXICO

● Mr. D'AMATO. Mr. President, I support the resolution to decertify Mexico on the grounds that it is not cooperating fully with the United States and has not taken adequate steps on its own in antinarcotics efforts.

The record speaks for itself. The State Department's 1989 International Narcotics Control Strategy Report is replete with examples of noncooperation. Year after year, we hear testimony from individuals who point to the corruption and narcotics problems in Mexico. Yet, the situation never improves.

One year ago, on March 16, 1988, Customs Commissioner William Von Raab testified before the Senate Caucus on International Narcotics Control on the status of illicit narcotics production and trafficking in Mexico. I believe that a restatement of some of his testimony is necessary. Commissioner Von Raab stated:

With respect to Mexico, that there is corruption among senior-level Mexican law enforcement officials, and corruption is pervasive throughout the law enforcement and military systems. And that a concerted effort to synthesize examples of official corruption would shock the American public.

This corruption has effectively precluded our working with Mexican authorities on narcotics interdiction and has inordinately increased the resources we are forced to commit to the Southwest border. The amount of drug entering the United States through Mexico continues to climb steadily. And Customs cannot fulfill its obligation to the American public of preventing drugs from entering the country as long as the present corrupt situation exists.

The law enforcement information available to us suggested that at best Mexico is making a token effort to address the issue of narcotics trafficking within its borders * * * our own investigations as well as extensive contacts with State and local law enforcement officials indicate that powerful Mexican officials are providing safe havens to drug trafficking, making it possible for narcotics to be smuggled into and out of Mexico with impunity.

When we have approached the Mexican Government about cooperative efforts, such as overflight, the response has been negative. In addition, Mexican officials were so unresponsive to our request for narcotic-related financial information that out of frustration we have ceased working with the Mexicans. It further stated that the problems in Mexico were so severe and ingrained that strong action by the U.S. Government was essential.

Mr. President, it is now exactly 1 year after Commissioner Von Raab testified. There is no evidence to show that the situation has significantly changed.

The State Department's 1989 International Narcotics Control Strategy Report lists many examples of Mexican failures to cooperate fully. The following statements are from pages 107 to 111 of that report, and I quote:

Mexico is a major producer of opium poppy and cannabis and continues to be a primary source of heroin and marijuana entering the United States.

Additionally, traffickers increasingly use Mexico as a transit country for shipping cocaine from South America to the United States.

Corruption continues to undermine effective drug law enforcement. The emergence in 1988 of an increasing number of Colombian traffickers within Mexico, involved primarily with facilitating the transhipment of cocaine to the United States, has contributed to an already complex situation. There is little information to measure the degree to which the government addressed high-level drug-related corruption during 1988.

Mexican financial institutions, which are governed by strict financial privacy laws, are not viewed as major conduits for large scale money laundering, but have been used to facilitate the laundering of narcotics proceeds.

Mexican commercial banks, all but two of which are nationalized do not provide information to United States officials on their activities. * * * For the most part, narcotics-generated funds are invested in real estate and attractive commercial ventures in Mexico or in the United States and other countries. Because Mexican currency exchange houses and commercial business operations are less stringently regulated than commercial banks and they deal in currency without conversion into pesos, drug traffickers are expected to increase their heretofore limited use of them to launder money.

Verdicts from their [Rafael Caro Quintero and Ernesto Fonseca Carrillo] trial in Guadalajara for the 1985 kidnapping and murder of DEA special agent Enrique Camarena are expected in 1989. The court case related to the 1986 detention of DEA special agent Victor Cortez by Jalisco State Police continues, and should also be resolved in 1989.

DEA participation in Operation Vanguard, the bilateral reconnaissance and eradication verification effort, was suspended by DEA headquarters in April, pending a reevaluation of the program. Future United States participation in the Mexican verification program is currently being reviewed in Washington.

According to the Mexican military, it manually eradicated 6,781 hectares (84,370 fields) of opium poppy and 8,785 hectares (74,216 fields) of cannabis in 1988. U.S. officials are unable to verify these claims which, when combined with reported PGR eradication totals, equal or exceed U.S. estimates of total cultivation. The Mexican military does not permit civilian (Embassy or PGR) scrutiny of its official activities.

Nevertheless, the United States Government continues to urge the Government of Mexico to undertake counter narcotics activities with Operation Alliance on our mutual border * * * the government, for reasons of sovereignty, has declined to grant open-ended or unrestricted rights to the U.S. Customs Service to cross the Mexican border in pursuit of suspect aircraft. Various alternatives have been proposed by both sides without resolution.

These measures probably curbed some abuses, especially compared with the excesses during the two previous administrations, but it is unclear whether the level of narcotics-related corruption has diminished, either in absolute terms or in its impact on programs. With regard to enforcement of laws which deal with corruption * * * the extent to which the government may have addressed high-level corruption in 1988 is unclear.

Statutes against drug trafficking are sound, but their enforcement is less satisfactory.

Some traffickers have taught farmers more advanced growing techniques, such as

using irrigation and improved seeds and fertilizers to increase and enhance yields. Nevertheless, in many rural areas the cultivation of opium poppy and marijuana remains unchanged over the past 40 years.

Opium poppy, traditionally grown only in the tristate region of Sinaloa, Chihuahua, and Durango, is now also found extensively in the states of Michoacan, Nayarit, Guerrero, Oaxaca, and Chiapas.

Both black tar heroin and the traditional Mexican brown variety are still produced in Mexico. According to drug abuse warning network [DAWN] statistics, the higher purity and lower price black tar herion has resulted in increased hospital emergency admissions, as well as overdose fatalities, in the United States.

Mr. President, so many of the State Department remarks in this 1989 report parallel the remarks from the 1988 International Narcotics Control Strategy Report. What has been accomplished in a year? The trials for the murder of DEA agent Enrique Camarena and detention of DEA agent Victor Cortez still have hot been resolved. Efforts to combat corruption have been minimal. Our law enforcement people cannot effectively work with the Mexican law enforcement establishment.

Yet, the amount of drugs entering the United States through Mexico continues unabated. Mr. President, this is not full cooperation.

The evidence of Mexico's lack of cooperation is clear and massive. We cannot afford to ignore this situation. Inaction signals to the world that we are not truly serious about our commitment to a war on drugs.

I urge my colleagues to support this important resolution. We just cannot turn a blind eye to the undeniable reality of Mexico's failure to give full cooperation.●

RETIREMENT OF LT. COL. ROBERT S. BLUDWORTH

● Mr. WARNER. Mr. President, I want to take this opportunity to commend a good friend of the Senate who is retiring from active duty in the U.S. Army after over 20 years service to our Nation and over 5 years service in the Army's Senate Liaison Office.

Lt. Col. Robert S. (Bo) Bludworth, in addition to his liaison functions, has brought to the Senate a depth of experience and insight from the Department of Defense that has been invaluable.

Bo enlisted in the U.S. Army in 1967, and after completing officer candidate school was commissioned as a 2d lieutenant. He has completed many key assignments during his distinguished military career including service in Vietnam as a helicopter platoon leader, in the United States and Germany as a commander of armor units, in the 25th Infantry Division in Hawaii as division training officer and chief of protocol, and at the University of West Florida as a professor of military science.

Dedicated and hard working, Bo is not one to allow the spotlight to shine on him; however, I know that he has been highly decorated during his career. He is the recipient of the Nation's third highest award for valor, the Silver Star, for gallantry in action, as well as two awards of the Distinguished Flying Cross, the Bronze Star, the Air Medal, the Army Commendation Medal for Valor, and the Combat Infantryman's Badge. During retirement ceremonies on Capitol Hill yesterday, which I know many of my distinguished colleagues attended, Bo received the Legion of Merit—a final tribute to a fine soldier.

As Bo moves to the civilian sector, I would like to express my appreciation to him for his outstanding service and support. I am sure that my distinguished colleagues will join me in wishing Bo, his lovely wife Sheila, and their children James, Stephanie, and Todd the very best in all their future endeavors.●

MORTGAGE INTEREST DEDUCTION

● Mr. RIEGLE. Mr. President, yesterday, I submitted a concurrent resolution, Senate Concurrent Resolution 21, with Senator D'AMATO and others expressing the sense of the Congress that there should be no further restrictions on the Federal tax deduction for mortgage interest.

Today, I would like to call to the attention of colleagues in the Senate an article from the most recent issue of Forbes magazine which examines the future of the mortgage interest deduction. The article states that "chances are slim that lawmakers would repeal the mortgage interest wholesale. More likely the deduction would die by inches." The article concludes by warning its readers to "think twice before you buy your dream house, especially if you are counting on the deduction to help meet the payments and the appreciation to fund your retirement."

Mr. President, I urge my colleagues to take a few moments from their busy schedules to review the Forbes article, and if you agree with its conclusions, I urge you to cosponsor Senate Concurrent Resolution 21.

Mr. President, I ask that the text of the article be printed in the RECORD.

The article follows:

HOUSE-HUNTING? READ THIS FIRST

(By Laura Saunders)

Is the tax deduction for mortgage interest sacred? Should it be?

Even to ask these questions is to risk sounding un-American or—worse, in some quarters—politically naive. Destroy the American dream of homeownership? Put young families, already hard-pressed, on the street? Deliver a karate chop to home prices everywhere, punishing worthy elders counting on their home equity to cushion their golden years? The last politician who seriously proposed a cut in the mortgage interest deduction was Jesse Jackson. The closest you'll find in Washington today is senior House Ways and Means Committee member Sam Gibbons (D-Fla.), who has run unopposed in the last two elections.

Nevertheless, the possibility of limiting the mortgage interest deduction is being oh so quietly, oh so tentatively discussed by serious people to a degree that would have astonished political professionals a few years ago. "The idea just keeps popping up," says Kent Colton, a very worried official of the National Association of Home Builders, "even though nobody admits to being the father of it".

Washington works in mysterious ways. Recall that even a week before it passed, you could get odds all over Congress that the Tax Reform Act of 1986 was dead. The votes that finally put it over came together in a burst of energy and sudden compromise few had thought possible only days before.

And for all its standing as a sacred cow, remember, the mortgage-interest deduction has already been tinkered with. Under current law, interest on mortgage debt above $1 million is not deductible. Though he says he favors the status quo, Sam Gibbons, a supporter of the $1 million cap, is not entirely in the lobbyists' camp. He got interested in mortgage deduction limits several years ago, he says, after learning that 2 of America's 150 million taxpayers were deducting interest on $10 million mortgages and another had a $15 million note. "I have no objections when the deduction goes for houses," he says. "When it goes for castles, I do."

An interesting thought, that. What's a castle? Says who? In most of the country, less than $1 million will get you something approaching a mansion, if not a castle. Does the American dream extend to a government-subsidized mortgage on a mansion? Congressmen from wealthy districts would surely fight a lowering of the mortgage cap, but would your average liberal vote against it?

Conscientious conservatives would have their own problems. This year lawmakers must come up with $18 billion to $27 billion of spending cuts or extra revenue to meet the Gramm-Rudman deficit target. The mortgage interest deduction for owner-occupied homes now costs Uncle Sam $35 billion a year in foregone tax revenues, third only to pension contributions and accelerated depreciation. This at a time when lawmakers sweat blood to find even $50 million. Could conservatives object to something that would so greatly help balance the budget? And you say you want a capital gains tax cut to stimulate investment? Okay, but swallow this with it.

There's another angle that could give pause to liberals and conservatives alike—doing something about the pathetically low national savings rate. The interest deduction is, after all, a subsidy for indebtedness. It's antisaving, say some economists, and helps explain why the Japanese have better factories than we do.

Such calculations have produced a House resolution backed by the National Association of Home Builders that declares opposition to any lowering of the $1 million ceiling. Its lead sponsor is Representative Marge Roukema (R-N.J.), whose Bergen County district includes New York suburbs where a modest three-bedroom can run $350,000. The home builders are trying to get congressmen to "take the pledge" by signing on as cosponsors. Over a third of the House members have done so, but not one of them is a member of the all-important House Ways and Means Committee.

The threat of congressional action on the mortgage interest deduction is serious enough that Tom Ochsenschlager, a Washington tax expert with accounting firm.

Grant Thornton, warns of it in speeches around the country: "Nobody believes it, but I just tell them, 'Remember, you heard it first from me and Jesse.'"

Like many in Washington, Ochsenschlager views the present $1 million cap, slipped into the 1987 tax bill at the last minute, as a foot in the door of your $500,000 colonial. "It is such a silly number, and raises so little revenue," he says, "that everyone thinks they just put it in as groundwork for future limits."

Perhaps the thing that spooks real estate lobbyists most right now is the fact that schemes to curtail the deduction are showing up on lists of revenue options, complete with estimates of the dollars they would raise. This, given budget pressures, could be a crucial step in putting a proposal in play. Revenue, cynics assure you, is far more important than merit when it comes to passing a law.

As recently as 1987, estimates of revenues to be generated by various deduction limits didn't turn up on one major list because few took the possibility seriously. "Now," says Ernst & Whinney Washington tax expert David Berenson, "it's like they're looking at it through a telescopic sight but saying, 'We're not going to shoot.'"

If the unthinkable should happen, would it destroy the American dream of homeownership?

No. Look abroad. Canada has never had a mortgage interest deduction and it has 62% homeowership, compared with a 64% rate in the U.S. Japan has none either, but its ownership rate is nearly that of the U.S. "Very few countries give as generous mortgage relief as the U.S., and those that do are mostly high-tax countries like Sweden," notes Richie Zook, a tax manager with Price Waterhouse.

Would less deductibility of interest hurt first-time home buyers? Not necessarily. Government-conferred benefits tend to get capitalized into the price of assets, says Harvard economist Dale Jorgenson, whether the asset in question is a home, a taxi medallion, or tobacco acreage subject to a grower's allotment. Existing players are enriched, but newcomers pay more to get in. Yes, deductions have helped make older homeowners wealthy, but they have also helped push home prices beyond the reach of young people.

Plenty of economists would cheer the deduction's demise. "It a national travesty," exclaims Jorgenson, despite the fact that he gets "fat" deductions from his Cambridge, Mass. Coop. Former top Treasury official Gerard Brannon likens the interest deduction to "an original sin" that has "resisted baptism."

Why? Because, they say, the current system has a bias toward real estate and away from other investment. It comes from a flaw implanted in the tax code soon after it was enacted in 1913. Congress allowed mortgage interest to be deducted. This made sense, because most taxpayers' personal debt was used to finance farms or small businesses. Paying interest was a cost of doing business.

But then lawmakers neglected the other side of the ledger: the income homeowners get in the form of free rent. Economists call this "imputed rent." Some countries, notably West Germany, actually levy taxes on such rent. But in the U.S. it is a tax-free perk of ownership, and an encouragement to buy ever bigger houses.

Business interest and home interest are both deductible, but while income from an investment in a die-caster is taxed one or more times (depending on whether you buy the tool directly or buy GM stock), the income from a house you live in is untaxed. A capital gain on GM stock is taxable, but a capital gain from homes is almost entirely exempt, thanks to rules on rolling over profits and on selling a home after reaching age 55.

So people invest more in houses than in the stock market. "Houses are great tax shelters—the only one the 1986 tax reform didn't touch," says Jorgenson. "But while tax shelters are great for individuals, they are rotten for society. We are the most overhoused population in the world."

Perhaps you don't agree. You may ask, do we really want to live like the Japanese, families of five in three drafty rooms with thin walls and a kerosene heater? But the same reasoning, while it would go far to justify the tax holiday for imputed rent, doesn't justify a deduction for interest at all.

Why not? Because the interest deduction is based not on how much housing you own but on how much money you owe. So long as you can deduct interest, there's little incentive to save by taking out a smaller mortgage or paying down the one you have. That's why interest deductions are antisavings. The 1986 tax "reform" that phased out consumer interest deductions didn't correct this bias toward consumption. Many taxpayers have simply shifted the debt from cars and credit cards to houses.

Some homeowners take all their equity out whenever they trade up. "The way the code is," says Grant Thornton's Ochsenschlager, "you can buy a house for $100,000 and wait till it's worth $200,000. Then you can buy an identical house in the same development for $200,000, put down the minimum payment and blow $60,000 of your appreciation on a trip of Vegas. I've seen it happen."

Look at the poor rewards for savers in this country. Invest your Christmas bonus in a bond and you might get 10%, which is 6% after taxes and maybe 1% after inflation. The mortgage interest deduction extends this rough treatment to thrifty homeowners. Pay down a mortgage and you earn 10% on the savings, that being the interest cost you avoid by paying off debt. Again, you get only 6% after taxes—since cutting your interest deduction raises your tax bill—and a meager 1% after inflation. Why bother to save for a crummy 1% return? Take a vacation and enjoy life.

But, protests the Home Builders' Kent Colton, homes are a form of capital formation. "For many Americans, their house is how they build real savings," he says. True, up to a point. If you save up $25,000 for a down payment, you are adding to the nation's capital. So, too, if you pay down a mortgage. But would you save any less avidly in a world without interest deductions? You might save more, because debt would hurt more on an aftertax basis. You would put down more and take a 15-year mortgage if you could swing it.

The ivory tower dwellers are right about another thing: Much of the apparent accumulation in housing is a paper gain, not true capital formation. House prices in Palo Alto, Calif., for example, have doubled since 1984. Stanford economist John Shoven tells of seeing a $500,000 "fixer-upper" recently. Some homeowners may not be saving for retirement, figuring they can cash in at 65 and move to Arkansas. This isn't true capital formation because it doesn't actually increase the number of houses or factories.

Congress usually turns a deaf ear to economic arguments until they prove useful politically, of course. Times and revenues being what they are, they may soon prove irresistible.

Chances are slim that lawmakers would repeal the mortgage interest deduction wholesale. That would produce a public revolt, a collapse in house prices and more savings and loan bankruptcies. It would also—heaven forbid—eliminate the housing lobbies as a lucrative source of campaign contributions.

More likely the deduction would die by inches. Among the possibilities:

Limit interest deductions to $12,000 per single return (the first year's interest on a $120,000 mortgage at 10%) or $20,000 per joint return (first year's interest on a $200,000 mortgage at the same rate), for a tax increase of about $1.5 billion a year after 1990. This has the political advantage of preserving the full benefit for the vast majority of taxpayers. But it would hit high-priced urban and suburban areas hard. Note: This option might apply to mortgage interest paid net of all interest received. Thus, if you received $30,000 in taxable bond interest and paid $40,000 in mortgage interest, you could deduct all the mortgage interest.

Limit the value of deductions to 15%, the lowest tax rate. This raises huge revenues—about $10 billion a year—once up and going, and has been rumored to be the personal favorite of Ways and Means Chairman Dan Rostenkowski (D-Ill.), though he denies it. But it cuts deep into deductions taken by the middle class, as the 28% rate kicks in at $31,000 of taxable income on a joint return.

Move the mortgage cap down to $750,000 or $500,000. No public estimates yet, but this affects so few voters that it has considerable appeal.

Phase out the deduction for upper-income taxpayers. No estimates on this either, but it could work like the phase-out of the 15% base rate now in effect for taxpayers with adjusted gross incomes above $75,000.

As a further nibble, disallow mortgage deductions on second homes, for a tax hike of $300 million a year. This ran into stiff opposition in 1986 from members from Florida, Colorado, and other second-home locales.

What if supporters beat back these and other attacks? In one sense the battle is already lost. Congress, when it imposed the $1 million cap in 1987, did not index it for inflation. "Somebody tried to, and we wouldn't let them," notes Representative Gibbons. The current rate of inflation will halve the value of mortgages covered by the deduction in 15 years.

Any way you look at it, the unlimited mortgage interest deduction is gone. So think again before you buy your dream house, especially if you're counting on the deduction to help meet the payments and the appreciation to fund your retirement. Real estate may not do as well for the next generation as it did for the last one.●

NATIONAL AFFORDABLE HOUSING ACT

● Mr. CHAFEE. Mr. President, yesterday I was pleased to join Senators CRANSTON and D'AMATO and 18 other of my Senate colleagues as an original cosponsor of S. 565, the National Affordable Housing Act. This bill addresses one of the most urgent prob-

lems confronting the towns, cities, and States of this Nation today: the dearth of affordable housing.

The Cranston-D'Amato bill is the product of 2 years of exhaustive discussion and debate on developing comprehensive housing legislation. It grew out of the recommendations of the National Housing Task Force, chaired by developer James Rouse and Fannie Mae Chairman David Maxwell.

If enacted, it will be the basis for most, if not all, of the further debate on housing. The bill is large in scope because the problem is large and daunting. In short, it is a large dosage of strong medicine. But that is because the ailment—America's housing crisis—is so harmful and nagging.

First and foremost, Mr. President, the National Affordable Housing Act provides $3 billion in totally new Federal spending for new housing production, subject to congressional appropriation, and an additional $1.1 billion to, among other things, ensure full funding of the McKinney Homeless Assistance Act, as President Bush has himself proposed. The money would be allocated to the States and localities, which would have to provide a 25-percent match using their own resources. The aid would go into a revolving trust fund which the States and localities could use to promote affordable housing construction. This would come in the form of grants, loans, or a combination thereof. Any repayment of the grant money would be channeled back into the revolving trust fund.

Now, I realize that this $4 billion figure is steep. And I have no illusions about the reality or gravity of our budget constraints. But this legislation is a good first step toward where we would eventually like our national housing policy to be. The bill is certainly not perfect, nor is it a panacea. It is, however, a realistic approach to the problem, and I look forward to working with the sponsors to refine it where necessary.

The Cranston-D'Amato bill places a premium on creativity and flexibility. That is, it encourages the States and localities to devise creative programs to alleviate their housing shortages and then provides them with flexibility in implementing those programs.

The bill's other major provisions are as follows. It requires States and localities receiving assistance to submit comprehensive housing affordability strategies. It permits first-time home buyers to withdraw funds from their individual retirement accounts [IRA's] for a home down payment, a proposal similar to one I introduced in the last Congress. It gives States and local governments more responsibility to design and implement housing programs. And the bill seeks to preserve existing low-income housing and establish one form of rental assistance, "rental credits."

In addition, this legislation provides permanent authority for the low-income rental housing tax credit, something I've long been a proponent of and which has proved itself as an effective program. In Rhode Island for instance, this credit resulted in the production of 170 units of affordable housing just in its first year of operation.

The bill also establishes the position of Assistant Secretary for Supporting Housing to administer housing programs serving elderly, handicapped, and homeless persons. It reauthorizes modernization and operating subsidies for public housing. And finally, the Cranston-D'Amato bill addresses the matter of rural poverty by reauthorizing existing FmHA programs and permitting the FmHA to serve very-low-income families with deferred-payment mortgages under certain conditions.

Mr. President, let me address the five features of the bill that I find most appealing.

First, this legislation includes provisions to update and strengthen FHA mortgage insurance programs to make them more useful and accessible. One way the bill accomplishes this is by permitting first-time home buyers and others who have not owned a home in 3 years to use funds in their IRA's or 401(k) retirement plans for investment in a home. It also lowers FHA downpayments to 3 percent on the first $50,000 of the mortgage, among other things. This should encourage home ownership, which is, of course, a dream of all American citizens.

Second, it gives States and local governments more responsibility to design and implement housing programs. By creating the HOME Corporation within HUD and the Housing Opportunity Partnership [HOP] to promote partnerships for affordable housing among State and local government, private industry, and nonprofits, the Cranston-D'Amato bill should spur the production of new low-cost housing. The principle is to provide new Federal funding for housing and use it to leverage State and local funds.

Third, Mr. President, the National Affordable Housing Act establishes a new Office of Affordable Housing Preservation within HUD with responsibility for retaining affordable housing for low- and moderate-income persons wherever feasible. Thus, it attempts to preserve the housing we already have.

The new office would be specifically charged with working with project owners and State and local governments to ensure that existing housing subsidies can be extended or to preserve the use of existing housing units by low- or very-low-income persons. The bill also establishes one form of rental assistance, "rental credits," which combines the best features of section 8 certificates and vouchers.

Fourth, this bill includes something I've long been a booster of, that of providing permanent authority for the low-income housing tax credit. This tax credit was created as part of the Tax Reform Act of 1986 to encourage construction and rehabilitation of housing for low-income Americans. The credit has the potential for expanding the supply of available and affordable housing, and is necessary to provide the incentive to develop or renovate housing for the poor.

Fifth and finally, Mr. President, the National Affordable Housing Act addresses the heartbreaking problem of homelessness by ensuring full $1.1 billion funding of the McKinney Homeless Relief Act. This is an issue on which the President campaigned and which I believe he sincerely wishes to address.●

PAUL CRAIG ROBERTS TESTIMONY ON CAPITAL GAINS

● Mr. KASTEN. Mr. President, two days ago the Senate Finance Committee held a hearing on the taxation of capital gains. I want to take this opportunity to commend Chairman LLOYD BENTSEN for assembling a fair and balanced list of witnesses to testify on this important issue. Under Senator BENTSEN's continued leadership, I am confident that can set aside the demagogic rhetoric on capital gains—and debate the issue on its economic merits.

In this regard, I recommend to the Senate the testimony of Dr. Paul Craig Roberts. Dr. Roberts notes that the capital gains tax is an unfair tax on the rise in the price of an asset—and that the capital gains tax is yet another layer of taxation of saving and investment. He argues that there is nothing to be lost from reopening the 1986 Tax Reform Act and everything to be gained if Congress uses the opportunity to cut the capital gains tax to foster economic opportunity and improve our competitive position in the world.

Roberts refutes the claim that a capital gains tax cut is a giveaway to the rich. He notes that this claim relies on a peculiar definition of rich —a definition devised to include the capital gains when, for example, a middle-class businessman swells his income to several hundred thousand dollars, and he is "rich" for that year. The next year his income goes back down to $40,000 or $50,000, and someone else sells a business, becoming rich for a year. The IRS data—in appendix 1 of Dr. Roberts' testimony—show that people with recurring annual income below $20,000 receive a larger proportion of capital gains than those earn-

ing over $200,000. Moreover, at least 50 percent of all capital gains go to people earning less than $60,000 annually.

I ask that Dr. Roberts' testimony be entered into the RECORD immediately following my remarks:

The testimony follows:

TESTIMONY BEFORE THE SENATE FINANCE COMMITTEE ON CAPITAL GAINS TAXATION, MARCH 14, 1989

(By Paul Craig Roberts)

SUMMARY

The capital gains tax is an unfair tax on the rise in the price of an asset. If the price rises because of inflation, there is no real gain at all, and the tax is nothing but a confiscation device. If the price rises because of improved earnings, these earnings are already subject to double taxation, first as company income and then as dividend income to individuals. Taxing the capital gain simply taxes the same income a third time.

The most serious bias in the U.S. tax code results from the multiple taxation of saving, which reduces the overall rate and level of investment, labor productivity, and labor income. By restraining the creation of new capital, our tax code protects old, established wealth from the upstarts who bust up the status quo, create opportunities, and undermine the protected enclaves of the rentier class. New capital is the best thing an egalitarian society has going for it.

The 1986 tax reform bill was a psychological victory: It brought the top tax rate down to the maximum that feudal Robber Barons could extract from medieval serfs. For the first time in my lifetime, a "free" American became a majority shareholder in his own income. This victory helped to spur the worldwide revival of capitalism.

However, the 1986 bill did not reduce the cost of capital or improve our competitive position in the world economy. There is nothing to be lost from reopening the bill and everything to be gained if the Congress uses the opportunity to construct a tax code that fosters opportunity and success in place of one that panders to envy and covetousness.

Mr. Chairman, members of the Finance Committee, I am Paul Craig Roberts. I have a research appointment at the Center for Strategic and International Studies here in Washington, where I occupy the William E. Simon Chair in Political Economy, and at the Hoover Institution at Stanford University, where I am a Senior Research Fellow. I am a former Assistant Secretary of the Treasury, a former editor and columnist for the Wall Street Journal, and a former professor at several universities. I have worked for the Congress both in the House and Senate and on members' and committee staffs. I have known some of you, such as yourself, Mr. Chairman, since those days.

I am a columnist for Business Week, the Scripps Howard News Service, the Financial Post of Canada, the Washington Times, and for European publications—opportunities that came my way because of the independence of my views. I do not speak for any interests. I am testifying at the request of this Committee. My careers are those of a scholar, a public servant, and journalist. I have both worked for the Reagan Administration and been honored by the socialist president of France.

Having said this, it is not clear to me which, if any, organized interests are pushing for a lower capital gains tax. It has never been an important issue to the corporate community. Perhaps there is an association of individual investors or a group of talented people with comfortable jobs in large organizations who need an inducement to chuck their security and go chase their dream.

However, organized interests are actively opposing a lower capital gains tax rate, specifically organized labor and its spokesmen. As an economist, I find labor's opposition perplexing, even mindless. Tax actions that reduce the cost of capital bring about an increase in capital investment, which, in turn, improves labor productivity and raises labor's income.

The imbecilic argument that capitalists benefit from capital and labor benefits from wages is a proposition from which communist countries themselves are in full retreat. In the United States we are increasingly a capital intensive economy, but capital's share of income is not rising. This means that labor's income is rising in step with capital's sharing the gains.

I am distressed when people cut off their noses to spite their faces. The claim that a reduction in the capital gains tax is unfair because it benefits the rich is a perfect example of self-mutilating behavior. It is also an example of a definition of fairness drawn so narrowly as to be self-defeating. From a rational standpoint, fairness has to be measured in terms of the relative success of our country is a competitive world economy. A tax policy designed to hold back "the rich" is not only unfair to the rich but also to labor and our competitive position. It is interesting, Mr. Chairman, that not a single country in the world agrees with the view that capital only benefits the rich. If we were to decide to punish the rich by giving away our capital, every country would be pleased to take it.

If capital benefits other people in addition to its owners, to whom is it unfair if we have more of it? How has the growth of capital in the U.S. over the past 300 years disadvantaged labor or the poor?

The only people disadvantaged by new capital are those with old, established wealth. New capital unleashes upstarts who bust up the status quo, create opportunities, and undermine the protected enclaves of the rentier class. New capital is the best thing an egalitarian society has going for it.

Moreover, as Appendix 1 shows, people with recurring annual incomes below $20,000 receive a larger percent of capital gains than those earning over $200,000.

To go to the crux of the matter, a capital gains tax is an unfair tax. It is not a tax on income, but on the rise in the price of an asset, reflecting either inflation or the stock market's estimate that a company's future earnings will be higher.

If the price of the asset rises because of inflation, there is no real gain at all, and the tax is nothing but a confiscation device.

If the price rises because the company's earnings improve then these earnings will be subject to double taxation, first as company income and then as dividend income to individuals. Taxing the capital gain simply taxes the same income a third time.

When the unfair capital gains tax hurts ordinary people, we give them a special exclusion, such as the rollover and exclusion of the capital gains people have in their homes. However, when the capital gains tax hurts investment, envy crowds out logic and the economy suffers.

It is a puzzle to me that U.S. tax law treats capital gains as income, even though the national income accounts do not regard them as income and do not include them in the measurement of gross national product. What we have achieved is the triumph of envy over policy.

Ideologically, the American left sees the capital gains tax as a wealth tax. For those whose first allegiance is to equality, the more wealth taxes the better. For them, this is the real issue. Arguments about the revenue and economic effects of capital gains taxation are little more than a smokescreen to keep us from the crux of the real issue.

It is destructive of sound tax policy to confuse wealth taxes with income taxes. Moreover, it has allowed the political left to establish a wealth tax without having to be forthright and to make a case before the Congress and the American people.

The government of the world's leading capitalist nation should be able to do a more honest job of defining capital income. A good starting point is to reject the supposition that fairness in tax policy mandates discrimination against capital. Unlike income that is consumed, income that is saved and invested is subject to multiple taxation. This is a highly irrational tax policy for a country that is worried about its competitiveness, about long-range real funding for Social Security, about budget deficits, and about the smooth absorption of large numbers of immigrants from the Third World.

America needs all the capital that it can get, particularly in light of the flood of immigrants. This inflow is likely to rise as socialist failures around the world continue to come home to roost, causing people to give up on their own countries and to migrate here, legally or illegally, in pursuit of opportunity. We can no longer afford tax laws whose main purposes are to indulge envy and to provide idelogical gratification for the anti-capitalist mentality, no mattter what its economic cost.

I agree that one reason a lower capital gains tax rate produces more revenue is that it allows "the rich" to make more money. I agree that it gets the left-wing's hackles up for "the rich" to have more money. But I object to those who oppose a lower capital gains tax on the narrow grounds of what it would do for the rich.

If envy prevents you from cutting the capital gains tax rate, you can at least index it for inflation. That way only real gains in value would be taxed, and this would introduce a small element of fairness into an unfair tax.

The argument is made that we cannot cut the capital gains tax rate without opening up the 1986 tax reform bill, I fail to understand the logic of this argument, but so what? Let's open up the bill. That bill is no great accomplishment. Compared to the Treasury's proposal more than a decade ago of a cash-flow tax, the 1986 bill is not worth much. Blueprints for Basic Tax Reform, published in January 1977, presents a comprehensive reform that would make our tax system neutral in its treatment of saving. It is pointless to complain about low saving when the tax code is extremely biased against saving.

For reasons I will show, the 1986 bill largely missed the point. Indeed, if it had not been for this Committee at the last minute, the bill would have been a disaster and would have wrecked the U.S. economy. It was certainly a psychological victory to get the top tax rate down to 33%. That's about the maximum tax that could be ex-

tracted from a medieval serf. It is a victory that the American people no longer have to pay federal tax rates in excess of what the Robber Barons were able to extract from feudal serfs. Though, of course, when you add in Social Security, state and local taxes, Americans are far more heavily taxed than medieval serfs. You need to ask yourselves in what sense a person is free who is not a majority shareholder in his own income.

It has become fashionable in some circles to present the 1986 tax bill as some sort of final deal cut between the forces of opportunity and the forces of envy. According to various people, including some of those with power over tax legislation, we cannot improve the prospect for capital investment in one part of the tax code without worsening it in another.

For example, the argument has been made that if we want to cut the capital gains tax rate, we have to offset it by raising the personal income tax rate. In other words, if we are going to help the economy in one way, we must hurt it in another. Otherwise, the rich will benefit too, along with the rest of us.

The Tenth Commandment is "Thou shalt not covet." I don't see any great achievement in a tax bill that strikes a 50-50 deal with covetousness. I don't see why we should establish our tax code on covetousness. A good tax code is one that doesn't have an ounce of covetousness in it. Considering the ungodly nature of us humans, that might be hard to accomplish, but there is no reason we shouldn't try.

The opportunity to truly reform our tax system was lost in the 1986 tax reform legislation. One group used the bill to close "tax loopholes" in blind pursuit of their goal of "fairness," using a definition altogether lacking in merit. Others simply wanted a revenue-neutral bill that would lower tax rates in order to demonstrate a second major Reagan success.

For their part, economists focused on the improved economic efficiency that would be achieved by abolishing differential "tax preferences," or "loopholes" that distort the choice or mix of investments, and they completely missed the larger issue: The most serious bias in our tax code results from the multiple taxation of saving, which reduces the overall rate and level of investment.

As a consequence of the multiple taxation of saving, the rate of return that an individual realizes from his investment is substantially smaller than the economic return of the investment to society. The amount of money he has to invest is first reduced by the personal income tax. If he invests his after-tax savings in a corporation which uses them to purchase capital equipment, the income earned by the capital investment itself is subject to taxation. First the return from this investment is taxed at the corporate rate, and if the remainder is passed on in the form of a dividend, it is taxed as regular income at the personal rate. If, instead, the remainder is reinvested, the return will be capitalized in the worth of the stock, adjusted for future corporate taxation. If the individual were to sell the stock and realize a capital gain, then this amount is subject to further taxation. These multiple layers of taxation are further compounded by such taxes as the property tax, resulting in reduced investment and lower growth in labor productivity.

Specific investment incentives, such as the investment tax credit and what is called a capital gains differential, can distort the choice of investments. However, they also reduce the tax bias against saving and investment. A reform that sets out, as the 1986 bill did, to eliminate distortions that affect the mix of investments can easily do so in a way that increases the bias against the overall level of investment.

Consequently, the cost of capital would rise and frustrate the expectations of better performance from efficiency gains. This important consideration was neglected in the tax reform bill until the last minute when this Committee, in its wisdom, further reduced the personal and corporate tax rates in order to avoid a substantial increase in the cost of capital.

The 1986 tax bill did not reduce the tax bias against saving, nor did it make the tax system neutral or fair in its treatment of investment. Indeed, the bill's contribution to the economy might not be enough to compensate for the two year hiatus in investment while the economy waited for the legislative outcome of the tax reform debate.

Mr. Chairman, members of the Committee, there is no doubt whatsoever that the capital gains tax affects the cost of capital. Anyone who doubts this should be prepared to raise the capital gains tax to 100 percent.

The capital gains tax is only one element in the cost of capital. It would help to lower it, but not if it is offset by hiking some other element in the cost of capital.

More importantly than how it affects the cost of capital, the capital gains tax affects our human capital by its energizing impact on the incentive to take risk. There are a variety of silly arguments that try to cover up this connection, such as "money for venture capital comes from tax-exempt entities unaffected by the capital gains tax rate." Yes, it often does, but the organizers of the ventures are taxpayers. Pension funds don't dream up new inventions and new technology. On this point see Appendix 2.

If you are concerned with the dispersion or loss of our technology, you might also consider that in today's international economy, the location of high risk new technology will be affected by the international taxation of capital gains. Not entirely, of course, but on the margin. On this point see Appendix 3.

The margin is important. Since World War II the margin we have held over the rest of the world has been shrinking. This process is accelerating as Europe unifies, as the Far East becomes a center of economic power, and as communist countries repudiate an envy-driven economy policy. If we allow envy to drive our tax policy, we will deserve to be the second-rate country we will become.

APPENDIX 1

DISTRIBUTION OF CAPITAL GAINS BY RECURRING INCOME: 1985

	Capital gains (billions)	Percent of all gains
Income group:		
Under 10	35.30	20.79
10 to 20	8.90	5.24
20 to 30	10.70	6.30
30 to 40	10.10	5.95
40 to 50	11.10	6.54
50 to 75	17.50	10.31
75 to 100	12.50	7.36
100 to 150	13.10	7.71
150 to 200	8.70	5.12
Over 200	41.90	24.68
Total	169.80	100.00

Source: Internal Revenue Service, 1985 individual tax model file, public use sample.

The erroneous claim is often made that the rich are the primary beneficiary of capital gains. This claim relies on a pecullar definition of rich—a definition devised to include the capital gains when, for example, a middle class businessman retires and sells his business. That year the capital gain swells his income to several hundred thousand dollars, and he is "rich" for that year. The next year his income goes back down to $40 or $50 thousand, and someone else sells a business, becoming rich for a year.

The IRS data show that people with *recurring* annual income below $20,000 receive a larger proportion of capital gains than those earning over $200,000. Moreover, at least 50 percent of all capital gains go to people earning less than $60,000 annually.

APPENDIX 2

The two tables below are drawn from an empirical study by Dr. John Freear and Dr. William Wetzel, University of New Hampshire. Their paper was prepared for the Babson Entrepreneurship Conference in Calgary, Alberta, Canada in May 1988.

Their evidence shows that individuals provide the bulk of the money for small capitalization new technology firms. Individuals also provide most of the seed and start-up funds for new technology firms.

FINANCIAL ROUNDS OF CAPITAL INVESTED IN NEW TECHNOLOGY—BASED FIRMS

	Private individuals		Venture capital funds		All other sources		Total	
	Number	Percent [1]	Number	Percent [1]	Number	Percent [1]	Number	Percent [1]
Size of round:								
Less than $250,000	102	84	8	6	12	10	122	100
$250,000 to $499,000	43	58	14	19	17	23	74	100
$500,000 to $999,000	15	26	31	55	11	19	57	100
Greater than $1,000,000	17	9	120	63	55	28	192	100
Total	177		173		95		455	

[1] Percent of total.

ROUNDS OF CAPITAL INVESTED IN NEW TECHNOLOGY-BASED FIRMS

	Private individuals		Venture capital funds	
	Number	Percent[1]	Number	Percent[1]
Stage of financing:				
Seed	52	29	11	6
Start-up	55	31	38	22
1st stage	29	16	56	32
2d stage	26	25	46	27
3d stage	10	6	19	11
Bridge	5	3	3	2
Total	177	100	173	100

[1] Percent of total.

APPENDIX 3

COMPARISON OF INDIVIDUAL TAXATION OF CAPITAL GAINS ON PORTFOLIO STOCK INVESTMENTS IN 1987

	Maximum short-term capital gain tax rate [1]	Maximum long-term capital gain tax rate [1]	Period to qualify for long-term gain treatment	Maximum annual net worth tax rate
Countries industrialized:				
United States [2]	38.5 percent	28 percent	6 months	None.
Australia [3]	50.25 percent	50.25 percent	1 year	None.
Belgium	Exempt	Exempt	None	None.
Canada [4]	17.51 percent	17.51 percent	None	None.
France [5]	16 percent	16 percent	None	None.
Germany [6]	56	Exempt	6 months	0.5 percent
Italy	Exempt	Exempt	None	None.
Japan	Exempt	Exempt	None	None.
Netherlands	Exempt	Exempt	None	0.8 percent
Sweden	45 percent	18 percent	2 years	0.3 percent
United Kingdom [7]	30 percent	30 percent	None	None.
Pacific basin:				
Hong Kong	Exempt	Exempt	None	None.
Indonesia	35 percent	35 percent	None	None.
Malaysia	Exempt	Exempt	None	None.
Singapore	Exempt	Exempt	None	None.
South Korea	Exempt	Exempt	None	None.
Taiwan	Exempt	Exempt	None	None.

[1] State, provincial and local tax rates not included.
[2] As of Jan. 1, 1988, the nominal tax rate for long- and short-term capital gains rate is to 28 percent. The marginal rate, however rises to 33 percent for joint returns between $71,900 and $149,250 and for single returns between $43,150 and $89,560.
[3] The above maximum long- and short-term rates are comprised of 1.25 percent Medicare levy and 19 percent income tax. Prior to July 1, 1987, the Medicare levy will remain at 1.14 percent and the income tax will remain at 57.0 percent (aggregating 58.225 percent). There is no distinction in rate, however, the 1-year holding period is for special exemption and indexing.
[4] Canadian residents are allowed an annual capital gains exemption of Canadian 30,000 ($22,998*) subject to a cumulative exemption of up to Canadian 500,000 ($383,300*) in 1990.
[5] Gains from proceeds of up to FF 272,000 (45,283*) are exempt from taxation in a given taxable year.
[6] The first Dm 1,000 ($564*) of short-term capital gains is exempt from tax.
[7] The first $6,300 ($10,096*) of annual gains is exempt.
*Based on exchange rates of Mar. 31, 1987.

Source: Prepared by Arthur Andersen & Co. for the Securities Industries Association.●

RESERVE OFFICERS TRAINING CORPS

● Mr. DURENBERGER. Mr. President, I rise today to call my colleagues' attention to an excellent speech delivered last week by Congressman IKE SKELTON to the Association of Military Colleges and Schools.

For more than a decade Congressman SKELTON has represented the Fourth District of Missouri in the House of Representatives. Through his service on the Armed Services Committee, Congressman SKELTON has developed a reputation as a thoughtful and independent advocate of a robust national defense. Like his district's most famous politician Harry S Truman, IKE SKELTON believes in an America willing and able to defend the cause of freedom around the world.

Congressman SKELTON knows firsthand the importance of military education. He attended Wentworth Military Academy in Lexington, MO. But his interest extends far beyond ties to an alma mater. Congressman SKELTON has been particularly involved in issues relating to educating future generations of U.S. military leaders. In the 100th Congress, he served as chairman of a special group established to review the U.S. advanced military education system. The Panel on Military Education of the House Armed Services Committee analyzed the curriculum at the five U.S. command and staff colleges and the five U.S. war colleges. The panel's work has been widely hailed as a groundbreaking study of the strengths and weaknesses of how the United States educates its future generals and admirals.

In his speech, Congressman SKELTON elaborates his views on the importance of training future officers in strategy and military history and discusses the importance of the Reserve Officers Training Corps in the military education system. Congressman SKELTON also points to some of the challenges current and future ROTC graduates will face in the years to come. His speech draws heavily on military history—demonstrating that lessons from past victories—and defeats—hold tremendous importance for future strategists.

Mr. President, like Congressman SKELTON, I have personal experience with military education in this country. I have a special spot in my heart for the Reserve Officers Training Corps: I was a member of the first Army ROTC graduating class from Saint John's University in Collegeville, MN, in 1955. Through my ROTC education, I learned the importance of combining civic duty with higher learning, military skills with civilian leadership.

After my pioneering education, I went on to serve as an officer in Army intelligence—experience that gave me valuable perspective years later when I was selected to serve on the Senate Select Committee on Intelligence. I remain committed to a strong Reserve Officers Training Corps in the United States as an invaluable program for our future military and civilian leaders.

I have another personal connection with military education. As a father, I was proud to see my son, David, Jr., choose to attend the Marion Military Institute in Alabama. Like his father, David benefited from combining military and civilian education. David went on to serve his country in the U.S. Marine Corps.

I commend Congressman SKELTON for his leadership on the vital issues of national defense and urge my col-

leagues to read his speech. I ask that the speech be printed in the RECORD at this point.

The remarks follow:

ADDRESS BY CONGRESSMAN IKE SKELTON, ASSOCIATION OF MILITARY COLLEGES AND SCHOOLS, MARCH 9, 1989

My sincere thanks for your generous recognition of my work and for placing me as the first on this honorable list. It adds much to this occasion that my good friend and fellow Wentworth student, who is now superintendent at that school, Col. J.M. Sellers, Jr., is here today as a leader within your association.

I feel a special tie to your schools, as two generations of my family have attended Wentworth Military Academy and one of our sons is a graduate of North Georgia College as well. Thus, the important role that military schools play within our country is known to me personally. Many Americans who have attained noteworthy success in our society can claim the roots of their desire to honorable achievement stemmed from your institutions.

Yours is the job of preparing young Americans for leadership—both in military and in civilian life. In this task, you have succeeded, and I compliment you on your great contribution to our American past. It will be your continuing task to prepare leaders for even more difficult days that lie ahead for our Nation.

The Reserve Officers Training Corps [ROTC] is an integral part of your institutions, and because of that, I want to speak to you about some of the challenges the armed services will face over the next few years and how those challenges will affect the Reserve Officer Training Corps in that same time period.

From fiscal year 1987 to fiscal year 1988 the four armed services experienced reductions totaling 36,000 active duty personnel. The Department of Defense has actually witnessed 4 straight years of real cuts in the defense budget, increases have not matched costs due to inflation. It's not hard to see that we will be facing flat budgets for at least the next few years, barring some emergency or world crisis.

In this budget climate, the incentive in the Pentagon will be to cut force structure in order to preserve readiness, a lesson learned from the hard experiences of the late 1970's and early 1980's. Then we did the opposite, and ended up with ships that couldn't sail, aircraft unable to fly, and a hollow Army. At the same time that we will be trying to preserve readiness, however, Pentagon and congressional budgeters will be focusing sharp scrutiny on the various training and education programs of the Armed Forces. The challenge in these next few months and years will be not cut training and education to such an extent that we actually find ourselves guilty of eating our own seed corn. Education, it must be remembered, is the foundation upon which we build for the future. As Sir Francis Bacon noted "knowledge is power," and a strong military must have wise leaders who have not suffered because of excessive cuts in training and education.

During the Great Depression of the 1930's, in a far harsher budgetary climate, all of the services found themselves reduced to pauperdom. The size of the forces were drastically cut and modernization programs postponed and then cancelled. Too poor to train and equip their forces, the Army and the Navy took advantage of a difficult situation by sending their best officers to various schools—to study, to teach, and to prepare for the future. The infantry school at Ft. Benning, the Command and General Staff College at Ft. Leavenworth, the Naval War College at Newport, and the Army War College here in Washington experienced a renaissance. It was during the interwar years, the "golden age" of American military education, that such renowed World War II military leaders as Dwight Eisenhower, Omar Bradley, Chester Nimitz, Raymond Spruance, and "Hap" Arnold attended one of the two war colleges. "Bull" Halsey, who commanded the central Pacific amphibious campaign against the Japanese during World War II, attended both the Army and the Navy War Colleges. George Marshall taught at the Army War College and was the assistant commandant of the Army infantry school. In short, we won the victories of the 1940's in the war college classrooms of the 1920's and 1930's.

Let me now shift from the recent past to the more uncertain future and discuss the important task of educating our future military leaders. A first rate ROTC program will prepare future military officers by providing them the most important foundation for any leader—a genuine appreciation of history. I cannot stress this enough because a solid foundation in history gives perspective to the problems of the present. And a solid appreciation of history provided by a first rate ROTC program will prepare students for the future, whether they decide to spend 30 years in one of the services or decide to re-enter the civilian world after a few years of military service.

In the March issue of Parameters, the U.S. Army War College Quarterly, Gen. John Galvin, Surpeme Allied Commander, Europe, describes why our country needs strategists—in each of the services, at all levels. "We need senior generals and admirals who can provide solid military advice to our political leadership," he writes, "and we need young officers who can provide solid military advice—options, details, the results of analysis—to the generals and admirals." He lists three elements in an agenda for action: formal schooling, in-unit education and experience, and self-development. The first and third items on the agenda apply to any quality ROTC program.

In brief, the young military student should learn the historical links of leadership, being well versed in history's pivotal battles and how the great captains won those battles. Hannibal, Caesar, Napoleon, MacArthur—all were in the debt of outstanding soldiers of the past. Stonewall Jackson's successful Shenandoah Valley campaign resulted from his study of Napoleon's tactics, and Napoleon, who studied Frederick the Great, once remarked that he thought like Frederick. Alexander the Great's army provided lessons for Frederick, 2,000 years before Frederick's time. The Athenian general, Miltiades, who won the Battle of Marathon in 491 BC, provided the inspiration that also won the Battle of El Alamein in 1942; the Macedonian, Alexander the Great, who defeated the Persians at Arbela in 331 BC, set the example for the Roman victory at Pydna 155 years later. The English bowmen who won Crecy in 1346 also won Waterloo in 1815; Montgomery, Bradley or MacArthur, who won battles in the 1940's might well win battles a century or so hence. Thus, I believe that every truly great commander has linked himself to the collective experience of earlier generals by reading, studying, and having an appreciation of history.

The German Army, with its traditions reaching back to the 18th century, provides a revealing example of the great care and attention taken toward the education of an officer, in the nurturing of military excellence. There is much there to draw upon.

The selection, training, and education of both prospective officers and staff officers was marked by a well-organized educational system that was highly competitive and challenging. I will give you one example. Officers in the German Army of the 1920's who hoped to serve on the general staff first underwent a 5-month preparatory course conducted by correspondence. This was followed by two 3-day evaluations that culminated in a 4-day examination. Two-hundred seventy officers in 1927 passed the preliminary cuts—the preparatory course and the two 3-day evaluations—and were eligible for the final exam. Of that total only 37 were selected for general staff candidate training. This system of competitive selection and thorough training accounts for the tactical brilliance for which the German armies of the past century are justly well regarded.

But on a higher level, the German military educational system failed. Tactical brilliance and great technical proficiency could not make up for two major weaknesses: The inability of German officers to question higher authority, most glaringly evident during the Nazi period, and the lack of strategic vision at the highest levels of military leadership. We in the United States succeeded at this higher level prior to World War II. Because of our military war colleges during the 1920's and 1930's America produced officers of exceptional character and strategic vision. They enabled us to emerge victorious from the Second World War.

Unfortunately, after the war we became complacent. Strategic thinking atrophied after 1945. In the nuclear age many believed that the ideas and thoughts associated with classical military strategy had been rendered obsolete. The bitter experience of Vietnam, which resulted from a loss of strategic vision, sent American military men back to the study of war and military history.

This process, however, must begin prior to the commissioning of an officer—be it at one of the three service academies, through an ROTC program, or at officer candidate school. In other words, you gentleman in this room must start the process. For students in an ROTC program, education should be emphasized, not just training. This means extensive reading, research, written analysis, seminar discussios, and old fashioned thinking. Instructors must not only know their subjects well, but also possess the gift of being able to kindle the student's interest and cause him to think.

At the same time, a quality ROTC program must instill in its students the notion that a military career includes a life long commitment to self-development. Commissioning day is simply the completion of the first small step of a process of education, of study, or reading, and of thinking that will continue for the rest of the young officer's professional life.

You gentleman have a sacred trust—to teach, to inspire, and to help mold America's future military leaders. Yes tactical proficiency is very important but so too is strategic vision. You here today will not be able to provide such vision to the young people in your charge, that can only come after years of careful reading, study, reflection, and experience. But you can help start the process by making those entrusted to your

care aware of the natural yardstick of 4,000 years of recorded history. Thucydides, Plutarch, Sun Tzu, Clausewitz, Napoleon, Mahan and Mackinder have much to offer tomorrow's military officers. You must make those future officers aware of this inheritance.

Winston Churchill put this idea in these words: "professional attainment, based upon prolonged study, and collective study at colleges, rank by rank, and age by age—those are the title reeds of the commanders of the future armies, and the secret of future victories."

Again, thank you for your kindness and your presentation to me today. You who produce young leaders for our country are to be commended for your great contributions. I hope that I may continue to be of some small help in your endeavors. Thank you, so much and God bless.●

CONTRIBUTIONS OF C-SPAN

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Concurrent Resolution 22, a concurrent resolution commemorating April 3, 1989, as the 10th anniversary of C-SPAN, and that the Senate proceed to its immediate consideration; that it be agreed to; that the motion to reconsider the vote by which it was agreed to be laid on the table and that its preamble be agreed to.

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

The concurrent resolution, with its preamble, was agreed to, as follows:

S. CON. RES. 22

Whereas the Cable Satellite Public Affairs Network, popularly known as "C-SPAN", began operations on April 3, 1979, broadcasting proceedings on the floor of the House of Representatives, and has been broadcasting proceedings on the floor of the Senate since June 2, 1986, through C-SPAN II;

Whereas having started in 1979 with an audience of about 3,500,000 households, C-SPAN now reaches more than 40,000,000 households in this country and has begun broadcasting overseas through the United States Information Agency's Worldnet system;

Whereas during the past ten years C-SPAN has continually expanded its schedule to include a variety of programs relating to the Nation's public policy and political process;

Whereas C-SPAN's schedule now includes, in addition to floor proceedings—

(1) coverage of Congressional hearings;

(2) two daily viewer call-in programs in which viewers question elected officials, policy makers, and journalists on issues of the day;

(3) weekly addresses by newsmakers at the National Press Club;

(4) a weekly program on "Process and Policy" wherein professionals give their analyses of current National issues;

(5) a weekly program on "Communications Today" that examines media trends and technology and communications law;

(6) a weekly "Supreme Court Review" that discusses cases currently before the Court; and

(7) occasional special programs on a variety of matters of interest in the field of public affairs, which last year included detailed coverage of the Presidential campaign and full gavel-to-gavel coverage of the Democratic and Republican conventions;

Whereas the cable industry has recently funded a program to provide equipment and scholarships to allow and encourage the use of C-SPAN in the classroom to educate students in the political process; and

Whereas C-SPAN has made a tremendous contribution to the cause of democracy by making immediately available to the public a comprehensive, accurate, and unbiased exposition of the political process in this country: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That on the occasion of the tenth anniversary of C-SPAN on April 3, 1989, the cable television industry is commended for the invaluable contribution it has made and continues to make toward informing and educating the citizenry of this Nation and thereby enhancing the quality of its government of, by and for the people.

FREEDOM OF INFORMATION DAY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of House Joint Resolution 167, a joint resolution to designate March 16, 1989, as "Freedom of Information Day"; that the Senate proceed to its immediate consideration, that it be passed, that a motion to reconsider be laid on the table, and its preamble be agreed to.

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

So the joint resolution (H.J. Res. 167) was passed.

FOURTH ANNIVERSARY OF THE KIDNAPING OF TERRY ANDERSON

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 28, Senate Resolution 81, relating to the fourth anniversary of the kidnaping of Terry Anderson.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 81) relating to the fourth anniversary of the kidnaping of Terry Anderson.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MOYNIHAN. Mr. President, today marks the fourth anniversary of the kidnaping of Terry Anderson in Lebanon. Mr. Anderson is one of nine American citizens now being held in that nation. None have been there longer than he.

Four years ago, Mr. Anderson was serving as chief Middle East correspondent for the Associated Press, working out of Beirut. On his way back from a tennis game on March 16, 1985, the former marine was apprehended by gunmen and taken hostage.

Mr. Anderson has spent the last 4 years as a prisoner, often shackled and blindfolded in a small windowless room in Beirut. He has been kept from the sunlight, kept from exercising, kept from the news of the world. His father and brother have died since he was taken captive; his wife gave birth to a daughter. He can only hear what he is told. Perhaps most disturbing to his family here, there is no indication Mr. Anderson will be freed soon.

Mr. Anderson is reportedly being held by Hezbollah, a fundamentalist Muslim group with close ties to Iran. The group has demanded that before Mr. Anderson is released, the Government of Kuwait must release the "Daw'a 17," a collection of terrorists who bombed the French and American Embassies in Kuwait in the autumn of 1983. The Government of Kuwait has no intention of releasing these criminals, and the United States Government will not ask them to, nor should it.

But to assert that there is nothing that can be done to free Mr. Anderson or the other hostages, that the U.S. Government should just wait for events to change, shows a certain callousness to the plight of those who are being held.

When Americans are kidnapped, as has happened periodically over the last 4 years, our Government has often responded with a massive effort to win these Americans' freedom. When TWA flight 847 was hijacked to Beirut, our Government pursued every diplomatic means to win the passengers' release. I should add that in that case, the terrorists' initial demands were the same as those made for Terry Anderson's release. Are we to understand from the executive branch's inaction that the U.S. Government has given up on Terry Anderson, Thomas Sutherland, Frank Herbert Reed, Joseph James Cicippio, Edward Austin Tracy, Jesse Turner, Robert Polhill and Alann Steen? I most certainly hope not.

Surely we should reject the explanation that nothing can be done. Something must be done. The executive branch must seek to use every avenue—formal and informal—to win these hostages' freedom. Our diplomats cannot forget. While many Americans may be numbed by the thought of spending 4 years as a capative in a foreign country, Terry Anderson must face that reality daily, with no idea when he might be released. This is a human tragedy of the greatest proportions.

Mr. President, to mark this occasion and to remind the American people of the plight of Terry Anderson and the

eight other American hostages being held in Lebanon, yesterday I introduced Senate Resolution 81. I did so on behalf of myself, the esteemed chairman of the Committee on Foreign Relations [Mr. PELL], and the senior Senator from Colorado [Mr. ARMSTRONG].

I ask unanimous consent that a statement by Bob Scheiffer pertaining to this subject be printed in the RECORD.

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

STATEMENT BY BOB SCHEIFFER

The historian Ariel Durant once wrote that civilization is not imperishable but must be relearned by every generation.

"Barbarism," she observed, "is like the jungle. It does not die out but only retreats behind the barriers that civilization has thrown against it, and waits there always to reclaim that to which civilization has temporily laid claim."

Because we live on civilization's side of the barrier, it is sometimes easy to forget that there is still evil in the world.

Because we are a civilized people, the taking of hostages is all but incomprehensible to us—an irrational, barbaric act for which we can ascribe no sane motive.

Our government is a government of laws and our system of values is based on reason. Yet, even here at the very seat of our government, we need look no farther than the metal detectors through which we now pass to board an air plane or enter most public gathering places to recognize that there are growing numbers of people who would not hesitate to harm the innocent to call attention to their own cause, and that we must protect ourselves against them.

We need reflect back no farther than the news of this morning which told of the latest developments in the investigation of the downing of the Pan Am airliner, to be reminded that there are still those who would use human suffering as a weapon of war.

When I came to Washington some twenty years ago, one could walk into most government buildings including the Pentagon without a pass, but today I must be fingerprinted, photographed and carry an identification card in order to be admitted to most places where I do my work as a journalist.

We complain about the inconvenience of all this but we have resigned ourselves to its necessity. These security measures are more than just protective devices, however. They are also symbols of how even here, in the capital of the world's most powerful democracy, that we, too, are victims of terrorism.

When we must submit to security checks, when the natural beauty of our great Capitol must be altered by ugly concrete it is a sign that terrorists have placed limits on our freedom.

For us, however, the terrorist has brought only inconvenience. For Terry Anderson and his family, for the families of all the hostages and the loved ones who have been taken from them, there has been much more. Real suffering and pain made all the more excruciating because it has been inflicted by those who would seem to have no grievance against any of them.

When we recognize the limits that have been placed on our freedoms by those who would threaten violence, let us hope that it will remind us of the suffering of the families who are with us today. Let us hope that it will remind us that their suffering is our suffering, and that when limits are placed on one man's freedom, that the freedom of all mankind is diminished.

We have come here today to say a powerful message no more complicated than this—that we remember Terry Anderson. It is a powerful message because it reaffirms a great strength of America. We are a people who remember each other.

We are a people whose soldiers do not turn their backs on fallen comrades, who have always been willing even in the face of great danger to themselves, to rescue the wounded, and even to recover the dead from the battlefield, in order that they be given a proper burial.

We are a civilized people whose value system is based on reason and caring for one another and those who place no value on human life, those who would bring suffering to the innocent for their own selfish goals must understand that we place the highest value on human life and that we will not forget senseless acts, nor will we ever accept terrorism as the normal course of events. We care too much for each other and because of that we will—in the end—prevail.

As he struggled to understand the Holocaust, Eli Wiesel once wrote that, "We must teach . . . about the origins and consequences of violence. In a society of distrust, skepticism, and moral anguish, we must tell our contemporaries that whatever the answer is, it must grow out of human compassion and reflect man's basic quest for justice.

To the families of the hostages what comfort can we offer to ease the pain of this long and inexplicable ordeal?

How wonderful it would be if there were one pronouncement we could make, one work we could say which would take the pain away.

But there is no such word.

All we can do is say to them that we remember and that we care.

God bless you Peggy Say and God bless the families of all the hostages.

As the pain and suffering that your loved ones have endured has been a tragic reminder that there are those who would do evil to advance their own selfish purposes. Your actions have shown us mankind's finest attributes, great courage and a determination never to forget, never to give up, until this awful thing is righted.

And God bless the hostages. May God give them strength to endure.

Mr. PELL. Mr. President, today I join my distinguished colleague, Senator MOYNIHAN of New York, in sponsoring legislation to mark the fourth anniversary of the kidnaping of journalist Terry Anderson in Lebanon. This is a day of deep sorrow, not only for the friends and family of Mr. Anderson, but for all of those who share the sadness and pain of the nine remaining hostages and their families.

Too often the world is shocked by the taking of yet another hostage by terrorists. In the immediate wake of each incident, all Americans react with grief and a strong sense of urgency that our Government take whatever steps may be appropriate to resolve the incident. Too often, as time goes by, the incident and the victims fade in our collective memory as we resume our daily activities. Our purpose today is to return the attention of our colleagues and the Nation to the hostages in Lebanon and to express our strong support for a renewed drive to secure their release.

At the beginning of 1988, eight Americans were being held against their will in Lebanon, including Mr. Anderson, Thomas Sutherland, Jesse Turner, Joseph Cicippio, Alann Steen, Edward Tracy, Robert Polhill, and Frank Reed. I am sad to report that rather than achieving any progress with these hostages since that time, we have witnessed instead yet another kidnaping. Lt. Col. William Higgins of the United States Marines was taken hostage last February while in Lebanon in connection with his official duties as a member of the U.N. Peacekeeping Force.

Mr. President, despite efforts by both the administration and the United Nations to free the nine hostages in Lebanon, there they remain. It is time for a renewed drive to free these captive Americans. I urge our new President and Secretary of State to redouble their efforts and work in tandem with the global community to secure the release of the hostages. I commend the United Nations for its attempts to resolve the hostage situation in Lebanon, and I call upon the Secretary General to extend these efforts to the maximum possible extent. Last, I wish to reassure the families and friends of the hostages that we remember their cause and share their grief.

TERRY ANDERSON

Mr. LEVIN. Mr. President, today marks a disturbing milestone in our Nation's history—the fourth anniversary of Terry Anderson's abduction in Lebanon. As one of nine American citizens who remain in captivity in Lebanon, Terry Anderson bears the distinction of the longest detention of any foreign hostage in that country.

Four years ago, Anderson, the Middle East bureau chief for the Associated Press, was dragged from his car and taken hostage by Islamic Jihad. He has been cut off from the world since then.

It is impossible for us to comprehend the suffering that Terry Anderson has endured in the last 4 years. Descriptions of life in captivity have come from the few hostages who have since been freed. The circumstances of their detention sound like a living nightmare.

Terry Anderson has been detained in a small, filthy, roach-infested cell. He has gone on hunger strikes and, in frustration, he once pounded his head against the wall until the blood flowed. He is often blindfolded and his ankle is shackled to a rusty manacle that burns his skin. There are reports that Terry Anderson, an ex-marine, has been beaten and harassed, and

that he has been held in solitary confinement.

The anguish that the Anderson family has experienced throughout this ordeal has also taken its toll. Terry Anderson's father and brother have died in the last 4 years. His wife has given birth to a daughter. Their courage and persistence is inspiring, especially because there is no discernible end in sight.

Islamic Jihad has announced that it will not release Terry Anderson until the Kuwaiti Government releases 17 terrorists charged with bombing the French and American Embassies. To date, they have not done so, and that is as it should be. Our policy is not to negotiate with terrorists. However, this does not preclude talking and other efforts. We must not give up in our attempts to bring them home.

I would like to pay special tribute to the individuals and organizations that have dedicated themselves to keeping the hostages in the forefront of our national consciousness—organizations such as "The Journalists Committee To Free Terry Anderson," which held an event this morning in the House of Representatives, and, in my own State of Michigan, the Pontiac Bicentennial of the Constitution Committee, which invited the relatives of the hostages to come to Pontiac last month to call attention to their plight, and to allow the families to meet and draw comfort from each other.

As Terry Anderson begins his fifth year of captivity, we must not forget him and the other Americans held hostage: Thomas Sutherland, Frank Reed, Joseph James Cicippio, Edward Austin Tracy, Robert Polhill, Alann Steen, Jesse Turner, and William R. Higgins. My hopes and prayers are with the hostages and their families.

The PRESIDING OFFICER. Is there further debate on the resolution? If not, the question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 81

Whereas hostage taking abridges human rights, harms the cause of world peace, and endangers the lives of innocent individuals;

Whereas nine Americans: Terry Anderson, Thomas Sutherland, Frank Reed, Joseph James Cicippio, Edward Austin Tracy, Jesse Turner, Robert Polhill, Alann Steen, and William Higgins, are missing and believed held hostage by groups operating within the borders of Lebanon;

Whereas March 16, 1989, marks the fourth anniversary of the kidnapping of Terry Anderson in Beirut;

Whereas Terry Anderson was serving with distinction as Middle East Bureau Chief of the Associated Press at the time of his kidnapping; and

Whereas Terry Anderson sought through his work and his writings to further the world's knowledge and understanding of the Middle East, and as a result of his captivity is prevented from so doing: Now, therefore, be it

Resolved, That the United States Senate hereby condemns all forms of hostage taking for whatever purposes by individuals, groups, or governments, and be it further

Resolved, That the Senate calls upon the nations of the world to condemn all forms of hostage taking, and to work for the release of all hostages.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution and its preamble were agreed to.

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

The motion to lay on the table was agreed to.

HUMAN RIGHTS ABUSES IN TIBET

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 32, Senate Resolution 82, which expresses the concern of the Senate for the ongoing human rights abuses in Tibet.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 82) expressing the concern of the Senate for the ongoing human rights abuses in Tibet.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, read as follows:

S. RES. 82

Whereas for the past four decades, repressive actions by the Chinese have resulted in the deaths of as many as one million Tibetans, the destruction of a large part of Tibet's unique cultural heritage, the flight of the Dalai Lama and tens of thousands of Tibetans from their homeland;

Whereas despite a short period (1978-82) when a Chinese policy attempt was initiated to address the grievances of the Tibetan people, recent reports issued by credible human rights organizations, including Asia Watch and Amnesty International and the international press confirm mounting human rights violations in Tibet, including arbitrary arrest and detention, the use of excessive force on peaceful demonstrators, restrictions on religious freedoms, torture, and a systematic pattern of discrimination;

Whereas Congress passed, and President Reagan signed into law on December 22, 1987, legislation stating that "the Government of the People's Republic of China should respect internationally recognized human rights and end human rights violations against Tibetans . . . and should actively reciprocate the Dalai Lama's efforts to establish a constructive dialogue on the future of Tibet";

Whereas on September 16, 1988, the United States Senate unanimously passed S.Con. Res. 129 commending the Dalai Lama for his efforts to resolve the problems of Tibet through negotiations, supporting his proposal to promote peace, protect the environment, and gain democracy for the people of Tibet, and calling on the Government of the People's Republic of China to enter into discussions to resolve the question of Tibet along the lines proposed by the Dalai Lama;

Whereas on September 21, 1988, the Chinese Government welcomed negotiations with the Dalai Lama and stated: "the venue of the talks can be Beijing, Hong Kong, or any of the Chinese embassies and consulates abroad. Should the Dalai Lama find these places inconvenient, he can choose any place at his discretion provided that no foreigners participate in the talks";

Whereas the Chinese Government has yet to accept negotiations with representatives of the Dalai Lama, and no such negotiations have taken place;

Whereas Tibetans continue to demonstrate in support of human rights and democratic freedoms in Tibet. On March 5, 6, and 7, 1989, at least thirty and, according to some reports, as many as sixty people died and hundreds were injured when Chinese authorities fired on unarmed Tibetan demonstrators in Lhasa;

Whereas Chinese officials in Beijing have declared martial law in the Tibetan capital of Lhasa and its environs. Western tourists in Lhasa during these demonstrations have reported random mass arrests and mistreatment of Tibetans by Chinese authorities: Now, therefore, be it

Resolved, That the Senate—

(1) condemns the recent use of violence against unarmed Tibetan demonstrators on March 5, 6, and 7, 1989;

(2) expresses sympathy for those Tibetans who have suffered and died as a result of Chinese policies in Tibet over the past four decades;

(3) urges the People's Republic of China to respect internationally recognized human rights and end human rights violations in Tibet;

(4) urges the People's Republic of China to lift the government-imposed restrictions on foreign press and human rights monitoring groups in Tibet.

(5) urges the Administration to propose that a United Nations observer team monitor the situation in Tibet;

(6) urges the United States to make the treatment of the Tibetan people an important factor in its conduct of relations with the People's Republic of China;

(7) urges the United States through the Secretary of State, to address and call attention to, in the United Nations and in other international fora, the rights of the Tibetan people;

(8) supports the efforts of the Dalai Lama and others to resolve peacefully the situation in Tibet; and

(9) calls upon the Government of the People's Republic of China to meet with representatives of the Dalai Lama to begin initiating constructive dialog on the future of Tibet.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

NATIONAL AGRICULTURE DAY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 117, a joint resolution to designate March 20, 1989, as National Agriculture Day, just received from the House of Representatives.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 117) to proclaim March 20, 1989, as National Agriculture Day.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

TRAUMA AWARENESS MONTH

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 68, a joint resolution designating May 1989 as Trauma Awareness Month, and that the Senate proceed to its immediate consideration.

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

The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 68) designating May 1989 as Trauma Awareness Month.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution was considered, ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. RES. 68

Whereas more than eight million individuals in the United States suffer traumatic injury each year;

Whereas traumatic injury is the leading cause of death of individuals of less than forty years of age in the United States;

Whereas every individual is a potential victim of traumatic injury;

Whereas traumatic injury can occur without warning;

Whereas traumatic injury frequently renders its victims incapable of caring for themselves;

Whereas past inattention to the causes and effects of trauma has led to the inclusion of trauma among the most neglected medical conditions;

Whereas the people of the United States spend more than $110,000,000,000 annually on the problem of trauma;

Whereas the problem of trauma can be remedied only by prevention and proper treatment through emergency medical services and trauma systems; and

Whereas the people of the United States must be educated in the prevention and treatment of trauma and in the proper and effective use of emergency medical services and trauma systems: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That May 1989 is designated as "National Trauma Awareness Month", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

TENTH ANNIVERSARY OF ISRAELI-EGYPTIAN PEACE

Mr. DOLE. Mr. President, I send to the desk a joint resolution and ask for its immediate consideration, on behalf of Senators BOSCHWITZ, HELMS, MOYNIHAN, MITCHELL, DOLE, and GRAHAM.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 87) to commend the Governments of Israel and Egypt on the occasion of the 10th anniversary of the Treaty of Peace between Israel and Egypt.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. BOSCHWITZ. Mr. President, today the Senate takes note of a historic treaty which, for the first time since the founding of Israel in 1948, proved that differences in the Middle East can be settled peacefully. I am pleased to introduce, along with my colleagues Senator PELL, Senator HELMS, and Senator MOYNIHAN, a resolution congratulating both Israel and Egypt for their decade of observance to their peace treaty. In a region so sorely harmed by violence, this treaty proves that once former enemies can move willingly along the previously uncharted paths of peace.

What a message this sends to other peoples and nations in the Middle East, so deeply steeped in conflicts. Perhaps the most important lesson we learn from the events leading to the peace treaty is that peace comes not because nations want war less, but because they want peace more. Once the psychological adjustment is made to try to achieve peace, everything else is possible.

The treaty stands as a testament and beacon of what can be accomplished through the diligence, persistence, and vision of national leaders committed to peace. To achieve the treaty, great acts of courage were taken. President Sadat's journey to Jerusalem broke the psychological and physical barriers separating Israel and Egypt. Similarly, Prime Minister Begin reflected the strong desire of his people for peace and seized the opportunity for peace when it arose. His courage in agreeing to return the entire Sinai Peninsula, an oil-rich area twice the size of Israel, is an example of statesmanship that will not soon be forgotten.

President Jimmy Carter showed vision and determination, tirelessly working for the achievement of the treaty. In the process, he accomplished a task which many had said was impossible.

Unfortunately, the other parties to the conflict have yet to see the wisdom of the course charted in the peace treaty. Had others followed the path of Israel and Egypt, years of violence could have been voided and the current Palestinian uprising might never have occurred.

Nevertheless, today we see some glimmers of hope on the horizon. And while a comprehensive formal peace may still be some distance away, I am optimistic that the day will come when direct negotitions among the parties will begin, bringing hope of peace to a region which deserves and needs it perhaps more than any other.

Mr. President, I strongly urge my colleagues to adopt this resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble reads as follows:

S.J. RES. 87

Whereas in Washington, District of Columbia, on March 26, 1979, the Governments of Israel and Egypt, with the support and encouragement of the United States, signed a treaty of peace formally ending their state of war;

Whereas this treaty, the only peace agreement between Israel and an Arab nation, remains a crucial element in fostering peace in the Middle East;

Whereas under terms of this historic document Israel and Egypt agreed to end the state of war between them, Israel fully withdrew its military forces and civilian settlements from the Sinai Peninsula, and Israel and Egypt established formal diplomatic relations, including the exchange of ambassadors;

Whereas the establishment of peace between Israel and Egypt demonstrates that direct bilateral negotiations are the most effective way to resolve the Arab-Israeli conflict and can lead to lasting and mutually beneficial results;

Whereas the other parties to the conflict have been unwilling to enter into direct bilateral negotiations but continue to maintain a state of war against Israel;

Whereas the continuation of the conflict has exacted a high cost in human lives and human suffering from both Israelis and Arabs; and

Whereas the treaty has allowed the peoples of Israel and Egypt to begin to build a network of cultural, economic, personal, and political contacts among themselves; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Government—

(1) Commends Israel and Egypt for their historic act of courage and statesmanship in signing the Treaty of Peace of March 26, 1979;

(2) calls upon the President to mark this historic anniversary with appropriate public activities;

(3) welcomes the willingness of Israel and Egypt to continue to observe the international obligations they have accepted which have contributed to the peace and stability of the region; and

(4) calls upon other Arab nations and the Palestinians to follow the example of Israel and Egypt, to join actively in the peace process, to renounce the state of war and acts of violence, and to enter into face-to-face negotiations to achieve a just and lasting peace.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the following nominations en bloc: Executive Calendar Nos. 44, 45, 46, 47, and all nominations placed on the Secretary's desk in the Air Force, Army, Navy, Public Health Service.

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

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

[NEW REPORTS]

IN THE ARMY

The following-named officer for appointment to the grade indicated, under the provisions of title 10, United States Code, section 601(a), in conjunction with assignment to a position of importance and responsibility designated by the President under title 10, United States Code, section 601(a):

To be general

Lt. Gen. Colin L. Powell, [redacted], U.S. Army.

The following-named officer for appointment to the grade indicated, under the provisions of title 10, United States Code, section 601(a), in conjunction with assignment to a position of importance and responsibility designated by the President under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. Donald W. Jones, [redacted], U.S. Army.

The U.S. Army Reserve officers named herein for appointment as Reserve Commissioned Officers of the Army, under the provisions of title 10, United States Code, sections 593(a), 3371 and 384:

To be major general

Brig. Gen. Joseph H. Brooks, [redacted]
Brig. Gen. James W. Holsinger, Jr. [redacted]
Brig. Gen. Homer A. Johnson, Jr. [redacted]
Brig. Gen. James R. Land, [redacted]
Brig. Gen. John R. McWaters, [redacted]
Brig. Gen. Eugene J. Yonno, [redacted]

To be brigadier general

Col. William J. Collins, Jr. [redacted]
Col. Edgardo A. Gonzalez, [redacted]

CENTRAL INTELLIGENCE

Richard J. Kerr, of Virginia, to be Deputy Director of Central Intelligence, vice Robert M. Gates, resigned.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, NAVY, PUBLIC HEALTH SERVICE

Air Force nominations beginning Eugene A. Beardslee, and ending Floyd J. Wygant, II, which nominations were received by the Senate on March 1, 1989, and appeared in the CONGRESSIONAL RECORD of March 2, 1989.

Air Force nominations beginning David L. Cloe, and ending Roger P. Suro, which nominations were received by the Senate on March 1, 1989, and appeared in the CONGRESSIONAL RECORD of March 2, 1989.

Air Force nominations beginning Michael L. Abbott, and ending Daniel C. Zook, which nominations were received by the Senate on February 1, 1989, and appeared in the CONGRESSIONAL RECORD of March 2, 1989.

Air Force nominations beginning Timothy L. Abel, and ending William P. Zuber, which nominations were received by the Senate on March 1, 1989, and appeared in the CONGRESSIONAL RECORD of March 2, 1989.

Army nominations beginning Barbara M. Alving, and ending Edmund P. Wiker, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 3, 1989.

Army nominations beginning Eric D. Adrian, and ending Charles J. Yowler, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 3, 1989.

Army nominations beginning Shirley O. Ford, and ending Charles Ferris, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 3, 1989.

Army nominations beginning Kenneth P. Adgie, and ending Karl D. Zetimeir, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 3, 1989.

Army nominations beginning Michael C. Aaron, and ending Randal D. Robinson, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 3, 1989.

Army nominations beginning Frank E. Chapple, II, and ending Bonnie L. Smoak, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of February 8, 1989.

Army nominations beginning Bram H. Bernstein, and ending James R. Woods, Jr., which nominations were received by the Senate on March 1, 1989, and appeared in the CONGRESSIONAL RECORD of March 2, 1989.

Army nominations beginning John M. Long, and ending Thomas E. Rigsbee, which nominations were received by the Senate on March 1, 1989, and appeared in the CONGRESSIONAL RECORD of March 2, 1989.

Army nominations beginning Robert H. Langston, and ending Gary S. Madonna, which nominations were received by the Senate on March 1, 1989, and appeared in the CONGRESSIONAL RECORD of March 2, 1989.

Navy nominations beginning Arne J. Anderson, and ending Kristen C. Zeller, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of March 3, 1989.

Navy nominations beginning Michael J. Epstein, and ending Benjamin T. Po, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of March 7, 1989.

Navy nominations beginning Kelly N. Alvey, and ending David B. Hurst, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of March 7, 1989.

Navy nominations beginning John B. Anderson and ending Jerry Lee Zumbro, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of March 7, 1989.

Navy nominations beginning David A. Austin, and ending Sheldon L. Weider, which nominations were received by the Senate on March 1, 1989, and appeared in the CONGRESSIONAL RECORD of March 2, 1989.

Public Health Service nominations beginning Duane F. Alexander, and ending Beverly A. Roth, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 3, 1989.

RICHARD KERR

Mr. MURKOWSKI. Mr. President, I am pleased to join in the unanimous recommendation of the Select Committee on Intelligence to the Senate that Richard Kerr be confirmed as Deputy Director of Central Intelligence. This is a matter of some consequence because the Deputy Director is second in command of the diverse agencies and vast resources that comprise the intelligence community of the United States.

Like his predecessor, Mr. Kerr is a career officer of the CIA. This is as it should be. While the President must have an individual of his own choosing as the Director, it is critical that political considerations play no role in the selection of the subordinate management of the intelligence process if that process is to maintain its integrity. There is no place for "good news only" intelligence that tries to tailor facts and analysis to fit policy and politics.

The requirement for unbiased intelligence is matched by the need to provide that intelligence to the key policymaking element of the Government. The Congress shares with the executive branch primary responsibility for formulating foreign and national security policy. This responsibility carries with it a right to relevant available information, including intelligence. This is particularly true of the Intelligence Committees which have both an oversight responsibility toward the intelligence community and are charged by the Congress to be the channel of access to the most sensitive intelligence information.

In his responses to questions for the record I detected a reluctance on Mr. Kerr's part to accept the right of the Intelligence Committees to have full and assured access to intelligence—including the reporting that goes into finished intelligence and to all special compartments. The precise conditions of access can be worked out in specific cases, but the principle is not negotiable.

Assuming agreement on this point, I look forward to a constructive and cordial working relationship with Mr. Kerr in his new, and important, capacity.

Mr. COHEN. Mr. President, I join with Senator BOREN in recommending to my colleagues the nomination of Richard J. Kerr to be Deputy Director of Central Intelligence.

Mr. Kerr is an intelligence professional in the truest sense of the term, having spent his entire career with the Central Intelligence Agency. Although he may not be well known to the public or, indeed, to Members of this body, he is well known to the Intelligence Committee. We have worked closely with him in the past, and have come to respect his integrity and abilities. We anticipate that he will continue to work with the committee in a spirit of candor and cooperation.

In my statement at Mr. Kerr's confirmation hearing, I observed that the Intelligence Committees spend a great deal of time in the area of covert actions, and that the relationship between the intelligence community and the committees has, for the most part, been excellent.

However, I also said that I was not satisfied with the way things have been left with respect to the requirements for reporting covert actions to Congress. Last year, I introduced legislation, S. 1721, which would have established a time certain of 48 hours for the President to report covert actions to the Congress. We passed that bill by a 71-to-19 vote, but it never came before the full House for a vote.

So we are still left with the Reagan administration's Justice Department determination that a President has unfettered discretion to interpret what his obligations are under the existing language calling for reporting "in a timely fashion." Last year's vote shows that this formulation is not acceptable to the Senate and it is a matter which must be resolved. I stated that I would work to reach an accommodation with the new administration, but if that was not possible—indeed, if progress was not made in the near future—I would reintroduce legislation requiring that notice of covert actions be given within 48 hours.

I asked the nominee about his views with regard to the requirement that the President report a finding authorizing a covert action to the two Intelligence Committees. Mr. Kerr testified that the congressional oversight role should be to examine the foreign policy premise of a proposed covert action, and to ensure that it is consistent with publicly stated U.S. policy and that the intelligence community had examined the risks of a proposed action in detail. Mr. Kerr also testified that it would be difficult for him to imagine a circumstance where the committees would not be informed in advance of a proposed action.

In Mr. Kerr's view, the congressional oversight function is necessary and positive. His testimony indicates that he believes the intelligence committees should be kept fully and currently informed of covert actions and other intelligence activities. I am pleased that Mr. Kerr has taken that position and look forward to working with him.

His confirmation in the position of Deputy Director of Central Intelligence will add another experienced and capable member to the President's national security team. I believe the appointment of Mr. Kerr will have a salutary effect on policymaking not only within the intelligence community, but within the Government as a whole. I urge the Senate to confirm him.

Mr. WARNER. Mr. President, I am pleased to join my colleagues from the Intelligence Committee to recommend for Senate confirmation Mr. Richard Kerr to be Deputy Director of Central Intelligence.

I congratulate Dick on receiving the President's nomination to serve as the Deputy Director of Central Intelligence. Such a nomination is clear evidence of the trust which the President places in him. I am confident that this trust is the result of Dick's vast experience in the intelligence community and his impeccable personal attributes.

Dick joined the Central Intelligence Agency in 1960 as an analyst. He has worked hard, performed well, and, accordingly, progressed through the ranks. Over the last 15 years, he has held a variety of senior level positions, both at the CIA and on the intelligence community staff. Since early 1986, he has served as the Deputy Director for Intelligence, the highest analytical position at the CIA. He is also a member of the Covert Action Review Group.

Along with his vast experience, Dick has had many noteworthy accomplishments over the years.

In the early 1960's, as a junior analyst, Dick was directly involved in supporting our policymakers during the Cuban missile crisis. Initially, he prepared the daily current intelligence reports on the confrontation, and later, was responsible for the daily reports on the subsequent withdrawal of Soveit missiles from Cuba. I might add that there are few intelligence analysts remaining in public service whose career spanned the Cuban missile crisis, the most serious confrontation of the post war era. The experience Dick gained during this time has prepared him well for handling critical national security emergencies.

During the 1970's, Dick's performance was consistently exemplary. He led an intelligence community planning group, the first of its kind that was responsible for developing a major new collection program which provided timely and useful information for the intelligence community. The success of this effort is well-known within the U.S. Intelligence community.

In the 1980's Dick initiated the daily briefings of senior administration officials to ensure that they receive the most accurate and up-to-date intelligence data in order to make informed decisions.

Throughout his career, Dick Kerr's contributions have had a highly significant impact on the intelligence community. In recognition of these contributions, Dick has received the National Intelligence Distinguished Service Medal and the Distinguished Intelligence Medal.

Mr. President, when I review Dick's experience and peformance, it is clear to me that, because of his almost 30 years of dedicated work at various levels within the intelligence community, Dick Kerr has reached the top of his profession because he has truly earned it.

Additionally, let me note that Dick Kerr's answer to the committee's questions during the confirmation hearings were both thoughtful and open. He assured us that, as the Deputy Director of Central Intelligence, he would continue to be truthful and forthcoming with the committee, and that he would work to ensure that the intelligence community as a whole would do the same.

In summary, Dick Kerr's experience, intelligence, honesty and hard work have equipped him to deal effectively with the critical issues and challenges which face the United States and the intelligence community in the decade of the 1990's. Without a doubt, he is well qualified to assume the important

and delicate position of Deputy Director of the Central Intelligence. I am fully confident that he will manage and represent the intelligence community well in this position, ensuring the best possible support to policymakers in both the executive and legislative branches of Government.

Mr. President, I strongly recommend that the Senate confirm Mr. Richard Kerr to the position of Deputy Director of Central Intelligence.

Mr. SPECTER. Mr. President, as we move to Senate consideration to confirm Richard Kerr as Deputy Director of Central Intelligence, I would like to say that I am impressed with Mr. Kerr's extensive background, broad experience and familiarity with the full range of intelligence issues. With nearly 30 years in key positions at CIA and on the intelligence community staff, he unequivocally qualifies for the accolade of career intelligence professional. Therefore, I plan to cast my vote in support of his nomination.

But, being a career professional carries special responsibilities for Mr. Kerr. The administration, the Congress and the American public can rightfully assume that he not only understands fully the laws, rules and needs of intelligence, but also knows when, where and how to speak up when policies or programs are running adrift of those very laws, rules and needs. I think it appropriate to say again today, as I have told Mr. Kerr privately and before the Intelligence Committee, that I harbor concerns about the timely reporting on covert actions. Second, I am concerned that the current management structure of the intelligence community is outmoded and will not allow him to perform effectively.

In the wake of the entire Iran-Contra affair, we are no closer to a binding agreement in law on when covert activities will be reported to the Congress. And, in fact we may have regressed. My pending legislation calling for reporting within 24 hours has a very sound basis. It is to ensure that covert activity is based on sound, coherent foreign policy and that all of the statutory members of the National Security Council are aware of and in support of the policy and planned covert activity.

In addition, it is to ensure that there is effective oversight over the agency implementing the covert action. One of the most devastating things that can happen to U.S. foreign policy and our intelligence agencies is for a Secretary of State to appear before the Congress and state that:

> One of the reasons the President was given * * * wrong information * * * was that the Agency or the people in the CIA were too involved in this—that I had come to have great doubts about the objectivity and reliability of some of the intelligence I was getting * * *.

Those were the words of former Secretary Shultz on the CIA's role in the Iran-Contra affair.

Mr. Kerr will be making decisions together with the DCI on all covert actions. He has told us that in "almost all instances the Intelligence Committees should be given prior notice of them." He has told us that the Intelligence Committees could have been notified earlier on the Iran covert action. This seems to suggest that in the future the Congress will be informed of a covert action somewhere in the uncertain range of prior to such activity but less that the 14 months of the Iran covert action. Because of this uncertainty, I shall continue to seek legislation to require the reporting of all covert actions within 24 hours.

Second, I am concerned that—given the outmoded management structure of the intelligence community—Mr. Kerr can effectively contribute the leadership needed. For this, he needs some legislative assistance.

Mr. Kerr has stated to us that he expects his role as DDCI will be somewhat more of the day-to-day manager of CIA and community activities because the DCI is so heavily focused on relations with Congress and direct contacts with policy makers.

In my view this is a near-impossible task.

Today, the director of central intelligence is trying to manage simultaneously the vast entities of the intelligence community and the CIA. In 1947, those entities were relatively small. Now, however, the intelligence community—that vast and complex network of some 14 departments, agencies and offices has grown to staggering proportions in terms of budget, people and missions.

When we add to that the need for interdependency, close coordination, cooperation and timeliness of information, the demand for a full time intelligence community director becomes all too apparent. As an example, in the 1990's, a far greater amount of satellite data will be available. But, in the face of tight budgets, the plans of the several intelligence agencies competing for exploitation resources must be better coordinated and managed. The consequences of inadequate coordination and management may well be a lack of confidence in the assessments of conventional force reductions in the Soviet Union and Eastern Europe. The leadship hand of the DCI must be more apparent.

Before he retired last year, Lieutenant General Odom, Director of the National Security Agency stated publicly that the intelligence community is "institutionally fragmented."

In my view, the reason why it *is* fragmented is because the management system is outmoded. It lacks the close day-to-day management which only a full time director can provide. The closest I can draw in parallel is to envision the Secretary of Defense also trying to manage the Navy Department—on a day-to-day basis, while also trying to manage the entire defense establishment. I am convinced that the deck is stacked against Mr. Kerr.

Mr. President, I shall vote "yea" on Mr. Kerr's nomination, but I am concerned about efficient senior management of the intelligence community. I also believe that there need to be a better mechanism to ensure the vetting, control and reporting of covert actions. Therefore, in the months ahead, I shall seek to achieve passage of my legislation to enhante the management and leadership of the intelligence community and covert actions by calling for a full time Director of National Intelligence.

Mr. BOREN. Mr. President, the nomination of Richard J. Kerr to be Deputy Director of Central Intelligence was reported to the Senate yesterday pursuant to a unanimous vote of the Senate Select Committee on Intelligence with a recommendation that he be confirmed. On behalf of myself and Senator COHEN, in our respective capacities as chairman and vice chairman of the committee, we urge the Senate to act favorably on this nomination.

The committee made a complete and thorough inquiry of the nominee's qualifications as well as his views on issues of mutual concern, and concluded that he is qualified by both experience and temperament to hold this sensitive and critical position.

As you may be aware, Mr. President, this position is established by the National Security Act of 1947. The incumbent is given responsibility, comparable to the Director of Central Intelligence, both to manage and supervise the activities of the Central Intelligence Agency, as well as coordinate the activities of the U.S. intelligence community. Obviously, he carries out these responsibilities under the direction of the Director of Central Intelligence, but it is important to recognize that the authorities of the Deputy correspond to those of the Director himself.

In the remainder of my remarks, I will summarize for my colleagues the nature of the committee's inquiry, and highlight the key features of Mr. Kerr's testimony to the committee.

SUMMARY OF COMMITTEE INQUIRY

Although the committee did not officially receive the nomination until February 21, 1989, President-elect Bush had announced his intention to appoint Richard J. Kerr to be Deputy Director of Central Intelligence on December 29, 1988.

The committee required Mr. Kerr to submit sworn answers to its standard questionnaire for Presidential appointees, setting forth his background and

financial situations. It also required sworn answers to its questions concerning Mr. Kerr's involvement in the so-called Iran-Contra affair. These were submitted to the committee on January 19, 1989.

The committee reviewed all statements previously made by Mr. Kerr before it as well as his statement before the Iran-Contra committees. The statements of other witnesses involved in the Iran-Contra affair were also reviewed for information bearing upon Mr. Kerr's involvement in this matter. All statements attributed to Mr. Kerr on the public record were also reviewed, and informal inquiries were made of present and former colleagues.

On February 21, 1989, the committee received a letter from the Director of the Office of Government Ethics transmitting a copy of the financial disclosure statement submitted by Mr. Kerr. The Director advised the committee that it disclosed no real or potential conflict of interest.

The chairman and vice chairman also reviewed the FBI investigation done for the White House on Mr. Kerr.

The committee held a confirmation hearing on Mr. Kerr on February 28, 1989, at which time the nominee was questioned on a variety of topics. Subsequently, written questions were submitted to the nominee for additional responses.

Based upon this inquiry, the committee reported the nomination to the Senate on March 14, 1989, by a unanimous vote, with a recommendation that Mr. Kerr be confirmed.

HIGHLIGHTS OF TESTIMONY

BACKGROUND OF NOMINEE

Mr. Kerr, 53, is currently Deputy Director for Intelligence at the Central Intelligence Agency, a post he has held since April 1986. He has spent his entire professional career at CIA, having joined the Agency upon his graduation from the University of Oregon in 1960. During his tenure at CIA, in addition to his present capacity, he has served as Deputy Director for Administration, 1986; Associate Deputy Director for Intelligence, 1982-85; Director for East Asian Analysis, 1981-82; and Director of Current Operations, 1979-81. He has also served a total of 7 years on the intelligence community staff, which serves as the DCI's staff for exercise of his community responsibilities.

The nominee holds a bachelor's degree from the University of Oregon, where he also had a year of graduate study. He is married with four children, and lives in Virginia.

VIEWS ON CONGRESSIONAL OVERSIGHT

In his opening remarks to the committee, Mr. Kerr described Congress' oversight of the Intelligence Community as both "necessary" and "positive." While saying that such oversight has not been without its problems and difficult moments, Mr. Kerr:

It assures the American people that activities that must be conducted in secret are being reviewed by their elected representatives, and are also being carried out in a lawful manner.

To make this process act effectively, the nominee continued:

It is vital that there be confidence and trust between the Intelligence Community and Members and staffs of the Intelligence Committees. Members must have confidence that they are receiving complete and candid answers, and that the intelligence professionals are telling them the full story and not holding back information.

The nominee pledged such candor and truthfulness in his future dealings with the committee.

On the question of reporting covert actions to the two intelligence committees, the nominee stated that he found it "difficult to imagine" any circumstance where Presidential findings, authorizing covert actions, could not be reported to the two Intelligence Committees within a matter of several days. He furthermore stated that any decision to withhold prior notice of such operations would have to be made by the President based upon "sensitive, compelling" circumstances, and ultimately upon his determination that—

That decision outweighed his commitment for notification of Congress and involvement of Congress in a bipartisan activity.

With regard to the failure of the previous administration to notify Congress of the Iran arms sales finding, Mr. Kerr stated that:

I believe that the committee could have been notified earlier * * * than it was.

The nominee also pledged to report illegal activities to the Intelligence Committees if they were undertaken by employees of, or persons acting on behalf of, the intelligence community. He stated further that he thought advising the committees of illegal activities on the part of others with whom the intelligence community had relationships "wise," and "would fall into the general provisions of notifications of significant activity."

ROLE AS DDCI

In explaining the role of the DDCI, the nominee responded:

The role of the DDCI is to assist the DCI by performing such functions as the DCI assigns or delegates. He acts for and exercises the powers of the DCI in his absence. My role in managing the Intelligence Community will be to support the DCI in the coordination of Community priorities and requirements, development of the National Foreign Intelligence Program budget, and examination of critical cross disciplinary intelligence problems. I expect my role will be somewhat more of the day-to-day manager of the CIA and Community activities because the DCI is so heavily focused on relations with Congress and direct contacts with senior policymakers.

The nominee also told the committee that as DDCI, he—

* * * will work with the DCI to sharpen the intelligence product and make it more relevent to policymakers. A(nother) major responsibility is to assist the DCI in assuming a stronger leadership role in the community. This will be more critical as budgetary constraints force hard decisions on resource issues. I plan to take some of the day-to-day administrative burdens off the DCI, but it is clear to me he intends for me to be involved in all of the major issues as well.

Commenting upon his goals as DDCI, the nominee further stated:

The provisions of timely, accurate, and objective information to our policymakers so that they can make informed decisions is in my view the most important function of the CIA and the Intelligence Community. We are not policymakers. Our role is to provide policymakers with unbiased intelligence, even if the intelligence does not support the policy being advocated, or even the policy that has been adopted.

ROLE IN THE IRAN-CONTRA AFFAIR

Mr. Kerr had a peripheral role in the Iran-Contra affair, beginning with his appointment in May, 1986, as Deputy Director for Intelligence.

In May 1986, Mr. Kerr was asked to provide intelligence on Soviet forces on the Soviet-Iran border for use by the McFarlane delegation going to Tehran in the middle of that month. Mr. Kerr inquired as to whether the provisions of such intelligence had been properly authorized by the President, and he was provided such assurance by the Deputy Director of CIA.

In "late summer, 1986," Mr. Kerr was advised for the first time by the national intelligence officer for counterintelligence, Charles Allen, of the arms sales to Iran as well as Allen's speculation that profits from the arms sales were being diverted to aid the Nicaraguan resistance. Mr. Kerr states he communicated these concerns to the Deputy Director of CIA "shortly thereafter," although the Deputy Director has, in other fora, testified he has no recollection of such a conversation. Mr. Kerr testifies that the Deputy Director asked him to keep him—the Deputy Director—advised of any future developments, but Mr. Kerr took no further actions in this regard.

In October 1986, Mr. Kerr was twice asked to support the then-ongoing Iran initiative. First, he was requested to provide intelligence to be passed to the Iranians involved in the negotiations. Later, he was asked to have CIA analysts evaluate maps reportedly provided by Iran purporting to show Soviet forces on the Iran-Iraq border. Mr. Kerr testified that on both occasions he sought approval from his superiors to ensure there were no objections to providing the support being requested.

The committee concluded that Mr. Kerr's role in the Iran-Contra affair had been peripheral, and, on the basis

of available information, did not disclose any improper or illegal activity on his part.

INTELLIGENCE ANALYSIS

The nominee provided assurances to the committee that intelligence analysis would remain objective and opportunities for dissenting views to be made known would be preserved. He also advocated challenging from time to time the accepted policy consensus:

You need to sensitize people to thinking about problems in different ways * * * bring in outside people and have them talk to those on the inside * * * (to) probe the organizational point of view.

Mr. Kerr also expressed his belief that too much intelligence analysis focused upon providing answers to problems rather than identifying opportunities for the policymaker:

I think intelligence has a role in identifying where opportunities might exist, where there is leverage, or where there are things that a policymaker can take advantage of * * * we tend to focus too much on the problem as opposed to the opportunity.

In commenting upon perceptions by one Member that the intelligence community had failed to predict certain actions on the part of the Soviet Union, for example, the Gorbachev proposals at Reykjavik, the nominee commented that he did not necessarily agree that it was the responsibility of the intelligence community to—

Predict outcomes in clear, neat ways, because that is not doable * * * What our business should be in this is to provide enough understanding of the issue * * * the possible outcomes and their implications for the policymaker * * * and, if we can, (provide) the one we think is most likely based upon the intelligence that we have.

CHALLENGES FACING THE INTELLIGENCE COMMUNITY

The nominee, in his testimony, identified a number of challenges facing the intelligence community.

First, he pointed out that:

The Soviet Union is attempting extraordinary and unprecedented change. It will be vital to have timely and accurate information * * * on the impact of Gorbachev's reforms on Soviet domestic and foreign policy. We must also analyze closely European and other foreign reactions to the * * * new Soviet policy initiatives.

He also pointed to arms control and the ability of the intelligence community to "monitor the numbers, deployments, and capabilities of Soviet strategic forces." And he pointed to the need to monitor such critical developments as "continuing Third World debt and instability" and "the emergence of Asia as an economic powerhouse."

The nominee also pointed out that:

A more focused and better coordinated effort against narcotics traffickers needs to be established within the Intelligence Community, and the support mechanism between the Intelligence Community and the drug enforcement agencies must be improved.

He also stated that:

The counterintelligence threat continues to grow, and we must build upon improvement already made * * * if we are to be successful in defeating the challenge posed by hostile intelligence services.

Finally, he noted the challenges posed by the proliferation of chemical and biological weapons capabilities, illegal technology transfer, and international terrorism are "as great as ever." While he noted that "a good deal" had been done already, "we need to do more."

CONCLUSION

The foregoing summarizes only the highlights of the record the committee, which is, of course, available to all Members in its entirely at the Intelligence Committee.

Based upon the nominee's statements to the committee, however, his exemplary record of distinguished service to the intelligence community, and the absence of any derogatory or otherwise disqualifying information concerning him, the Select Committee on Intelligence voted to report his nomination to the Senate with a recommendation that he be confirmed by the full Senate as Deputy Director of Central Intelligence.

Mr. METZENBAUM. Mr. President, as we move to confirm the nomination of Mr. Richard Kerr as Deputy Director of Central Intelligence, I would like to make some observations.

First, when I look at Mr. Kerr's background, I largely like what I see. I am glad to see an intelligence professional in one of the two top intelligence positions. Judge Webster's FBI background gives him experience in counterintelligence and in aspects of the fight against terrorism and narcotics trafficking. Mr. Kerr will add a familiarity with foreign countries, with foreign policy, and with intelligence community operations and programs.

I am also pleased that the new Deputy Director of Central Intelligence will have experience in intelligence analysis. The public often thinks of intelligence in terms of secret operations, and we on the Intelligence Committee often concentrate on the big budget items. But day in and day out, the analytic functions of our intelligence agencies have the most profound impact on U.S. policies. It is the analysts who use the technical data and the information from secret sources; most of the time it is the analytic officials who interact with policymakers and produce the intelligence that they read.

I am still not sure, however, that Mr. Kerr will contribute the kind of leadership we need from the senior professional in the intelligence community. He has the background, but his performance too often seems bureaucratic and uninspired. This was particularly the case in some of his answers to questions for the record.

When we asked whether the Presidential Finding on the Iran arms sale program could have been given to the committee within 24 or 48 hours, Mr. Kerr's answer was: "In my view, I believe the committee could have been notified earlier of the Iran finding than it was." That is not a very forthcoming response.

When we asked about the need for budget cuts, Mr. Kerr replied, "we will be making some difficult choices." But he gave neither specifics nor any criteria by which he would make those choices.

Mr. Kerr gave a rather puzzling answer to the committee's question regarding access, when necessary, to raw intelligence. He granted the committee "the responsibility to carefully examine the evidential basis for intelligence community judgments," but opposed "its own competitive analysis" and ended up saying the committee should "ask us hard questions about the sources of our information and their reliability, and * * * our analytic approach and the process of review." I don't know where that leaves us.

In the covert action field, we asked whether Mr. Kerr had ever disagreed with a decision. His reply was as follows: "Any reservations I have had about covert action proposals have been included in the documentation going forward to the DCI. My concerns have always been well addressed." That is a fine expression of loyalty to Bill Casey, Bob Gates, and Bill Webster. But it doesn't tell us much about where Mr. Kerr is going to come out.

When it comes to intelligence analysis, Mr. Kerr believes that the CIA already does a good job of providing forthright analysis relating to covert action programs. He sees no lessons to be learned from the history of the national intelligence estimates relating to the Iran arms sales. And he sees few problems in the relationship between intelligence and policy, partly because "most policy issues can be phrased in legitimate intelligence terms."

Mr. Kerr's answers for the record are consistent with his performance in the Iran-Contra affair. When he was told to prepare material for Bud McFarlane to use in briefing Iran, he made sure that the program was duly authorized, but did not determine whether it was wise or whether the material he prepared had been useful. When he heard one professional's view that funds might be going to the Contras, he told his immediate superior but did nothing more. He went by the book, asking only those questions necessary to ensure that his people were not breaking the law. This was despite the fact that he was a member of the Covert Action Review Group—a panel that was supposed to review all covert

action programs, but had not been consulted on this one.

Mr. President, I am voting in favor of Mr. Kerr's confirmation despite my reservations. I hope that his background and his professionalism will prompt Mr. Kerr, once he becomes Deputy Director of Central Intelligence, to assert himself and to make sure that the experience and wisdom of intelligence professionals are brought to bear on high-level decisions relating both to intelligence operations and to the intelligence judgments presented to policymakers.

Richard Kerr has been an intelligent and able bureaucrat. Now he must go beyond that and help lead the intelligence community through both the normal trials of dealing with policymakers and the special challenges that a tight budget will impose. I hope he understands that need and will be an active leader—not merely a loyal member of the team.

Mr. MITCHELL. Mr. President, I ask unanimous consent that a motion to reconsider en bloc be laid upon the table, and that the President be immediately notified of the confirmation of the nominations.

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

LEGISLATIVE SESSION

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

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

REPUBLICAN LEADER TIME ON TOMORROW

Mr. DOLE. Mr. President, I wish to indicate that I will not be using my leader time. If anyone needs that time in the morning, it is available.

RECESS UNTIL 8:45 A.M. TOMORROW

Mr. MITCHELL. Mr. President, if the Republican leader has no further business and if no Senator is seeking recognition, I ask unanimous consent that the Senate stand in recess under the previous order until 8:45 a.m. tomorrow.

There no objection, the Senate, at 9:04 p.m., recessed until Friday, March 17, 1989, at 8:45 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 16, 1989:

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601(A), IN CONJUNCTION WITH ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be general

LT. GEN. COLIN L. POWELL, [redacted] U.S. ARMY.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601(A), IN CONJUNCTION WITH ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. DONALD W. JONES, [redacted] U.S. ARMY.

IN THE ARMY

THE U.S. ARMY RESERVE OFFICERS NAMED HEREIN FOR APPOINTMENT AS RESERVE COMMISSIONED OFFICERS OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A), 3371 AND 3384:

To be major general

BRIG. GEN. JOSEPH H. BROOKS, [redacted]
BRIG. GEN. JAMES W. HOLSINGER, JR., [redacted]
BRIG. GEN. HOMER A. JOHNSON, JR., [redacted]
BRIG. GEN. JAMES R. LAND, [redacted]
BRIG. GEN. JOHN R. MCWATERS, [redacted]
BRIG. GEN. EUGENE J. YONNO, [redacted]

To be brigadier general

COL. WILLIAM J. COLLINS, JR., [redacted]
COL. EDGARDO A. GONZALEZ, [redacted]

CENTRAL INTELLIGENCE

RICHARD J. KERR, OF VIRGINIA, TO BE DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING EUGENE A. BEARDSLEE, AND ENDING FLOYD J. WYGANT, II, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 2, 1989.

AIR FORCE NOMINATIONS BEGINNING DAVID L. CLOE, AND ENDING ROGER P. SURO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 2, 1989.

AIR FORCE NOMINATIONS BEGINNING MICHAEL L. ABBOTT, AND ENDING DANIEL C. ZOOK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 2, 1989.

AIR FORCE NOMINATIONS BEGINNING TIMOTHY L. ABEL, AND ENDING WILLIAM P. ZUBER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 2, 1989.

IN THE ARMY

ARMY NOMINATIONS BEGINNING *BARBARA M. ALVING, AND ENDING *EDMUND P. WIKER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 3, 1989.

ARMY NOMINATIONS BEGINNING ERIC D.* ADRIAN, AND ENDING CHARLES J.* YOWLER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 3, 1989.

ARMY NOMINATIONS BEGINNING SHIRLEY O. FORD, AND ENDING CHARLES FERRIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 3, 1989.

ARMY NOMINATIONS BEGINNING KENNETH P. ADGIE, AND ENDING KARL D. ZETMEIR, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 3, 1989.

ARMY NOMINATIONS BEGINNING MICHAEL C. AARON, AND ENDING RANDAL D. ROBINSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 3, 1989.

ARMY NOMINATIONS BEGINNING FRANK E. CHAPPLE, II, AND ENDING *BONNIE L. SMOAK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 6, 1989.

ARMY NOMINATIONS BEGINNING BRAM H. BERNSTEIN, AND ENDING JAMES R. WOODS, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 2, 1989.

ARMY NOMINATIONS BEGINNING JOHN M. LONG, AND ENDING *THOMAS E. RIGSBEE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 2, 1989.

ARMY NOMINATIONS BEGINNING *ROBERT H. LANGSTON, AND ENDING *GARY S. MADONNA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 2, 1989.

NAVY

NAVY NOMINATIONS BEGINNING DAVID A. AUSTIN, AND ENDING SHELDON L. WEIDER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 2, 1989.

NAVY NOMINATIONS BEGINNING ARNE J. ANDERSON, AND ENDING KRISTEN C. ZELLER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 3, 1989.

NAVY NOMINATIONS BEGINNING MICHAEL J. EPSTEIN, AND ENDING BENJAMIN T. PO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 7, 1989.

NAVY NOMINATIONS BEGINNING KELLY N. ALVEY, AND ENDING DAVID B. HURST, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 7, 1989.

NAVY NOMINATIONS BEGINNING JOHN B. ANDERSON, AND ENDING JERRY LEE ZUMBRO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 7, 1989.

PUBLIC HEALTH SERVICE

PUBLIC HEALTH SERVICE NOMINATIONS BEGINNING DUANE F. ALEXANDER, AND ENDING BEVERLY A. ROTH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 3, 1989.

EXTENSIONS OF REMARKS

INTRODUCTION OF GLOBAL WARMING RESOLUTION

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. FAZIO. Mr. Speaker, today Congressman AUCOIN and myself, along with a number of our colleagues in the House are introducing a joint resolution which is intended to reestablish the role of the United States as a world leader in developing and implementing solutions to the problem of global climate change.

Last week's decision by the European Community to accelerate controls on chemicals that harm the Earth's ozone shield once again demonstrated that global environmental issues are front-burner concerns here and around the world. International activity is accelerating on the global warming issue as well.

The United Nations Environment Programme [UNEP] and the World Meteorological Organization [WMO] have helped organize an Intergovernmental Panel on Climate Change [IPCC] to investigate the scientific background, potential impacts and necessary policy responses to global climate change. The United States, which chairs the IPCC's working group on policy responses, must be an international leader on global warming.

The United States generates at least 20 percent of the greenhouse gases emitted around the world.

The Department of Energy's national energy policy plan projects that by the year 2010 the U.S. generation of carbon dioxide will increase by 38 percent from 1985 levels. Without our aggressive leadership, other nations—particularly in the developing world—will be reluctant to adopt policies urgently needed to slow down the generation of greenhouse gases.

In recent public statements, the leaders of the Soviet Union, West Germany, and Canada have urged stepped up international cooperation on matters of the global environment. Despite reports about political and economic difficulties, even the Government of Brazil is making progress in addressing environmental issues with worldwide implications. And last weekend, more than 30 nations gathered in The Hague to develop a declaration of support for actions to protect the atmosphere.

The United States must reestablish its role as a world leader in environmental protection. In this interest, Congressman AUCOIN and I are introducing the following global warming resolution. Senator WIRTH has introduced the same resolution in the other body. The purpose of this bill is to establish a goal for reductions in the U.S. emissions of greenhouse gases, including carbon dioxide, methane, nitrous oxide, chlorofluorocarbons, and tropospheric ozone. Specifically, the bill requires that emissions of carbon dioxide be reduced by 20 percent by the end of calendar year 2000. In addition, the bill calls for the United States to host an international summit meeting on global warming and global environmental concerns in 1989.

As the new administration and Congress search for public policy measures to encourage reduction of generation of greenhouse gases, this resolution will send a clear signal to the international community that we are serious about addressing this challenging issue.

I urge my colleagues to cosponsor this resolution, and ask that the resolution be printed in full in the RECORD at this time.

Whereas the concentration of the so-called greenhouse gases—including carbon dioxide, methane, nitrous oxide, chlorofluorocarbons, tropospheric ozone—is rising;

Whereas since the start of the industrial revolution 150 years ago the atmospheric concerntration of carbon dioxide, the most prevalent of these gases, has increased by 25 percent; the concentration of methane has increased by 100 percent; the concentration of nitrous oxide has increased by 10 percent; the concentration of CFC's has increased from zero 60 years ago at an average rate of 5 percent per year; and concentrations of tropospheric ozone continues to increase by 1 percent per year;

Whereas the leading scientists of the world have warned policy makers that increased concentrations of these gases will alter climate; and that such climate alterations could have devastating effects on weather patterns, agricultural productivity, coastal population centers due to rising sea levels, and biological health;

Whereas the majority of these gases are generated in the production of energy;

Whereas the Department of Energy's National Energy Policy Plan projects the United States' generation of carbon dioxide to increase from 1985 levels by 38 percent in the year 2010;

Whereas the leading scientists of the world, including the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine have urged the President to take action to reduce the generation of these gases by the United States;

Whereas international negotiations are underway to develop strategies to reduce the generation of these gases;

Whereas the United States is chair of the response strategies working group of the Intergovernmental Panel on Climate Change [IPCC], which was established by the United Nations Environment Programme and the World Meterological Organization;

Whereas at the first meetings of the IPCC's response strategies working group, the Secretary of State urged the nations of the world to act to reduce the generation of "greenhouse" gases and;

Whereas action by the United States to reduce the generation of greenhouse gases will encourage other nations to take similar action to reduce the generation of these gases: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Global Warming Policy Act".

SEC. 2. NATIONAL GLOBAL WARMING POLICY.

It is the policy of the United States: (1) to reduce the generation of "greenhouse" gases in the United States, with an initial goal of reducing emissions of carbon dioxide from calendar year 1988 levels (as determined by the Department of Energy) by 20 percent by the end of calendar year 2000; (2) to host, in 1989, an international summit meeting on global warming and global environmental concerns; (3) to encourage other nations to undertake measures to reduce the generation of greenhouse gases; (4) to develop binding multilateral agreements with other nations by the end of calendar year 1992 to reduce, or as early as is practicable, the global generation of greenhouse gases; (5) to assist in the worldwide protection of tropical rainforests; (6) to require each Federal agency to examine its program to determine the impacts of global warming on its missions and activities and to evaluate and propose policies under its authority that could reduce the generation of greenhouse gases; and (7) to develop new technologies that will provide reliable supplies of energy and services for the citizens of the United States while reducing the generation of greenhouse gases.

UNTIED LENDING TO THE SOVIET BLOC—SELLING THE ROPE BY WHICH TO HANG US WITH

HON. STAN PARRIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. PARRIS. Mr. Speaker, I am pleased to have the opportunity today to address a matter of vital importance to both the economic and national security interests of the United States. During the 100th Congress, my distinguished colleagues, Representatives KEMP (NY) and ROTH (WI) introduced legislation, H.R. 3095, to examine the issue of Western commercial bank lending to the Soviet Union and Eastern Europe. The West, through undisciplined lending practices, has financed a large portion of the Soviet Empire's hard currency requirements at a multibillion dollar annual cost to Western taxpayers in higher defense and foreign assistance spending. In my judgment, capital controls are a necessary parallel to national security export controls, in order to deny the Soviets hard currency resources needed to modernize and upgrade their military capability. Such controls are fundamental in evaluating our lending habits to countries that would seek to destabilize freely elected democratic governments.

Conventionally accepted figures indicate that Soviet indebtedness has almost doubled in the past 4 years reaching nearly $45 billion. This gross debt figure, however, does not include as much as $5–10 billion in Western bank deposits in Soviet-owned banks located in the West. Moreover, since 1985, the Soviet Union has secured such moneys from the West in the form of untied cash loans. Untied loans, that is, money which can be used for any purpose with no questions asked, are offered to the Soviet bloc at a rate of about 7½ percent—rates which the American farmer, businessman, homebuyer, car purchaser, or college student could hardly obtain.

There are some who maintain that the Soviet Union is regarded as a sound and attractive credit risk at a time when there are relatively few creditworthy sovereign borrowers. However, the long-term creditworthiness of the Soviet Union, as perceived, is often predicated upon several misconceptions. With regard to hard currency assets, although the Soviets retain large gold reserves, they would be unable to tap such reserves without increasing global market concern over Soviet financial troubles. Furthermore, the Soviets' large scale reserves of oil and gas, in many cases, are not accessible for extract, processing and transport without heavy investment by Western partners. The monetary worth of such assets is therefore negated in the absence of Western financing.

The Soviets' hard currency loan portfolio to Third World countries is, also, significantly overvalued. The bulk of Soviet credits have been used to fund arms sales to impoverished client states which are unable to meet debt obligations, and such credits are in part funded by U.S. taxdollars. This, coupled with acknowledged Soviet policy to encourage Third World countries to oppose economic policies advocated by the West and to repudiate their debts to Western banks and governments, raises questions as to the soundness of Western lending to such countries.

Even in the recent spirit of glasnost and Perestroika, and in the fervor to improve superpower relations, the West cannot ignore the fact that souring economic conditions often result in government bailouts. Under depressed economic circumstances, total Soviet bloc indebtedness, which has risen to roughly $140 billion, could pave the road for U.S. taxdollar financing of Soviet defaults to U.S. businesses and banks. I believe untied lending to the Soviet Union and bloc countries is economically unsound, particularly given a potential $100 billion Federal bailout of U.S. savings and loan institutions, the international debt crisis, and the risks associated with bank-financed leveraged buy-outs.

From our strategic and national security perspective, the Soviet Union continues to represent a formidable adversary which has increased its military power at a level greater than any seen during the pre-Gorbachev period. The Soviets' military capabilities, even after promised unilateral force reductions are engaged, far exceed any legitimate defensive requirements and maintains Soviet conventional superiority well in excess of a 2-to-1 ratio over NATO forces. Western untied lending to the Soviet bloc has helped to finance both an expanding military budget and aggressive foreign activities—it cannot be overemphasized that the USSR's effort to acquire Western capital resources and technology continues to fuel growth in the Soviet armed forces and military infrastructure and pose an increasing threat to the West's long-term security interests.

The legislation I am proposing would require banks to disclose, to stockholders, shareholders, investors, and bank depositors, the amounts and conditions of untied loans to the Soviet bloc and Warsaw Pact nations. In addition, this legislation would give the President discretionary authority to regulate the export of financial assets or the extension of credit to (one) the USSR and Warsaw Pact nations, if such action were believed to undermine the national security interests of the United States, or (two) to any country supporting international terrorism whereby such export might be used in support of or in the commission of a terrorist act against the United States or a U.S. citizen. Finally, this legislation would also give the appropriate Federal banking agency jurisdiction to disapprove any proposed acquisition or control of a U.S.-insured bank by the U.S.S.R. or Warsaw Pact nation.

At a time when we maintain such a vital stake in the interests of developing nations and Third World countries, at a time when we are enacting policy to restructure and refinance debt and grant favorable credit conditions; at a time when we are faced with the institutional health crisis of our savings and loans, when we are burdened with an unacceptable Federal budget deficit, clearly it is contrary to our future economic stability and national security requirements to offer greater monetary incentives to the Soviet bloc than are offered to American citizens and to our allies abroad. I believe this legislation is a first step toward addressing these concerns, and I would urge my colleagues to join me in working toward its prompt passage during this session of the 101st Congress.

NORTHERN IRELAND: THE VIOLENCE CONTINUES

HON. JOSEPH P. KENNEDY II

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. KENNEDY. Mr. Speaker, tomorrow, March 17, is St. Patrick's Day. St. Patrick's Day is a festive holiday that causes Americans—many of Irish descent but many not—to turn their attention to Ireland and to Irish-Americans. We are reminded of all those Irish-Americans who have helped make America great and to the countless contributions they have made to America and the world. But we should not let all our celebrating cause us to forget Northern Ireland, where the violence and economic distress continue.

On February 12, Protestant militants murdered Pat Finucane in his kitchen in front of his wife and 3 children. Pat Finucane was a well-known criminal attorney who often represented IRA defendants. He was the first criminal attorney murdered in 20 years of sectarian violence. The Ulster Freedom Fighters claimed responsibility for Finucane's death and claimed he was a member of the IRA. Sinn Fein stated that Mr. Finucane was not a member of the IRA or Sinn Fein, the IRA's political organization.

As offensive as the murder of Mr. Finucane is, it is made worse by the fact that it follows a mid-January statement by Douglas Hogg, a conservative Member of Parliament, that some attorneys in Northern Ireland were "unduly sympathetic" to terrorist groups. What right does a legislator have to make such an inflamatory remark? An op-ed piece written by Francis Costello in the Boston Globe on March 3, 1989, captures the outrage that all civilized people feel about Mr. Hogg's remark and Mr. Finucane's murder, and I respectfully request that it be placed in the RECORD immediately followed my statement.

The Finucane murder has touched off a new wave of violence. On March 7, the IRA shot and killed three Protestants in County Tyrone. On March 8, the IRA killed two and wounded six while blowing up a British Army vehicle near Londonderry. On March 10, two Catholics and one Protestant were wounded in Ulster shootings, and one Catholic was shot to death in West Belfast. Furthermore, British authorities found a large IRA supply of explosives, weapons, and ammunition near Scarborough, the site of Prime Minister Thatcher's meeting with Conservative Party leaders.

The IRA and Protestant extremist groups should be condemned for their wanton violence and murder. But we must do more than condemn violence. We must ensure that the underlying causes of the violence—the poverty and the lack of opportunity for all citizens of Northern Ireland and especially the unfair treatment and the repression of the Catholics—are addressed. Killing more British soldiers will not solve the problem. Nor will tighter security, better intelligence, or even crippling the IRA by locking up or murdering all its members. In order to find a peaceful, political solution, inequities such as the fact that the unemployment rate for Catholics is 2½ times the rate for Protestants must be rectified.

The United States must not be reluctant to use its influence to help rectify these inequities. We must make sure that United States defense contracts and other United States contracts do not go to Northern Ireland firms that practice discrimination. We must also encourage United States businesses to invest in Northern Ireland. The best approach to correct the discrepancy in unemployment rates is to create new jobs in Northern Ireland so there will be more jobs for everyone. Finally the United States must use its foreign aid, through the International Fund for Ireland and through other vehicles, to improve the situation in Northern Ireland.

More than 2,600 people have died in 20 years of sectarian violence in Northern Ireland. And the situation is no better today than it was 20 years ago.

[From the Boston Globe, Mar. 3, 1989]

The Law of Terror

(By Francis Costello)

Attempting to work within the legal framework of a fundamentally lawless society such as that of Northern Ireland can be an occupational hazard.

For Belfast attorney Patrick Finucane, that hazard ended in death recently, when three semi-automatic-wielding Protestant paramilitaries burst into his Belfast home and murdered him in front of his family. Finucane was the first criminal attorney killed by either side in the 20-year-old conflict.

At 38, Finucance had established himself as an effective advocate for IRA defendants. But his most prominent professional involvement occurred last November when he mounted a successful challenge to a coroner's ruling that the Northern Ireland policemen (Royal Ulster Constabulary) involved in the shooting deaths of unarmed Catholics were exempted from giving evidence.

The British attorney general had declared that the police officials involved in what was called a "shoot-to-kill policy" would not be prosecuted out of "considerations of national security."

Yet just as the British government's commitment to the impartial administrtaion of justice was called into question by that action, its hands are also unclean in connection with the events leading up to the murder of Finucane. Less than three weeks before the murder, Douglas Hogg, a conservation member of Parliament and a minister in the Home Affairs Office, declared that certain Northern Ireland attorneys were "unduly sympathetic" in their defense of accused paramilitaries. Given Finucane's reputation as one of the most effective legal activists in challenging the crown's shoddy approach to justice in Northern Ireland, there was little need to single him out by name. But Hogg's intemperate remarks had the same effect in placing the life of Finucane and other Catholic attorneys in Northern Ireland in jeopardy.

Hogg has yet to receive even a reprimand from Prime Minister Thatcher, let alone a demotion. Ironically, three days after Finucane's death. Ayatollah Khomeini issued threats against Salman Rushdie, the author of "The Satanic Verses."

"Nobody," Hogg said, "has the right to incite people to violence on British soil or against British subjects." Evidently the British government makes exceptions to that dictum if the source of the incitement is one of Thatcher's ministerial appointments and the victim is a Northern Ireland Catholic.

It is by this double standard that the British government has conveyed to Northern Ireland Catholics that their lives and safety are low priorities. Why else would Douglas Hogg had felt so free to utter his comments with impunity? Why else would a convicted murderer of an unarmed and politically uninvolved Catholic in Belfast be returned last year to the ranks of the British army, despite the protests of the Irish Government and the Catholic hierarchy? Why else would a government that decries terrorism outlaw the IRA but not the equally lethal Ulster Defense Association, which harbors the Protestant terroists who killed Patrick Finucane and hundreds of other Catholics since the 1970s?

Nationalists (Catholic) and legal rights groups have condemned the murder of Finucance and have been critical of the British government and Hogg. The statement of the impartial Committee on the Administration of Justice termed the murder an "attack on civil liberties and the rule of law," Pointing directly to the British government, the committee said: "We are especially disurbed that the murder so closely follows Home Office Minister Douglas Hoggs's statement that the government regards some lawyers as sympathetic to terrorism."

Unfortunately, this admonition may be lost on the British government, whose policy has perpetuated the steady erosion of dueprocess rights and fundamental press freedom in Northern Ireland, while turning a blind eye to the use of excessive force by police and security forces. Hogg will be able to sleep contentedly in the knowledge that his comments will cost him little. But the family of Patrick Finucane, and many other Northern Ireland Catholics, will not be able to sleep so lightly—for good reason.

DEVONIAN SHALE AND TIGHT SANDS GAS CREDIT

HON. NICK JOE RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. RAHALL. Mr. Speaker, I am introducing legislation which would make permanent the nonconventional fuel tax credit, also known as the section 29 credit, for gas produced from Devonian shale formations and ensure the applicability of this credit for gas produced from tight sands formation as well.

Joining me in sponsoring this bill are my colleagues from West Virginia, BOB WISE, ALAN MOLLOHAN, and HARLEY STAGGERS, Jr.; BILL CLINGER from Pennsylvania; JOE SKEEN of New Mexico; and from the Texas delegation, CHARLIE STENHOLM, CHARLIE WILSON, BILL SARPALIUS, and RALPH HALL.

Mr. Speaker, I have the highest regard for the great State of Texas and the support of my colleagues from that State for this bill is deeply appreciated. I do want to note, however, that Texas, and Oklahoma for that matter, do not have a monopoly on gas production in this country. I know that may come as a surprise to some, but the fact is that in 1988 my own State of West Virginia had the second highest number of producing natural gas wells in the country. Moreover, throughout what is known as the Appalachian Basin, there is substantial and significant gas producing activity.

The tax credit that is the subject of this legislation is intended to provide an incentive to produce gas from relatively inaccessible sources. Simply stated, there is a higher degree of risk associated with drilling for gas in Devonian shale and tight sands formations than in more common deposits. One writer recently described a tight sands structure in this fashion: "It is a type of formation that is almost like concrete."

Under the legislation, the existing section 29 credit for wells drilled in Devonian shale formations, which soon expires, would be made permanent. The bill would also reinstate, and make permanent, the section 29 credit for tight sands production. Further, these credits would be allowable against the alternative minimum tax.

Mr. Speaker, I would be underestimating the situation if I said that ensuring the continued exploration, drilling and production of gas from Devonian shale and tight sands formations is necessary. It is essential. Gas produced from these formations make an invaluable contribution to the industrial vitality of the Nation, and to our energy security. I would urge my colleagues to consider this matter, and to lend it their support.

MEDICAID COMMUNITY CARE FOR THE FRAIL ELDERLY, H.R. 1453

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. WAXMAN. Mr. Speaker, last week I had the opportunity to testify before the Budget Committee's Human Resources Task Force on the fiscal year 1990 health budget. I urged Chairwoman BOXER and her colleagues to set aside in the fiscal year 1990 budget resolution new entitlement authority for a number of high-priority Medicaid initiatives affecting poor pregnant women and children, individuals with mental retardation, and the frail elderly. At the time I testified, all but one of these initiatives had been introduced. Yesterday, I joined Representative WYDEN, Representative SCHUMER, Chairman ROYBAL of the Select Committee on Aging, and six colleagues from the Committee on Energy and Commerce in introducing the remaining bill, HR. 1453, the Medicaid Frail Elderly Community Care Amendments of 1989.

Under this legislation, States would be given the option to extend Medicaid coverage for community care services to low-income, functionally disabled elderly individuals. Community care services would include homemaker/home health aide services, chore services, respite care, adult day health, and other services for which Federal Medicaid matching funds are now available only under a limited waiver authority. Whatever community care services a State chooses to offer would have to be provided through a community care plan developed specifically for each eligible individual and administered by a case manager.

The services that the State elects to offer would be subject to minimum Federal quality standards, along with rigorous monitoring and enforcement. Such standards and enforcement mechanisms are particularly important in light of the recent findings presented by the General Accounting Office in its report "Board and Care: Insufficient Assurances that Residents' Needs Are Identified and Met" (GAO/HRD–89–50). Board and care facilities as well as other community-based settings are the places where many of the community care services would be provided to the frail elderly under this bill. The GAO study found serious problems in some licensed board and care homes, including physical abuse, unsanitary conditions, and lack of medical attention. The quality, monitoring, and enforcement standards that would be established in this legislation are designed to ensure that such abuses do not take place.

The legislation is not a comprehensive solution to the long-term care crisis facing this Nation. Instead, it is a modest, incremental reform of the Medicaid Program, targeted at the most vulnerable of the low-income frail elderly. I believe that the Federal Government needs to respond to the long-term care needs

of the elderly and disabled in this country, and I will soon be introducing a proposal for a comprehensive program. However, we do not have to await the enactment of a comprehensive long-term care program to make long-overdue improvements in Medicaid that will help to keep the poorest of the frail elderly out of nursing homes as long as possible.

Final CBO cost estimates are not available. However, preliminary, informal discussions with CBO staff indicate that the costs of this bill to the Federal Government will not exceed $100 million per year. The most important limitations on costs structured into the bill are: First, the strict definition of the eligible population as functionally disabled and poor under current Medicaid eligibility rules; second, the ceiling on payment amounts at 50 percent of the Medicare nursing home rate; third, the State maintenance of effort requirement; and fourth, the optional nature of the benefit.

While I had hoped that many of these constraints would not have to be added to the bill, it is clear that without these limits the costs would be unrealistic in the current budget climate. However, we cannot afford to lose the opportunity in this Congress to reduce the institutional bias in the Medicaid Program. This bill will do that, by giving the States the option to offer these community-based services even though they are not able to demonstrate budget neutrality, as required under the current section 2176 waiver authority. What follows is a brief summary of the bill.

BRIEF SUMMARY OF MEDICAID FRAIL ELDERLY COMMUNITY CARE AMENDMENTS OF 1989 H.R. 1453

OPTIONAL EXPANSION OF COMMUNITY-BASED SERVICES

Allows States, at their option, to cover under their Medicaid programs "community care" for functionally disabled elderly individuals. Unlike the current "section 2176" home and community-based services waiver, this option would not require the States to demonstrate budget neutrality or limit participation to those at risk of institutional care. The bill directs the Secretary of Health and Human Services (HHS) to develop interim and final quality requirements for such care, and establishes a monitoring and enforcement process to ensure compliance with these requirements. Effective the later of January 1, 1990, or 30 days after publication of interim requirements.

DETERMINATIONS OF FUNCTIONAL DISABILITY AND USE OF CASE MANAGEMENT SERVICES

To be eligible for this community care benefit, an individual must be (1) 65 years of age or older, (2) eligible for Medicaid in the community due to low income and resources (i.e., receiving Supplemental Security Income (SSI) or qualifying as "medically needy"), and (3) determined to be functionally disabled. Functional disability is to be determined on the basis of a comprehensive assessment conducted by an interdisciplinary team designated by the State and used to evaluate an individual's ability to perform activities of daily living (bathing, dressing, eating, toileting, and transferring) or "ADLs". Those individuals who (1) are unable to perform at least 2 (or, at State option, 3 or 4) ADLs or (2) have a primary or secondary diagnosis of Alzheimer's disease would be eligible for services. Based upon this assessment, an individual community care plan (ICCP) is to be developed and periodically reviewed and revised by a qualified care manager who is responsible for assuring that the community care specified in an ICCP is being provided. States may assign an eligible individual to a case manager, but only if the individual has the right, at his or her discretion, to choose another qualified case manager.

QUALITY ASSURANCE FOR COMMUNITY CARE

Requires the Secretary to establish quality standards for community care and for settings in which community care is provided. Such standards must include minimum qualifications for personnel providing community care and the establishment of a patients' bill of rights. The requirements established by the Secretary must also assure, through methods other than reliance on State licensure, that individuals receiving community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and provision of health care services by unqualified personnel in board and care facilities and other community settings. States would retain the right to impose quality standards more stringent than the minimum Federal requirements developed by the Secretary.

PAYMENT FOR COMMUNITY CARE

Requires States to assure that payment rates for community services are reasonable and adequate to meet the costs of providing services, on an efficient and economical basis, in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

CEILING ON PAYMENTS FOR COMMUNITY CARE SERVICES

Aggregate State Medicaid expenditures for the optional benefit could not exceed the product of the (1) the average number of individuals receiving the benefit in a given quarter times (2) 50 percent of the average State per diem rate for Medicare skilled nursing facility (SNF) services times (3) the number of days in such quarter.

MAINTENANCE OF EFFORT

States would be required to report to the Secretary all funds other than Medicaid funds spent on community care for the elderly in FY 1989 and every year thereafter. States electing this new option would be required, each fiscal year, to maintain their State-only expenditures for such services at the FY 1989 level. Failure to do so would result in a reduction of Federal matching payments for these services to the extent of the shortfall in State-only spending.

ATTITUDE OF SOUTH KOREA TOWARD ISRAEL

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. ACKERMAN. Mr. Speaker, I would like to call my colleagues' attention to the attitude of South Korea toward Israel. This problem should be a concern for all proponents of free trade. South Korea is an emerging economic power and—as part of Seoul's admirable moves toward greater openess—is even exploring trade links with North Korea and other Eastern bloc countries. But Israel, which has full diplomatic relations with South Korea, continues to suffer from overt discrimination in both its trade and diplomatic contacts with Seoul.

Virtually no major Korean company will trade openly or directly with Israel today. The Koreans continue to refuse to allow Israel to reopen its Seoul Embassy, which was shut in 1979 due to budgetary constraints. Official Korean trade statistics inexplicably include every country in the world except Israel. I find South Korea's bias against Israel in the international community inexcusable, and I hope that Seoul will immediately re-examine this regrettable policy.

I am inserting for the record an excellent article from the Los Angeles Herald Examiner, entitled "Why Seoul Has a Bias Against Israel." This piece contains the best information I have seen on the trade relations between South Korea and Israel. I urge my colleagues to read it.

[From the Los Angeles Herald Examiner, Dec. 18, 1988]

WHY SEOUL HAS A BIAS AGAINST ISRAEL

(By Willy Stern)

SEOUL.—With South Korea emerging as a world economic power and struggling to convince the international community that it is moving toward a true democracy, it is even exploring tentative trade links with its arch enemy in the north and other Eastern bloc countries. But Israel—a country with which Seoul has full diplomatic relations—continues to suffer from overt discrimination.

Consider the following:

Virtually no major Korean company will trade openly or directly with Israel. (Ironically, those same firms lobby against passage of protectionist legislation in Washington on "free trade" grounds.)

The Koreans continue to refuse to allow Israel to reopen its Seoul embassy, which was shut down in 1979 because of budgetary constraints.

Official Korean trade statistics include every trading partner except Israel. (Bilateral Korean-Israeli trade now approaches $100 million annually.)

The Korean foreign ministry in Seoul will not grant interviews to the Israel media for fear of angering Arab leaders.

The Koreans reneged on a promise to host, in Seoul, an Israeli trade mission that visited the Far East last year, after Saudi Arabia privately protested the move.

There are two primary reasons for South Korean's commercial and political discrimination against Israel. One is its perceived reliance on Arab oil and Arab business. "Unofficially" encouraged by the Seoul government, most major Korean firms submit to the Arab economic boycott of Israel, which proclaims that any company trading with Israel cannot also do business with an Arab company. American law, enacted in the 1970s, makes it illegal to comply with the boycott. As a result, American traders find themselves at a competitive disadvantage with Korea in the Mideast.

Only Korea and Japan continue to bow to what amounts to economic blackmail. For example, the two largest Korean car manufacturers, Hyundai Motor Corp. and Daewoo Motor Corp., openly admit they cannot sell autos to Israel because it might jeopardize their lucrative sales in the Arab world. Korea now sells $3 billion a year in goods and services to the Arab countries.

The second reason for South Korea's anti-Israel bias is Seoul's worry that Soviet-

backed North Korea might pre-empt its precious export markets. South Korea bends over backward to avoid any action that might be construed as pro-Israel and thus useful to North Korean diplomats seeking to drive a wedge between Seoul businessmen and their Arab counterparts. As in Japan, commercial and diplomatic self-interest prevails over morality in trade calculations.

For the last two years, the South Koreans said their quest for a harmonious and successful Olympics precluded any sensitive diplomatic initiatives—like moving closer to Israel. But Korean officials promised both Israelis and visiting American Jews that that situation would change after the Games. In recent weeks, however, Israeli diplomats in the Far East say it has become apparent the Olympics were just an excuse to avoid Israel.

Meanwhile, the Korea Times, Seoul's English-language newspaper, reported earlier this year that anti-Semitism had spread from Japan to Korea. Leading Koreans, according to the newspaper, blame trade disputes with the U.S. on an America dominated by "Jewish Mafias in control of business, press media and even the CIA."

In the last 18 months, Korean trade officials have watched Japan move closer to Israel, fearing that alienating the American Jewish community isn't good business. Koreans privately admit that U.S. pressure would compel changes in Seoul's trading policy with Israel, but thus far American attention has been directed at Tokyo.

That must change. The Bush administration should encourage the South Korean government to ignore the Arab-sponsored boycott against Israel and urge Seoul to allow Israel to reopen its embassy.

The United States has always tried to stand up for itself, for its friends and for fairness in international trade and diplomacy. These same principles could and should be applied to South Korea's shabby treatment of Israel.

CONSTITUTIONAL AMENDMENT TO CONGRESSIONAL PAY RAISE

HON. STAN PARRIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. PARRIS. Mr. Speaker, some time ago, a Virginian stood before this body to introduce a constitutional amendment to address the congressional pay raise situation. This was not in response to the most recent pay raise fiasco, although the distinguished Representative would surely have been outraged and disappointed by that episode. No, as I said, this was some time ago—200 years to be exact. The Virginian was James Madison, rightfully known as "the Father of the Constitution," and the amendment that he introduced read as follows:

No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

This amendment was 1 of 12 proposed in 1789, 10 of which became the Bill of Rights. Like the other 1789 amendments, this amendment was passed by the Congress and submitted to the States for ratification. To date 26 States have ratified it, 6 around the time of its introduction, 1 in 1873, and another 19 in the past 11 years.

I think that it is clear that this amendment is still valid and susceptible to ratification. Beginning with the 18th amendment, Congress has specified a time limit for ratification within its amendment—my distinguished colleagues will undoubtedly recall the 7-year limit for the equal rights amendment that was subsequently extended. At the time of the pay raise amendment, however, this was not the practice. In the only Supreme Court case which directly addressed the time limit applicable to an amendment in which no limit is specified, the Court deflected the issue to Congress. [*Coleman* v. *Miller*, 307 U.S. 433 (1939).] The Court held the validity of ratifications to be a "political question" to be decided by Congress, if and when three-quarters of the States purport to ratify an amendment. One of the objectives of our resolution is to express the willingness of Congress to certify all of the ratifications of the pay raise amendment should be three-fourths figure—38 States—be reached.

The wisdom of this amendment should be clear. Like the other 1789 amendments that became the Bill of Rights, this provision was intended to protect the people against unfair governmental action. Just as property cannot be seized without fair process, the peoples' tax money should not be appropriated for Member salaries without procedural safeguards. This is one area where it is unreasonable to expect the Congress always to place the interests of their constituents first. The specter of self-interested action looms large.

The postponement of Member salary increases until after an intervening election provides a check on Member action, and involves the people in the process. Voters will have an opportunity to turn out a Member at the polls if they feel that he or she has voted for an unreasonable salary increase, and they will be able to make such a choice before the Member touches his ill-gotten gains.

Finally, I think that it is important that such a protection be embodied in the Constitution. Unlike an amendment to the House rules or to the United States Code, a constitutional amendment will place this rule of fairness beyond the reach of even the most sorely tempted congressional majority. In closing, I will ask my colleagues in the House to support prompt action on this resolution, and send a signal to the States: that we will certify the final 12 ratifications; and to the people: that we are willing to bind our hands, and the hands of our successors, in order to keep them out of the public coffers. Let us have a system where the people of America decide the value of our service to them.

JAMES R. FERGUSON

HON. JOSEPH P. KENNEDY II

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. KENNEDY. Mr. Speaker, The Eighth District has lost a large part of its history, its heart, and its soul with the passng of Jim Ferguson. Jim served Speaker Tip O'Neill for many years as his friend, advisor, and chief assistant. And for the past 2 years he helped me in my efforts in serving the people of our neighborhoods.

But his great legacy is left to the people of our district. The countless disabled veterans who received jobs, the widows who obtained deserved benefits, the families that moved into desperately needed housing, and young people who received crucial educational assistance all had their lives changed for the better by Jim Ferguson.

He was a decent and modest man who rarely received public credit for his good work. Yet, Jim Ferguson leaves a quiet record of accomplishment and personal service that the people of our district will never forget.

PERSONAL EXPLANATION

HON. NICK JOE RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. RAHALL. Mr. Speaker, yesterday I was absent to attend the funeral of former Member, James Kee of West Virginia. I strongly support H.R. 1231, the Eastern Airlines Strike Resolution, and had I been present, I would have voted aye on the rule—rollcall 7—and aye on final passage—rollcall 8.

ACID DEPOSITION CONTROL ACT OF 1989

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. WAXMAN. Mr. Speaker, today, I have the privilege of announcing that over 140 House Members from both parties have joined together to introduce comprehensive acid rain control legislation.

This is a vitally important effort. Acid rain is destroying lakes and forests from Maine to Florida and from the Adirondacks to the Sierras. It is threatening the health of tens of thousands of people each year. And it is eroding buildings and bridges and irreplaceable statuary, causing billions of dollars in damages annually. It simply must be stopped.

It has been nearly a decade since the National Academy of Sciences recommended that we take "prompt action" to protect our ecosystems and our economy from acid rain. This call for action has been repeated again and again by the academy and other leading experts, as scientists have learned more and more about the widespread threat to our lakes and forests.

I believe we are finally going to listen to our scientists, and the overwhelming public opinion in this country, and take effective action to stop the acid assault. For the first time, the President of the United States is publicly committed to acid rain control. We have an ardent supporter of acid rain control as Senate majority leader. The Speaker of the House has identified the Clean Air Act as one of his top

priorities for this session. And we now have an effective acid rain control bill with broad bipartisan support in the House of Representatives.

Many of the Members here today first supported this bill in 1986. We showed then that environmental issues enjoy extraordinary bipartisan support that cut across regional lines. And we proved that acid rain control can be crafted to overcome regional differences.

Today, because of the tireless efforts of my colleagues, this bill has again earned wide bipartisan support from all regions of the country.

The secret of the success of this bill lies in three basic principles—effectiveness, flexibility, and fairness.

This bill is effective. The litmus test of any acid rain bill is "How much and how soon." We need large reductions in sulfur dioxides and nitrogen oxides—and we need them soon—to save thousands of lakes and streams from death through acidification. This bill will deliver a 10 million ton reduction of SO_2 and a 4 million ton reduction of NO_x by 1998. There is no bill in the House that does as much as soon.

This bill is also flexible. It sets the reduction targets, but lets the States pick the control strategies. Governors can opt for fuel switching. Or they can opt for technological solutions, such as scrubbers, that protect high-sulfer coal jobs. Or they can opt for a mix of control methods. No bill gives States more options.

And this bill is fair. It guarantees that residential rates will not increase more than 10 percent as a result of acid rain controls by making Federal subsidies available. More residential rate payers will face less than a 1-percent rate increase.

Since the bill's original introduction in 1986, I have learned of ways to improve its already sound fundamentals. Energy conservation should be further promoted. And we need to make our gains in this bill last by limiting backsliding. I will work for these improvements.

It is no surprise to me that this bill has become the acid rain bill in the House. Some of the most talented Members of the House from both sides of the aisle have developed its concepts and forged its compromises. Among them are Republicans SILVIO CONTE, TOM TAUKE, SHERRY BOEHLERT, MAT RINALDO, and BILL GREEN, and Democrats GERRY SIKORSKI, MO UDALL, ED MARKEY, and JIM FLORIO. I commend them all for their efforts.

We begin this year in a new climate and, according to White House meteorologists, with a fresh breeze blowing. I believe that in this climate the bipartisan effort we have launched today will move forward to provide the country with permanent relief from acid rain.

In conclusion, let me announce that the Subcommittee on Health and the Environment will move expeditiously to hold hearings on this bill. I expect to hold hearings on the bill beginning on April 6.

A summary of the bill follows:

SUMMARY OF THE ACID DEPOSITION CONTROL ACT OF 1989

The bill establishes an acid rain control program that reduces sulfur dioxide emissions by 10 million tons and nitrogen oxide emissions by 4 million tons by 1998. The major provisions are summarized below:

SO_2 EMISSION REDUCTIONS

The bill requires a two-phase reduction in sulfur dioxide (SO_2) emissions from electric utilities and other stationary sources burning fossil fuels. By 1994, states must achieve a statewide average rate of SO_2 emissions from utilities of 2 pounds per million Btu (lbs/mmBtu). By 1998, states must achieve statewide average rates of SO_2 emissions from utilities and industrial boilers of 1.2 lbs/mmBtu. And by 1998, they must also reduce SO_2 emissions from industrial processes by an amount that the U.S. Environmental Protection Agency determines to be economically and technologically feasible. These reductions are estimated to lower SO_2 emissions by 5 million tons by 1994 and by 10 million tons by 1998.

NO_x EMISSION REDUCTIONS

The bill also requires reductions in nitrogen oxide (NO_x) emissions from utilities, industrial boilers, and industrial processes. By 1998, states must achieve statewide average rates of NO_x emissions from utility and industrial boilers burning fossil fuels of 0.6 lbs/mmBtu, and they must reduce NO_x emissions from industrial processes by an amount determined by EPA to be economically and technologically feasible. In addition, EPA must tighten existing emission standards for new coal-fired, electric utility plants and establish such standards for new fossil-fueled industrial boilers. These reductions are estimated to lower NO_x emissions by 2.7 to 3.5 million tons by 1998.

STATE IMPLEMENTATION PLANS

The bill allows states to choose any control strategy to achieve the statewide average emission rates for SO_2 and NO_x mandated by the bill. If a state fails to submit a complying implementation plan, congressionally imposed emission limitations apply to the utilities and industrial boilers in the state.

MIDCOURSE CONGRESSIONAL REVIEW IN 1994

The bill requires EPA to submit a report to Congress in 1994 that assesses the reductions in acid rain achieved by 1994 and the feasibility of meeting the 1998 reduction requirements.

PROTECTION AGAINST EXCESSIVE RATE INCREASES

The bill entitles electric utilities to receive federal subsidies to protect residential customers from rate increases attributable to SO_2 controls that exceed 10% after rates are equalized and levelized across the state. The subsidy is to be funded by a federal trust fund created by levying a fee not to exceed ½ mill per kilowatt hour on power generated by electric utilities. The level of the fee is to vary in proportion to the levels of SO_2 emitted by the utility.

ASSISTANCE FOR INNOVATIVE TECHNOLOGIES

The bill allows a federal program, funded by an in-state fee on electricity generation, to be established at the option of any state to provide financial assistance for innovative technologies to control SO_2 or NO_x emissions.

EMISSION REDUCTIONS FROM MOBILE SOURCES

The bill requires mobile sources to meet tighter emission standards for NO_x and hydrocarbons. It requires fuel manufacturers to reduce the sulfur content of diesel fuel to 0.05% by weight by 1991. And it requires EPA to control evaporative hydrocarbon emissions by issuing regulations within six months of enactment requiring on board canisters or stage II controls (gas-station vapor recovery) or both. These requirements are estimated to lower SO_2 emissions by 0.5 million tons and NO_x emissions by 0.5 million tons by 1998.

TRIBUTE TO CHANDLER ELEMENTARY SCHOOL FOR THEIR ARBOR DAY PROJECT

HON. FRANK McCLOSKEY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. McCLOSKEY. Mr. Speaker, I recently received a letter from Mr. Earl E. Pfettscher, principal of Chandler Elementary School, Chandler, IN, informing me of an exceptional Arbor Day project the school has planned. Each student at Chandler has pledged to plant one tree on April 14, Arbor Day. The dream of these children is that students nationwide will follow their example and join in this practical and innovative plan to improve the future of the environment and the quality of their lives. During Arbor Week, April 10–14, the students will study the greenhouse effect, the climate, and the environment. One of the major causes of the greenhouse effect is the increase in atmospheric carbon dioxide due to the destruction of our forests. The loss of these valuable trees has greatly reduced the amount of plants available to absorb this ever increasing excess of carbon dioxide in the air. In addition, planting trees around buildings is an effective means of energy conservation.

The Chandler students are taking positive action to better their environment. However, the 700 tree seedlings which the Chandler students will plant represent only a preliminary step in a possible national movement toward renewing our natural resources. The American Forestry Association estimates that there are 100 million spaces where additional trees could be planted around American homes and communities. With their school serving as a role model, the Chandler students' goal is for every student in the nation to make the same simple pledge they have taken:

Trees play an important part in affecting our environment. We the undersigned members of Chandler Elementary School have agreed to plant a tree in recognition of Arbor Day, 1989. We urge other students in the United States to join us by doing the same.

I can is the name of the program at Chandler Elementary School that teaches positive attitude. These students have taken an optimistic and practical initiative toward improving our environment. I praise them for their innovative project and their belief that they can make a definite impact on their future. In furthering their goal, I urge my colleagues to notify the schools in their districts of the Chandler School Arbor Day project. Finally, I hope the Chandler School project encourages not only students but all Americans nationwide to make a great investment in the future by spending a small amount of time and energy on April 14 to plant a seedling.

Individually, the impact of a seedling planted this Arbor Day may not appear so great. However, when these trees mature in Indiana and,

hopefully, across the Nation, the importance of each tree, and of the contribution of those who planted them, will be obvious. The poet Cicero, quoting Caesilius Statius, wrote 2,000 years ago, "Serit arbores quae alteri seculo prosint" which translates as "Trees does he plant to be of service to the coming age." Clearly the children of Chandler Elementary are being of service to the coming age.

My congratulations and best wishes to Mr. Pfeltscher and the students of Chandler Elementary School.

THE ACID DEPOSITION CONTROL ACT OF 1989

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. BOEHLERT. Mr. Speaker, today I am pleased to be joining a bipartisan coalition in introducing the Acid Deposition Control Act of 1989, which is essentially identical to H.R. 2666 of the 100th Congress, and H.R. 4567 of the 99th.

I coauthored this bill in 1986 along with other Members of the House working group on acid rain. It has endured as a standard with the broadest support from all regions, Republicans and Democrats, conservatives, moderates, and liberals. The bill is not perfect—I haven't seen a perfect piece of legislation yet, and there are changes I would like to make.

But the bill has drawn strong support for a good reason. Not only would it achieve deep emission reductions on an expedited timeframe—the goal which is so important to us wherever acidic snow and rain corrode our lakes, forests, and health. This bill is the least costly to society and average folks, the most reasonable to implement, and the most favorable to protection of regional economic concerns.

The balance and fairness of our approach was indicated last June, when the Governors of Ohio and New York tendered an acid rain plan based very substantially on this bill. I was proud to offer that legislation as a symbol that regional differences can be ironed out.

While I have the opportunity, I would like to share with my colleagues some special information which has come to me over the past few days.

First, a little context. From the earliest days of campaign 1988 to the weeks immediately following George Bush's election to the last 10 days, I have been working personally with George Bush and his team to end the acid rain stalemate. The President has made an unequivocal, personal commitment to breaking that stalemate.

I am happy to report administration assurances to me that the President will offer his acid rain action plan in short order.

The President's proposal will be a strong, responsible plan for breaking the stalemate and reversing this environmental disaster, and I will be proud to sponsor that package and work for its enactment.

An equal priority, however, is the urgent need to get the Energy and Commerce Committee moving. As George Bush has said, the years of study alone are over, the time for action is now. After years of delay, we can count on the Senate taking action by September. We need a bill reported to the floor of the House this year.

I have every confidence that a bill based on these principles will ensure a bipartisan consensus that serves the national interest.

NATIONAL CAPITAL TRANSPORTATION AMENDMENTS OF 1989

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mrs. MORELLA. Mr. Speaker, in 1988, the Washington Metropolitan Area Transit Authority was nationally recognized when it received the Public Transportation System Outstanding Achievement Award. Today I speak in strong support of the legislation being introduced, which would complete the 103-mile metrorail system for the Nation's Capital. The 13.5 miles, which remain to be built, are critical to the system. The system was designed as a whole, and these final miles contain necessary storage yards, inspection facilities, and traffic intercepts which are vital to assure the efficient and effective operation of the system.

The Red Line from Wheaton, MD, to Glenmont, MD, is a part of the remaining 13.5 miles to be built. It will provide badly needed transportation to the upper Georgia Avenue corridor. This corridor is experiencing rapid growth in housing and office development. The Glenmont station will link this rapidly developing center for jobs and housing with commercial and residential areas throughout the metropolitan region.

The Glenmont portion of the metrorail system must be built because it will provide a badly needed transportation alternative in one of the fastest growing corridors in Montgomery County and the region. It will provide mobility to transit dependent riders from Howard County, Baltimore County, and other local jurisdictions to the north of Montgomery County. Without this portion of the Red Line, the authority will be forced to operate the Wheaton station as a terminal station, which was never intended, thus causing enormous traffic problems. Finally, to most efficiently operate the Red Line from Shady Grove to the terminus on the Glenmont line, the authority must construct a yard at Glenmont to provide needed maintenance services, car storage, and minor repairs. The yard will increase operating efficiency and reduce operating costs.

Mr. Speaker, I stand in strong support of the National Capital Transportation Amendments of 1989. We must finish the subway that serves the Federal work force, our visiting constituents, and visitors from around the world. It will permit the realization of the vision by Congress of building the full 103-mile system.

THE OIL POLLUTION LIABILITY AND COMPENSATION ACT OF 1989

HON. WALTER B. JONES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. JONES of North Carolina. Mr. Speaker, on behalf of the leadership of the Merchant Marine and Fisheries Committee, I am proud to introduce H.R. 1465, the Oil Pollution Liability and Compensation Act of 1989. The legislation, when enacted, will establish a comprehensive oil pollution liability and compensation system. The concept of oil spill legislation enjoys the broad support of the majority of the oil industry, the administration, environmental groups, States and the Congress. The House has addressed the issue frequently since 1978 and has come close to enactment, most recently at the end of the 99th Congress. This bill builds upon past efforts and is indeed legislation whose time has come. Allow me to briefly outline some major components of the bill:

It replaces four separate oil pollution liability systems with one single comprehensive Federal system, and replaces four existing small cleanup funds with one large fund;

It covers oil spills from vessels and facilities, both offshore and onshore;

It imposes strict, joint, and several liability on those responsible for oil spills;

It establishes liability for a broad class of damages, including cleanup costs, damages to natural resources, and third party damages;

It authorizes up to $500 million to cover claims against the fund arising out of a single incident, with the revenues to come from the industry and not the general taxpayer, as is currently the case under the Clean Water Act; and

It implements two international protocols establishing a similar liability and compensation regime globally, which are strongly supported by the administration.

Oil spills over the past few months continue to demonstrate the need for this legislation. So far this year, sizable spills have occurred in Washington and Hawaii while a mystery oil slick was spotted off the Florida keys, potentially threatening the Key Largo National Marine Sanctuary and the John Penekamp Coral Reef State Park. The current Federal system is lacking in many respects and could have failed to provide adequate compensation for those who have been damaged by these spills.

While the energy and transportation industries continue to work hard to minimize the risk of spills, accidents happen. Regretfully, oil spills will continue to occur. The time for a comprehensive Federal oil spill law is long overdue. Please join me in supporting this important legislation.

INTRODUCTION OF THE DELLUMS/PARRIS METRO REAUTHORIZATION ACT

HON. STAN PARRIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. PARRIS. Mr. Speaker, Mr. DELLUMS and I, as chairman and vice chairman of the Committee on the District of Columbia, have today introduced legislation with a number of our colleagues that will provide for the completion of our "Nation's Subway"—Washington's Metrorail System. Specifically, this bill will authorize the appropriation of Federal matching funds over approximately 11 years for the final 13.5 miles of this 103-mile system.

The current Federal authorization for the initial 89.5 miles of this system, Public Law 96-184, enacted in 1980 will soon expire. The DELLUMS-PARRIS reauthorization legislation will pick up where the current authority leaves off, allowing for the completion of the Green Line in the District and Maryland and of the Yellow Line in Virginia.

Of considerable importance to me and my constituents is the long-awaited extension of the Yellow Line from Van Dorn to the Springfield-Franconia site—one of the fastest growing areas in Northern Virginia and, indeed, in the entire Washington Metropolitan area. Without this vital rail link, there can be no question that the I-95/I-395 corridor will become virtually gridlocked. It is also a fact that no amount of road construction in this congested area could possibly replace the benefit to be realized in connecting Springfield-Franconia to Washington's Metrorail System.

Metrorail and Metrobus feeder service has far surpassed original expectations in the role it plays today as perhaps the most important component of the Washington area's transportation infrastructure. I invite my colleagues to imagine life in today's Washington without Metrorail.

In closing, I believe it is important to point out for the record that while there does exist an understandable degree of parochial interest in this legislation by members of the Virginia, Maryland and D.C. delegations, this is, in fact, the "Nation's Subway," located in the Nation's Capital and serving its millions of visitors annually, and helping ensure that the business of Government may continue unimpeded by local infrastructure deficiencies.

I am most pleased with the level and intensity of support for this legislation which has been expressed by so many of my colleagues so early in the process. I am also looking forward to working with Chairman DELLUMS in aggressively pursuing this critical legislation in our District of Columbia Committee early in this session of the 101st Congress.

BETTER MANAGEMENT FOR NATIONAL PARKS

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. VENTO. Mr. Speaker, the National Park System was authorized by the Congress in 1916. The National Park Service was established to manage and protect units of the Park System so as to prevent degradation of the lands and resources in perpetuity.

The Congress has subsequently reaffirmed that the protection of units of the National Park System should be given the highest priority and has enacted legislation—Public Law 91-383—which provides that these lands shall be managed to prevent derogation of the values for which they were created.

Management of natural and cultural resources in the Park System in perpetuity required the development of a highly professional organization that was trained to protect these natural and cultural resources on the basis of reaching objectives in scores of even hundreds of years: The National Park Service is the result of that requirement and carried out the mandate in a highly professional manner during its first 50 years. But then things began to change. An outstanding professional Park Service Director was fired because he refused to agree with development plans of a political insider that would have destroyed a park in Florida. And that Director was replaced not with a first rate professional land manager—but rather a professional political campaign advance man. Since then we have had a continuous stream of Assistant Secretaries and Deputy Assistant Secretaries and assistants to the Assistant Secretaries—all political appointees—with limited or even no knowledge of how to protect our national treasures that make up the National Park System, second guessing, overturning, and interfering with professional park managers' decisions about how to protect the parks.

Finally, we reached the point over the last few years where the decisions on personnel qualifications, location of development, research conclusions, interpretive programs, management guidelines, and a host of other day-to-day operational decisions were made by political appointees whose histories, more often than not, were as representatives of the very groups, organizations, and businesses whose primary mission was to undermine the National Park System.

Mr. Speaker, the Congress has, one by one, established what is now considered the greatest amenity the United States has; its natural and cultural treasures all within the National Park System. That System and those treasures are being destroyed by a variety of threats and intrusions, but none more insidious nor more effective than bad management by political appointees, who make expedient decisions that help developers or timber or mining interests and impair the resources we thought were protected because they were national parks.

Mr. Speaker, today I am introducing a bill to return the National Park System to people who know how to protect those resources, to people who have dedicated their lives to caring about these unique areas and to people who are committed to carrying out the intent of Congress to maintain these resources in perpetuity; to the now depleted National Park Service professional land managers. My bill to establish a National Park System Review Board passed the House in the 100th Congress by an overwhelming majority but was not acted upon by the Senate. I have reintroduced that bill today with 65 cosponsors and ask my colleagues to join me in passing this bill to give us the relevant professional management that the special resources of our National Park System need and deserve.

UKRAINIAN-AMERICANS 71ST ANNIVERSARY

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. KOLBE. Mr. Speaker, last January Ukrainian-Americans celebrated the 71st anniversary of the proclamation of Ukrainian independence. The suppression of Ukrainian culture is a brutal chapter in the history of Eastern Europe. I would like to take this opportunity to urge support for the Ukrainian peoples and to encourage the Soviet Union to grant greater religious freedom, cultural practices, and individual rights for the citizens of the Ukrainian Republic.

Mr. Speaker, on the occasion of the 71st anniversary of the proclamation of the free and independent Ukrainian National Republic, the Honorable Thomas J. Volgy, mayor of Tucson, proclaimed Friday, January 20, 1989, to be Ukrainian Independence Day in our community. I would like to include that proclamation into the RECORD on behalf of the Ukrainian community of Southern Arizona.

Proclamation by the Honorable Tom Volgy, mayor of Tucson:

PROCLAMATION

Whereas, January 22, 1989 will mark the 71st anniversary of the proclamation of the free and independent Ukrainian National Republic; and

Whereas, the young Ukrainian National Republic fell in 1920 as the first victim of Communist Russia, and for more than half a century Ukraine has suffered untold persecution, man-made famine, religious oppression, and outright linguistic genocide in the form of Russification; and

Whereas, the people of Ukraine in 1986 experienced untold sufferings for generations to come from the nuclear disaster at Chornobyl which was under Moscow's control; and

Whereas, on April 23, 1988 the U.S. Commission on the Ukraine Famine reported its findings that the Great Famine of 1932-33 was premeditated genocide against Ukrainians perpetuated by Joseph Stalin and those around him; and

Whereas, in April 1988 the U.S. Congress passed a resolution calling for the legalization of the Ukrainian Orthodox and Catholic Churches in the Soviet Ukraine; and

Whereas, on this occasion, it is appropriate to reflect upon our perception and un-

derstanding of the Ukrainian people and their aspirations; and

Whereas, today's celebration salutes the determination of the people of Ukraine to live in freedom,

Now, therefore, I, Thomas Volgy, Mayor of the City of Tucson, Arizona, do hereby proclaim Friday, January 20, 1989 to be "Ukrainian Independence Day" in this community and call upon all of our citizens to join those of Ukrainian descent in prayers for peace and freedom throughout the world.

INTRODUCTION OF PLATORO RESERVOIR BILL

HON. BEN NIGHTHORSE CAMPBELL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. CAMPBELL of Colorado. Mr. Speaker, I am introducing a bill, cosponsored by the entire Colorado congressional delegation, which provides for the transfer of the Platoro Reservoir to the local irrigation district and provides for the protection of fish habitat in the Conejos River in southern Colorado.

The Platoro Reservoir was built in 1951 by the Bureau of Reclamation as part of the San Luis Valley irrigation project. Because of the administration of the interstate Rio Grande Compact, the reservoir has never been used.

The Conejos District will make an advance, lump-sum payment of $500,000 to the Federal Government for the purchase of the Federal project. This sum represents the present value of the district's future obligations under the repayment contract, taking into account the Federal savings of operation and maintenance costs.

The reservoir and underlying lands will then be transferred to the district, which is responsible for operating, maintaining and repairing the dam. The district believes that after assuming the risk and responsibility for making this irrigation project work, they can implement an aggressive local water management program to realize the project's irrigation benefits.

This bill is also intended to end a longstanding environmental problem caused by the original construction of the reservoir, namely maintaining satisfactory in-stream flows in the Conejos River for fish and wildlife.

The Platoro was designed in the 1930's and 1940's; it was built in 1951—all before NEPA or the Fish and Wildlife Coordination Act. No in-stream flows were provided below the dam. This bill requires the Conejos District to provide in-stream flows by releasing water that would have been used for irrigation. This reduced yield for irrigation will be compensated by the further reduction in the lump-sum payment price.

The State of Colorado will manage the water rights protecting these released waters. Because of the State's provision of low-interest financing to the Conejos District, the result is a three-way shared responsibility to provide for the enhancement of the Conejos' fish habitat.

This transfer allows the Federal Government to discount and sell off a questionable loan. The risk of meeting compact obligations and the task of implementing a water management program is passed to the local water users.

The Conejos District is ready to meet the challenge of being directly responsible for the success of the project. This bill gives the district the opportunity to free itself from Federal bureaucratic overhead which makes the financial operation of the reservoir nearly impossible.

Platoro Reservoir is located in one of the poorest rural counties in the country. The local operation of Platoro Reservoir is seen as a key economic development issue and the Colorado General Assembly has overwhelmingly provided funding to the district in the form of a loan package to allow this transfer to go forward.

This bill deserves to be judged on its merits. The local water users are willing to take a Federal irrigation project which has not worked and assume responsibility for its success. This bill makes good sense for both the Federal Government and the Conejos District and I urge you to support it.

INTRODUCTION OF APEX LEGISLATION

HON. JAMES H. BILBRAY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. BILBRAY. Mr. Speaker, today Representative BARBARA VUCANOVICH and myself introduced legislation to provide Federal land near Apex in southern Nevada for the development of a specialized industrial facility which could accommodate defense-related and other industries requiring expansive space to operate safely.

A similar measure will be introduced by Nevada's two Senators, Senator HARRY REID and Senator RICHARD BRYAN.

On May 4, 1988, the southern Nevada community of Henderson suffered a series of fires and explosions at a rocket fuel plant which killed 2 and left more than 350 injured.

The devastation wrought extensive property damage as far as 12 miles from the site of the explosion in Las Vegas, and the effects of a 5-square-mile toxic cloud created by the fires was felt by the residents of the towns of Moapa, Logandale, and Overton, NE.

Schools were closed and hundreds of residents were evacuated. One report indicated a ring of destruction 8 miles wide.

The blast and fires destroyed the Pacific Engineering & Production Co. [Pepcon] as well as the Kidd & Co. marshmallow factory contiguous to the rocket fuel plant. The Kerr-McGee Chemical Corp., also located in Henderson, was not damaged.

Together with Pepcon, Kerr-McGee is the only company in the United States to produce ammonium perchlorate. Once blended to specific needs, the chemical provides the fuel for our solid rocket motors used by the Air Force and NASA to power the space shuttle and a variety of military missiles.

As a result of the blast, Federal, State, and local officials explored the idea of building a plant far enough away from populated areas so a Pepcon-like disaster wouldn't have any affect on residents or businesses.

The package we introduce today meets this need. It provides for the relocation of the Kerr-McGee plant operations on 3,840 acres of Federal land. For future needs, the legislation transfers up to 17,000 acres of land within the Apex site for future heavy industrial needs.

The legislation would allow the diversification of the economy in southern Nevada while insuring the safety of its citizens. Further, the measure is consistent with the findings of the Henderson Commission which recommended the siting of certain industries in areas well removed from population centers.

We acknowledge as Nevadans that ammonium perchlorate is essential to the Nation's defense efforts, our space program, and the commercial launch industry. But Nevadans expect the Federal Government to treat us just as fairly. A community that supports two of the most important plants in the country should be treated with compassion and concern.

I urge immediate action by the Congress.

A BILL TO MAKE ILLEGAL DUMPING WASTE INTO OCEAN WATERS A CRIMINAL OFFENSE

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. HUGHES. Mr. Speaker, today I am introducing two bills to make illegal dumping of waste into ocean waters a Federal criminal offense. These bills impose stiff fines up to $250,000 per violation and jail sentences of up to 5 years on anyone convicted of dumping waste illegally into the ocean. Additionally, the bills include provisions imposing forfeiture of property used to commit the crime.

During the 100th Congress, a number of legislative initiatives were enacted to develop measures that will protect the marine environment from a variety of pollution sources. One such bill, the Ocean Dumping Ban Act, places a deadline on sewage sludge and industrial waste dumping by municipal sewage authorities and industries currently dumping pursuant to a permit or court order. It also places tough new restrictions and penalties on the dumping of medical wastes in marine waters, and sets stringent regulations on the handling and transportation of garbage by barge.

Although this legislation was a major step in cleaning up our oceans, there are still areas within the law that need to be strengthened to achieve our overall goal of protecting our marine environment.

Currently, illegal dumping of waste materials into ocean waters is merely a misdemeanor offense—resulting in little incentive to stop such activities. The two bills that I am introducing today will increase the seriousness of such a crime by making it a felony, and serve as a significant deterrent against such intolerable practices.

Mr. Speaker, I believe that these two bills are both necessary and timely. They are good bills and it is my hope that Congress will move quickly to enact these measures.

IN REMEMBRANCE OF DR. EDMUND MORGAN, JR., OF GREENFIELD, MA

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. CONTE. Mr. Speaker, I rise today to pay tribute to Dr. Edmund Morgan, Jr., of Greenfield, MA, who was called from us Sunday, March 5, at the age of 66.

Dr. Morgan was a gentleman and a scholar. A graduate of Harvard and Tufts medical schools, where he had been a member of the Alpha Omega Alpha Medical Honor Society. Ed was a surgeon of the first caliber. He served his internship and residency at the Charity Hospital in New Orleans, and later served as a surgeon with the U.S. Coast Guard, on the Goedetick Surveyors Ship, the *Explorer*.

Dr. Morgan was also a chief surgeon in American Samoa and during the Korean war he served with the 187th Airborne Division as captain in the Medical Corps. For 2 years, he worked in the U.S. Army Hospital in Japan before returning to private practice in Boston in 1964.

In 1976, Dr. Morgan moved his wife and six children to Greenfield, MA, which is in my First Congressional District. He continued to practice medicine at the Franklin Medical Center and the Veterans' Administration Hospital in Leeds.

Besides his love of medicine, Ed cherished his wife and six children. An educated man who wanted the best for his offspring, Ed worked hard to ensure that they received a proper education. His deep concern for their futures became evident to me several years ago when I had the pleasure of meeting the doctor and his son Ed at a picnic in Holyoke, MA. Dr. Morgan beamed with pride over his son's accomplishments and dreamed one day of seeing his son in uniform as a cadet at the U.S. Military Academy. His son attended a military prep school in New Mexico and worked hard to gain admittance into the Academy. In 1988, their dream was fulfilled when young Ed received an appointment to West Point.

Dr. Morgan's dedication to his country and his family was unquestionable. Through his selflessness he gave to others and through his kindness he won the hearts of those who had the pleasure of his acquaintance. I share the sense of loss the Morgan family is feeling during this trying period but am confident that all the wonderful memories of times shared will help them get through the difficult days ahead. Dr. Morgan, a true American, will be sorely missed.

HELP PROTECT OUR DEMOCRATIC FORM OF GOVERNMENT

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. GOODLING. Mr. Speaker, I am introducing legislation to make the 1990 census a more equitable and realistic tool for conducting congressional reapportionment. This bill will only affect the census for purposes of reapportionment and will not impact on the present allocation of Federal benefits, based on census data, to individuals deserving of such assistance.

My legislation directs the Secretary of Commerce to exclude illegal aliens from the census count and also requires the inclusion of U.S. military personnel, civil servants, and their dependents stationed overseas in the enumeration. In addition, the bill mandates the counting of U.S. students studying abroad, a small but important group of citizens who deserve to be included in the reapportionment process.

As a Represenstative from Pennsylvania, I share a unique concern about the upcoming census. According to recent projections, the Commonwealth will lose at least two seats, and perhaps three, as a result of reapportionment in 1992. If the Census Bureau can be directed by Congress to exclude illegal aliens from the count used to apportion congressional districts, Pennsylvania, and other States adversely affected by demographic change—Illinois, Iowa, Kansas, Massachusetts, Michigan, Montana, New York, Ohio, West Virginia, and Wisconsin—can be spared additional injury and insult caused, by current Census Bureau policies.

Our Founding Fathers had several purposes in mind when they established the census; to help pay debts incurred from the Revolutionary War and, according to a Commerce Department pamphlet, "to establish a truly representative government to sit in the two Houses of Congress." Under the present system, the census fails to achieve one of its primary goals. The inclusion of illegal aliens in the census count violates the basic constitutional rights of representation guaranteed to U.S. citizens.

Because of current Census Bureau policies, voters in States with large numbers of illegal aliens enjoy a distinct advantage over citizens in other parts of the country. Fewer U.S. citizens are needed to elect a Representative to Congress in these areas, and they enjoy, on the basis of their location, a greater amount of political power than citizens in areas with few illegal aliens. This is not what the framers of the Constitution intended. In fact, the Supreme Court ruled in 1964 in Wesberry versus Sanders that article 1, section 2 of the Constitution mandates that "as nearly as practicable, one man's vote in a congressional election is to be worth as much as another's."

It is ironic that the Constitution originally excluded from the census the original inhabitants of the United States, American Indians, and current interpretations of the Constitution result in the inclusion of individuals who are living in the United States in violation of the law. Unless attempts to correct current Census Bureau policies are successful, the United States will be faced with a unique situation in the 21st century: citizens who live in areas of the country with large numbers of undocumented aliens will have a disproportionate and unrealistic amount of influence in determining the policies and direction of our country. Is this what the Founding Fathers had in mind? Most definitely not. Something must be done now to correct this situation, not only for the sake of the millions of Americans directly affected in 1990, but also in order to ensure our democratic form of government does not become another casualty of illegal immigration.

MEDICARE COVERAGE OF MAMMOGRAPHY

HON. BARBARA B. KENNELLY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mrs. KENNELLY. Mr. Speaker, I am pleased to reintroduce the Older Women's Cancer Prevention Act, legislation which will significantly improve the Medicare Program.

More than 1 in 10 American women will develop breast cancer sometime in their lives. This devastating disease is the leading cause of cancer deaths among women, taking over 45,000 lives in 1987 alone. Older women are even more susceptible to this cancer. Yet early detection and treatment of this condition can reduce fatality rates significantly. Thus it is recommended by the American Cancer Society that women over the age of 40 undergo complete breast examinations annually. Each exam should include a physical exam, instruction in self-examination, and a low level x ray called a mammogram. The examination should also include comparison of new mammograms to past ones to identify changes over time, and counseling and followup by doctors for their patients who show positive results.

While Medicare generally does not cover preventive care, Medicare coverage for screening mammography was included in the Medicare Catastrophic Coverage Act which we passed last spring. I supported that provision wholeheartedly. It has become clear, however, that the reimbursement cap will not be sufficient to ensure that mammography will be readily available to women who need it. The current $50 cap on reimbursement severely limits provider options and defeats the intent of the legislation, which was to increase the number of women who are being screened and treated for early signs of breast cancer.

In the 1950's cervical cancer was killing American women at a similar rate to the current one of breast cancer. A test existed which would allow for early detection and treatment of cervical cancer. Yet only 1 of 10 women were tested for this type of cancer because few doctors offered the test in their offices. As the test became widely available in the offices of primary care physicians, however, the number of women receiving the test in-

creased until, today, 9 out of 10 women are regularly tested for cervical cancer. The incidence of deaths from cervical cancer has decreased by over 70 percent since them.

Similarly, screening tests for breast cancer need to be made readily available in the office of primary care physicians so women will undergo these tests on a regular basis. Not only is a woman more likely to undergo the test when under the care of someone she knows and with whom she is comfortable, but doctors are more able to identify changes over time, and are able to provide the analysis, counseling, and followup that are necessary to effectively care for patients who are found to have positive test results.

Yet in most areas of the country, the only providers who can offer mammograms for $50 are mobile vans which old make-shift screening clinics at shopping centers and other public places. Even these vans often can offer the tests at such a bargain only because they are heavily subsidized by charitable organizations.

These mobile vans provide a well-intentioned and valuable service which we should encourage to continue. However, such vans cannot and should not become the main provider of these important tests. For example, in the whole of my own State of Connecticut there are only two of these mobile vans. This is clearly inadequate to meet demand. More importantly, however, most women, especially older women, simply will not submit to being examined by a stranger in a van in the parking lot of a shopping mall. In addition, by necessity the care offered by these units is considerably less comprehensive than that provided in a clinic or a doctor's office. These van visits are one-shot deals, where a physician is rarely available to examine and counsel the woman. There is no comparison with older mammograms, so any change in the physiology of the patient cannot be detected. Followup is nonexistent. A woman receives her test results in the mail, and, if the test is at all suspicious, is merely directed to visit her doctor. This can cause undue confustion and alarm, especially for older women.

For these reasons it is very important that screening tests for breast cancer become widely available in doctors' offices. The $50 cap on Medicare reimbursement will prevent this from happening. Doctors and even high-volume clinics cannot realistically offer the test for $50, and will not do so.

The irony of the whole thing is that this test is virtually the same test as the diagnostic mammography currently reimbursable under Medicare. Yet that test is reimbursed at a rate which is "reasonable," allowing for regional adjustment for the price of the test. This is much more realistic in terms of the actual price of the test, which currently ranges from about $80 to $200. Coverage at this level would allow more doctors to begin to offer the test in their offices.

The legislation which I am introducing would be a minor adjustment to the Medicare provisions of the Social Security Act, but would be of major benefit to older women in the early detection and treatment of breast cancer. The bill would merely raise the cap on the screening test to be in line with coverage for the diagnostic test, which falls under the same payment schedule as other radiology treatments and would be adjusted by regional costs.

If we raise the reimbursement cap for screening mammography to reasonable levels, mammography will become widely available to older women. With this availability will come more frequent testing, and with more frequent testing will come the early detection and treatment of breast cancer. Thus we can expect the same dramatic decrease in mortality from breast cancer that we experienced for cervical cancer when Pap smears became widely available. It is for this reason that I am reintroducing the Older Women's Cancer Prevention Act.

The bill currently has 57 cosponsors, and I invite the rest of my colleagues to join us in supporting the goal of saving lives by the early detection and treatment of breast cancer.

A TRIBUTE TO TERESA O'BRIEN

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. FISH. Mr. Speaker, I would like to take this opportunity to commend Ms. Teresa O'Brien for a lifetime of outstanding service to her family and her community. Ms. O'Brien will celebrate her 94th birthday on March 18, and is a lifetime resident of Bedford, NY, in my congressional district.

Teresa O'Brien is the eldest of a generation of a family that has provided much to the community of northern Westchester County. Teresa's father, Thomas O'Brien, and her brother-in-law, John Kinkel of Bedford, founded O'Brien & Kinkel, a major Mt. Kisco builder of quality homes until the 1960's. O'Brien & Kinkel built St. Patrick's Catholic Church in Bedford in 1930 on land donated to the Archdiocese of New York by the O'Brien family.

Teresa was first hired by O'Brien & Kinkel as a secretary. She was soon promoted to treasurer and later to a vice-president position in the firm. This marked a considerable accomplishment for a woman in those times and exemplifies Teresa's lifetime habits of hard work and dedication to the family business.

In addition to Teresa's personal accomplishments, her family's community service over the last century is worthy of our recognition. William O'Brien, past president of O'Brien & Kinkel and Teresa's brother, was named "Mr. Mt. Kisco" in 1956 in honor of his many civic accomplishments.

Teresa's sister, Mary O'Brien, was postmistress of Bedford from 1925–45, and was a familiar sight to Bedford's citizens as she bicycled through the town delivering urgent mail during the war years.

Her sister Annie O'Brien was the organist and choir director at St. Patrick's Church for decades, and taught Latin to generations of alter boys at the church.

John Kinkel, husband of Teresa's sister, Katherine, was the volunteer fire chief in Bedford for a quarter century, 1925–50, in addition to his responsibilities at O'Brien & Kinkel. On his 90th birthday in 1966, at a ceremony to honor his many contributions to the community, he was named "Mr. Bedford."

Indeed, a great tradition of civic generosity has been synonymous with the personal success of the O'Brien & Kinkel families. Ms. O'Brien's great-nephew, Mr. Brien Kinkel, who resides in Silver Spring, MD, also is an accomplished professional, who is representative of his proud family tradition.

Mr. Speaker, Teresa O'Brien can look back with tremendous pride on her own accomplishments and those of her family. I rise today to salute her and ask my colleagues to join me in wishing Ms. Teresa O'Brien, continued blessings and prosperity on the occasion of her 94th birthday.

WORKING FAMILY CHILD CARE ASSISTANCE BILL OF 1989

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. MICHEL. Mr. Speaker, the President yesterday submitted his child care proposal to Congress, and I am today introducing it in bill form.

The proposal implements the President's commitment during the campaign to provide a tax credit for up to $1,000 per child for low-income working parents to assist them in meeting their child care needs. The tax credit concept leaves the decision in the hands of parents as to the type of child care most suited for their children, and avoids heavy-handed Federal standards that could go so far as to license grandmothers who care for their grandchildren.

This proposal also assists those families who may feel it is most appropriate for one parent to stay at home to care for young children. Parents should not be forced to place children in day care centers in order to receive help, and the President's proposal allows that flexibility.

The provisions in this proposal basically track with those outlined in the President's budget submissions. A tax credit of up to $1,000 per child would be provided for children under age 4 in low-income families where at least one parent works. It would be refundable, which means families would receive a cash payment from the Government if the credit to which they are entitled exceeds the taxes they pay.

The President's proposal would retain the existing child care tax credit and would also make that refundable. This will better enable more moderate income families to meet their child care needs.

The President's proposal represents a sound base from which to address the child care issue. We may want to make some adjustments in specific provisions, and in fact we have a Republican task force under the chairmanship of TOM TAUKE that is in the process of developing a comprehensive proposal. But the President's proposal represents a solid way to go, and I invite all Members interested to join me in cosponsoring the bill.

INTRODUCING LEGISLATION TO DESIGNATE TWO WILD AND SCENIC RIVERS

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. LAGOMARSINO. Mr. Speaker, today I am introducing legislation to designate two wild and scenic rivers, establish two new wilderness areas and expand an existing wilderness within Los Padres National Forest. The legislation would implement key recommendations of the U.S. Forest Service following completion of the final management plan for the forest. I am pleased to sponsor this bill which will protect and preserve these outstanding natural and scenic resources for the enjoyment of future generations.

My bill proposes to add approximately 58.5 miles to the national wild and scenic rivers system through designation of segments of Sespe Creek and Sisquoc River. As proposed by the Forest Service following completion of the forest plan, the 27.5-mile segment of Sespe Creek extending from its junction with Trout Creek just east of the popular Lions Campground to the Devil's Gate area north of Fillmore would be designated as a wild river. As the river winds through the National Forest, it offers numerous scenic and recreational opportunities. Many varieties of plants and trees can be found along the river's banks, including willow and sycamore. The unique landscape also serves as important habitat for several species of birds and mammals, including beavers. The 53,000-acre Sespe Condor Sanctuary is located on lands adjacent to the river and protects critical nesting and roosting habitat for the endangered California condor. The Sespe is also known as an excellent trout fishery and a portion of the river was recently designated as a State wild trout stream. Recreational activities along the Sespe include swimming, camping, hiking, horseback riding, and fishing. Several trails parallel or cross the river at various points.

This segment of Sespe Creek lies entirely within an area of Los Padres Forest I am proposing for wilderness. This dual designation would serve to protect the many outstanding features of the river.

The 31-mile segment of the Sisquoc River flows entirely through the San Rafael Wilderness and would therefore be designated as a wild river. It is known for its recreational opportunities as a wild river. It is known for its recreational opportunities, including hiking, horseback riding, and fishing which are enhanced by a foot and equestrian trail paralleling the entire length of the river. The Sisquoc flows through diverse terrain, including rugged and rocky slopes, dense chaparral, and several small meadows. Deer, black bear, and several other species of wildlife can be found along the river. The upper reaches of the river border the Sisquoc Condor Sanctuary and provide critical bathing and roosting habitat for the endangered condor. Several cultural sites are also located along the river, including remnants of early homesteads and Chumash Indian villages.

The Sespe and Sisquoc Rivers deserve the protection this legislation will afford. In addition, my bill would establish the Sespe and Matilija Wilderness areas and expand the existing San Rafael Wilderness.

The proposed 197,000-acre Sespe Wilderness begins just east of the Dick Smith Wilderness which was established largely through my efforts with passage of the 1984 California Wilderness Act. This area is characterized by rugged and diverse topography and serves as a major watershed for the Piru, Sespe, and Cuyama Rivers. Although the wilderness lies almost entirely within Los Padres National Forest, a small portion of it extends into adjacent Angeles National Forest.

The Sespe area serves as important habitat for many sensitive bird and animal species, including the recently reintroduced bighorn sheep and the endangered California condor. The area is also known for its unique natural and geologic features, including Topatopa Mountain, Sespe Hot Springs, and the Pristine Sespe Condor Sanctuary. Wilderness designation for the sanctuary will provide even stronger protection for this critical habitat. Provisions I have included in my bill will insure that any oil and gas exploration and development in this area must be conducted in an environmentally safe manner from outside the sanctuary, thereby prohibiting any type of surface disturbance. In addition, such development will be subject to strict stipulations contained in the forest plan to insure protection of this fragile area and its sensitive bird and animal species.

Nature study, fishing and hunting are popular recreational activities in this area. Numerous trails through the area and several trail camps enhance other activities such as cross-country hiking and backpacking. Recreational access to Sespe Hot Springs would be allowed to continue via the Johnson ridge trail pending completion of a study by the Forest Service to determine appropriate future management of the area.

My legislation would also establish the Matilija Wilderness encompassing 30,000 acres in the Santa Ynez Mountains. This region is noted for its steep canyons and rugged chaparral-covered slopes. It was extensively burned during the Wheeler fire of 1985 and is currently an excellent example of a recovering southern California chaparral ecosystem. The Matilija provides habitat for numerous animal species including deer, bear, mountain lion, bobcat and fox, as well as the California condor.

Finally, my bill would establish the La Brea addition to the San Rafael Wilderness. The 16,500-acre addition would extend westerly along the southern slopes of the Sierra Madre Mountains, bringing the total acreage of this wilderness to approximately 167,500 acres. The proposed addition encompasses the entire Horse Canyon watershed to its junction with the Sisquoc River.

Mr. Speaker, the legislation I am introducing today provides for comprehensive and far-reaching additions to the National Wilderness System and the National Wild and Scenic Rivers System. It will preserve and protect in perpetuity some of our most serene and secluded canyons, rivers, and peaks. In addition, by virtue of their close proximity to the urban areas of Southern California, these resources will continue to provide numerous diverse recreational opportunities to meet the demands of an ever increasing population. Therefore, I urge my colleagues to cosponsor and support this important legislation.

PEACE FOR EL SALVADOR

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. MFUME. Mr. Speaker, over the last 9 years the civil war in El Salvador has claimed an estimated 70,000 lives and displaced about one out of every four Salvadorans. Many of these Salvadorans eagerly await the day that they can not only return to their homelands, but also live in peace, raise their families and resume their disrupted life styles.

Mr. Speaker, Salvadorans will go to the polls on Sunday, March 19, 1989, to elect their nation's new leadership. Usually one would be optimistic about the prospects for change with an incoming administration; however, it appears that El Salvador's future will be even more uncertain after this election than it is at the present time.

Congress has approved aid to El Salvador in the current fiscal year of a little over $1 million a day. I hope that we can begin to exert more influence within this nation in order to have the ruling party improve El Salvador's human rights record and negotiate an end to the bloody and costly civil war for the sake of her own people.

SMITHSONIAN NUMISMATIC COLLECTION

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. SCHULZE. Mr. Speaker, the Smithsonian Institution has grown tremendously since its founding in 1848. One area, however, which is in need of greater attention is that of the Smithsonian's numismatic collection. The national numismatic collection is one of the most complete collections of coins and medals both from American history and other nations.

At virtually no cost to the American taxpayer, the numismatic collection could be significantly improved with the two bills I am introducing today.

The first measure would require the U.S. Mint to provide the Smithsonian with specimens of pattern coins, trial strikes, experimental pieces, and other products made in the production of coinage by the U.S. Mint. These are now routinely destroyed by the mint and could be given to the Smithsonian at no cost.

The second bill would require the mint to provide the Smithsonian annually with 200 proof sets of U.S. coins. As a result, the Smithsonian would be in a posture to trade with other mints and national museums around the world for sets of contemporary

coinage. The transfer of U.S. coins from the mint to the Smithsonian would be very inexpensive, as the face value cost of 200 proof sets is only $182, and even less in manufacturing costs. The value of these proof sets and those acquired through trading with other countries will undoubtedly increase in the future, thus accentuating the wisdom of purchasing contemporary coinage now at low-manufacturing costs instead of paying higher prices in the years ahead.

The Smithsonian and the American people will certainly benefit from having the uncirculated mint sets or proof sets of the more than 156 nations on Earth that produce money as well as a complete collection of contemporary U.S. coins, including patterns and trial strikes.

I urge all my colleagues to join me in improving the Smithsonian's numismatic collection.

TRIBUTE TO PRESIDENT DUARTE

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. MAVROULES. Mr. Speaker, this Sunday, elections will be held in El Salvador. While we in America applaud the Salvadoran's respect for a democratic electoral process, we also recognize that after the elections the civil war will still go on, human rights will still be abused, and the freedoms afforded by American democracy will still be denied to many Salvadorians.

El Salvador's fragile democracy requires our continued careful attention and support. We want to promote a political solution to the 8-year-old guerrilla conflict; we want to see an end to the heinous death squads; we want to see an improvement in human rights; and we want to eventually reach peace in the entire region. United States aid should be structured to promote these objectives.

President Duarte leaves office after serving his country for 4½ years. During this time, he fought hard to institute reform and achieve peace. Today, we honor his efforts. Let's hope that this great leader's vision will one day be realized for his ravaged country.

EL SALVADOR

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Ms. PELOSI. Mr. Speaker, this Sunday, the people of El Salvador go to the polls to elect a new President. Elections, when they are free and fair, are an important step in the development of democratic institutions.

Unfortunately, according to many accounts, the Salvadoran people have lost faith in the electoral process, in great measure because they do not believe that the elections will end the tragic civil war which has destroyed so many lives in this tiny country.

The electoral process has been a cornerstone of United States policy toward El Salvador over the past 8 years. Combined with $3 billion in U.S. funding, elections, and military assistance have done nothing to stop the civil war. According to U.S. Government data, social, and economic conditions are worse now than in 1980 when the war first erupted.

The rebels offering of a peace proposal, combined with the interest of the Salvadoran political parties in opening discussions with the rebels, have created a unique opportunity to achieve a negotiated political settlement to the civil war. I believe that the U.S. Government should aggressively pursue this avenue to peace. The Salvadoran elections will not stop the civil war, only negotiations will.

SALVADOR KILLINGS RISE DESPITE U.S. PLEA

HON. JOE MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 16, 1989

Mr. MOAKLEY. Mr. Speaker, I rise today to express my deep concern regarding the situation in El Salvador and to express my outrage over our Government's continued deportation of Salvadoran refugees who have sought temporary safety in the United States.

Despite Vice President QUAYLE's recent visit to El Salvador and his stern warning to the military that they must improve their human rights record or face the loss of future U.S. aid—the situation has worsened. In fact, according to Tutela Legal, the human rights office of the Catholic Church, the number of death-squad-style killings has risen dramatically.

Mr. Speaker, the war goes on; both sides continue to target civilians for persecution; thousands are currently displaced from their homes; and, unless real steps towards peace are taken soon—the death toll will escalate.

It will take more than tough talk and more than elections to change the course in El Salvador.

In the meantime, while Congress and the administration reevaluate our policy, let us have the compassion and the simple decency to temporarily halt deportations—at least until the conflict has calmed.

Mr. Speaker, I would like to submit to the RECORD the following article which appeared in the Los Angeles Times on March 9.

SALVADOR KILLINGS RISE DESPITE U.S. PLEA—QUAYLE'S THREAT OF AMERICAN AID CUTOFF IGNORED, OFFICIALS SAY

(By Kenneth Freed)

SAN SALVADOR.—Vice President Dan Quayle's trip here last month to demand that the government end human rights violations or face the loss of American aid has had almost no impact, with the number of killings actually increasing since his visit, according to diplomats and human rights groups.

In the month before the vice president's February trip, the number of civilian deaths attributed to death squads and the military was eight. However, since Feb. 3, when Quayle told the Salvadoran military that the United States "expects them to work toward the elimination of human rights violations," killings attributed to rightwing death squads and the military have matched the earlier monthly average of 20 a month, according to figures compiled by human rights organizations.

And, although pressure from Quayle for action in one case has resulted in movement in that instance, many diplomats are still skeptical that anyone will actually be punished.

That case involves the so-called San Sebastian massacre of Sept. 21, in which members of the army's 5th Brigade allegedly killed 10 civilians suspected of supporting the Marxist rebel organization, the Farabundo Marti National Liberation Front.

After the U.S. Embassy here became convinced that the army had covered up the direct responsibility of senior officers for the killings, Quayle was asked to put pressure on the military. He arrived with the names of three army officers, all members of the 5th Brigade, and said that action had to be taken against them.

The three are Col. Jose Emilio Chavez Caceres, the brigade's commander; Maj. Mauricio de Jesus Beltran, its intelligence chief, and the officer in charge of the San Sebastian operation, known only as Lt. Vasquez.

SALVADORANS OUTRAGED

Quayle adopted a tactic used in 1983 by then-Vice President George Bush. Bush came here with a list of nine people he said were responsible for many of the human rights violations by death squads and the military. Bush's trip is credited by many Salvadoran and foreign officials with moderating the human rights abuses of that period.

Quayle met privately with military leaders, told them of his concern and then handed a sealed envelope containing the three names to the U.S. Ambassador William Walker, who passed it on to the minister of defense, Gen. Carlos Vides Casanova.

Sources close to the military high command said Vides Casanova and other officers were outraged at what they felt was unacceptable interference in their affairs. Yet they heeded the warning that a lack of action would endanger the $430 million a year that El Salvador receives from the United States.

As a result, Col. Chavez Caceres has been suspended as 5th Brigade commander and brought to the capital, though he is not under arrest. Maj. Beltran and Lt. Vasquez are being held at military installations in San Salvador, as is a fourth officer, a Lt. Galvez, who was a platoon commander during the San Sebastian operation.

Sources close to the military say the action in the San Sebastian case is little more than a sop to pacify the United States and that Quayle's message is being largely disregarded.

There has been no progress in several other prominent human rights cases on which the United States had demanded action.

According to Tutela Legal, the human rights office of the Catholic Church here, and several Western diplomats, the overall Salvadoran record is bleak. Even diplomats who are critical of Tutela Legal, and who try to minimize the human rights situation, acknowledge that Quayle's visit "doesn't appear to have had any effect."

Meanwhile, there has been a steady stream of disappearances of people assumed by Tutela Legal and diplomatic sources to be victims of death squads.

In the past month, court officials have ordered several exhumations at what were called "body dumps" in the early 1980s,

when death squads were killing people and dumping them at these places at the rate of 800 a month.

Last Saturday, three bodies were dug up near the suburb of Soyapango, all men who had been taken from their homes, tortured and shot. The three were residents of Soyapango, an area often used as a body dump and controlled by the air force, which has a reputation of taking extreme measures against suspected guerrillas and their sympathizers.

Tutela Legal has also accused the army of killing a woman doctor and a 14-year-old girl acting as a nurse last month at a guerrilla field hospital in northern Chalatenango province. In addition to allegedly killing these two, allegedly after raping them, the army is also accused of killing three paramedics and five wounded guerrillas being cared for in the hospital.

Despite the action taken as a result of the San Sebastian incident, sources close to the proceeding doubt that the case will go much further. Col. Chavez Caseres, the former brigade commander, was a military academy classmate of the army chief of staff, Col. Rene Emilio Ponce, and several other influential officers.

U.S. officials acknowledge that no Salvadoran military officer has been convicted of a crime since 1979. A European diplomat said that "if there is any public attempt to punish [the officers in the San Sebastian incident], it will cause a military reaction."

Although Chavez Caseres has been suspended and other officers arrested, the army has not complied with court procedure by turning over evidence and delivering the officers for questioning.

Nor has the court been given a videotape, made by the army just minutes after the killings, that contradicts an almost uniform account of the incident given by enlisted men who were at the scene. These men testified that the civilians had been killed in a guerrilla ambush, but their account is challenged by sources close to the investigation.

In Washington, Quayle's spokesman, David Beckwith, said the United States wants those accused to be brought to "a fair trial . . . we want justice to be done."

The United States "can't dictate their procedures, but it has to be perceived as a fair investigation."

Adding to the doubts about a just conclusion to the San Sebastian case, or any other violation of human rights, is the fear that clings to any such investigation here. The judge who originally investigated the incident has been forced to resign and go into hiding.

"I am afraid," Judge Ediz Alcides Guardique Calvallo said in an interview. "If they threaten me or hurt my family, I will have to leave. Now there is great international pressure, and that is stopping them. But what will I do later? Later they can get me."

Exhibit 128

OFFICE OF MANAGEMENT AND BUDGET

Final Bulletin for Agency Good Guidance Practices

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final bulletin.

SUMMARY: The Office of Management and Budget (OMB) is publishing a final Bulletin entitled, ''Agency Good Guidance Practices,'' which establishes policies and procedures for the development, issuance, and use of significant guidance documents by Executive Branch departments and agencies. This Bulletin is intended to increase the quality and transparency of agency guidance practices and the significant guidance documents produced through them.

On November 23, 2005, OMB proposed a draft Bulletin for public comment. 70 FR 71866 (November 30, 2005). Upon request, OMB extended the public comment period from December 23, 2005 to January 9, 2006. 70 FR 76333 (December 23, 2005). OMB received 31 comments on the proposal from diverse public and private stakeholders (see *http://www.whitehouse.gov/omb/inforeg/good_guid/c-index.html*) and input from Federal agencies. The final Bulletin includes refinements developed through the public comment process and interagency deliberations.

DATES: The effective date of this Bulletin is 180 days after its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Margaret Malanoski, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10202, Washington, DC 20503. Telephone (202) 395–3122.

SUPPLEMENTARY INFORMATION:

Introduction

As the scope and complexity of regulatory programs have grown, agencies increasingly have relied on guidance documents to inform the public and to provide direction to their staffs. As the impact of guidance documents on the public has grown, so too, has the need for good guidance practices—clear and consistent agency practices for developing, issuing, and using guidance documents.

OMB is responsible both for promoting good management practices and for overseeing and coordinating the Administration's regulatory policy. Since early in the Bush Administration, OMB has been concerned about the proper development and use of agency guidance documents. In its 2002 draft annual Report to Congress on the Costs and Benefits of Regulations, OMB discussed this issue and solicited public comments regarding problematic guidance practices and specific examples of guidance documents in need of reform.[1] OMB has been particularly concerned that agency guidance practices should be more transparent, consistent and accountable. Such concerns also have been raised by other authorities, including Congress and the courts.[2]

In its 2002 Report to Congress, OMB recognized the enormous value of agency guidance documents in general. Well-designed guidance documents serve many important or even critical functions in regulatory programs.[3] Agencies may provide helpful guidance to interpret existing law through an interpretive rule or to clarify how they tentatively will treat or enforce a governing legal norm through a policy statement. Guidance documents, used properly, can channel the discretion of agency employees, increase efficiency, and enhance fairness by providing the public clear notice of the line between permissible and impermissible conduct while ensuring equal treatment of similarly situated parties.

Experience has shown, however, that guidance documents also may be poorly designed or improperly implemented. At the same time, guidance documents may not receive the benefit of careful consideration accorded under the procedures for regulatory development and review.[4] These procedures include: (1) Internal agency review by a senior agency official; (2) public participation, including notice and comment under the Administrative Procedure Act (APA); (3) justification for the rule, including a statement of basis and purpose under the APA and various analyses under Executive Order 12866 (as further amended), the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act; (4) interagency review through OMB; (5) Congressional oversight; and (6) judicial review. Because it is procedurally easier to issue guidance documents, there also may be an incentive for regulators to issue guidance documents in lieu of regulations. As the D.C. Circuit observed in *Appalachian Power:*

> The phenomenon we see in this case is familiar. Congress passes a broadly worded statute. The agency follows with regulations containing broad language, open-ended phrases, ambiguous standards and the like. Then as years pass, the agency issues circulars or guidance or memoranda, explaining, interpreting, defining and often expanding the commands in regulations. One guidance document may yield another and then another and so on. Several words in a regulation may spawn hundreds of pages of text as the agency offers more and more detail regarding what its regulations demand of regulated entities. Law is made, without notice and comment, without public participation, and without publication in the **Federal Register** or the Code of Federal Regulations.[5]

[1] U.S. Office of Management and Budget, *Draft Report to Congress on the Costs and Benefits of Federal Regulations,* 67 FR 15,014, 15,034–35 (March 28, 2002).

[2] *See, e.g.,* Food and Drug Administration Modernization Act of 1997, 21 U.S.C. § 371(h) (establishing FDA good guidance practices as law); ''Food and Drug Administration Modernization and Accountability Act of 1997,'' S. Rep. 105–43, at 26 (1997) (raising concerns about public knowledge of, and access to, FDA guidance documents, lack of a systematic process for adoption of guidance documents and for allowing public input, and inconsistency in the use of guidance documents); House Committee on Government Reform, ''Non-Binding Legal Effect of Agency Guidance Documents,'' H. Rep. 106–1009 (106th Cong., 2d Sess. 2000) (criticizing ''back-door'' regulation); the Congressional Accountability for Regulatory Information Act, H.R. 3521, 106th Cong., § 4 (2000) (proposing to require agencies to notify the public of the non-binding effect of guidance documents); *Gen. Elec. Co.* v. *EPA,* 290 F.3d 377 (D.C. Cir. 2002) (striking down PCB risk assessment guidance as legislative rule requiring notice and comment); *Appalachian Power Co.* v. *EPA,* 208 F.3d 1015 (D.C. Cir. 2000) (striking down emissions monitoring guidance as legislative rule requiring notice and comment); *Chamber of Commerce* v. *Dep't of Labor,* 174 F.3d 206 (D.C. Cir. 1999) (striking down OSHA Directive as legislative rule requiring notice and comment); Administrative Conference of the United States, Rec. 92–2, 1 C.F.R. 305.92–2 (1992) (agencies should afford the public a fair opportunity to challenge the legality or wisdom of policy statements and to suggest alternative choices); *American Bar Association, Annual Report Including Proceedings of the Fifty-Eighth Annual Meeting,* August 10–11, 1993, Vol. 118, No. 2, at 57 (''the American Bar Association recommends that: Before an agency adopts a nonlegislative rule that is likely to have a significant impact on the public, the agency provide an opportunity for members of the public to comment on the proposed rule and to recommend alternative policies or interpretations, provided that it is practical to do so; when nonlegislative rules are adopted without prior public participation, immediately following adoption, the agency afford the public an opportunity for post-adoption comment and give notice of this opportunity.''); 3 American Bar Association, ''Recommendation on Federal Agency Web Pages'' (August 2001) (agencies should maximize the availability and searchability of existing law and policy on their Web sites and include their governing statutes, rules and regulations, and all important policies, interpretations, and other like matters on which members of the public are likely to request).

[3] *See* U.S. Office of Management and Budget, *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local and Tribal Entities,* 72–74 (2002) (hereinafter ''2002 Report to Congress'').

[4] *Id.,* at 72.

[5] *Appalachian Power,* 208 F.3d at 1019.

Concern about whether agencies are properly observing the notice-and-comment requirements of the APA has received significant attention. The courts, Congress, and other authorities have emphasized that rules which do not merely interpret existing law or announce tentative policy positions but which establish new policy positions that the agency treats as binding must comply with the APA's notice-and-comment requirements, regardless of how they initially are labeled.[6] More general concerns also have been raised that agency guidance practices should be better informed and more transparent, fair and accountable.[7] Poorly designed or misused guidance documents can impose significant costs or limit the freedom of the public. OMB has received comments raising these concerns and providing specific examples in response to its proposed Bulletin,[8] its 2002 request for comments on problematic guidance [9] and its other requests for regulatory reform nominations in 2001 [10] and 2004.[11] This Bulletin and recent amendments to Executive Order 12866 respond to these problems.[12]

This Bulletin on ''Agency Good Guidance Practices'' sets forth general policies and procedures for developing, issuing and using guidance documents. The purpose of Good Guidance Practices (GGP) is to ensure that guidance documents of Executive Branch departments and agencies are: Developed with appropriate review and public participation, accessible and transparent to the public, of high quality, and not improperly treated as legally binding requirements. Moreover, GGP clarify what does and does not constitute a guidance document to provide greater clarity to the public. All offices in an agency should follow these policies and procedures.

There is a strong foundation for establishing standards for the initiation, development, and issuance of guidance documents to raise their quality and transparency. The former Administrative Conference of the United States (ACUS), for example, developed recommendations for the development and use of agency guidance documents.[13] In 1997, the Food and Drug Administration (FDA) created a guidance document distilling its good guidance practices (GGP).[14] Congress then established certain aspects of the 1997 GGP document as the law in the Food and Drug Administration Modernization Act of 1997 (FDAMA; Public Law No. 105–115).[15] The FDAMA also directed FDA to evaluate the effectiveness of the 1997 GGP document and then to develop and issue regulations specifying FDA's policies and procedures for the development, issuance, and use of guidance documents. FDA conducted an internal evaluation soliciting FDA employees' views on the effectiveness of GGP and asking whether FDA employees had received complaints regarding the agency's development, issuance, and use of guidance documents since the development of GGP. FDA found that its GGP had been beneficial and effective in standardizing the agency's procedures for development, issuance, and use of guidance documents, and that FDA employees had generally been following GGP.[16] FDA then made some changes to its existing procedures to clarify its GGP.[17] The provisions of the FDAMA and FDA's implementing regulations, as well as the ACUS recommendations, informed the development of this government-wide Bulletin.

Legal Authority for This Bulletin

This Bulletin is issued under statutory authority, Executive Order, and OMB's general authorities to oversee and coordinate the rulemaking process. In what is commonly known as the Information Quality Act, Congress directed OMB to issue guidelines to ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, utility, objectivity and integrity of information disseminated by Federal agencies.[18] Moreover, Executive Order 13422, ''Further Amendment to Executive Order 12866 on Regulatory Planning and Review,'' recently clarified OMB's authority to oversee agency guidance documents. As further amended, Executive Order 12866 affirms that ''[c]oordinated review of agency rulemaking is necessary to ensure that regulations and guidance documents are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order,'' and the Order assigns that responsibility to OMB.[19] E.O. 12866 also establishes OMB's Office of Information and Regulatory Affairs as ''the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency.'' [20] Finally, OMB has additional authorities to oversee the agencies in the administration of their programs.

The Requirements of the Final Bulletin and Response to Public Comments

A. Overview

This Bulletin establishes: a definition of a significant guidance document; standard elements for significant guidance documents; practices for developing and using significant guidance documents; requirements for agencies to enable the public to comment on significant guidance documents or request that they be created, reconsidered, modified or rescinded; and ways for making guidance documents available to the public. These requirements should be interpreted and implemented in a manner that, consistent with the goals of improving the quality, accountability and transparency of agency guidance documents, provides sufficient flexibility for agencies to take those

[6] *See, e.g., Appalachian Power; Gen. Elec. Co.; Chamber of Commerce;* House Committee on Government Reform, ''Non-Binding Legal Effect of Agency Guidance Documents''; ACUS Rec. 92–2, *supra* note 2; Robert A. Anthony, ''Interpretive Rules, Policy Statements, Guidances, Manuals and the Like—Should Federal Agencies Use Them to Bind the Public?'' 41 Duke L.J. 1311 (1992).

[7] *See, e.g.,* note 2, *supra.*

[8] U.S. Office of Management and Budget, ''Proposed Bulletin for Good Guidance Practices,'' 70 FR 76333 (Dec. 23, 2005).

[9] *See* note 1, *supra.*

[10] U.S. Office of Management and Budget, *Draft Report to Congress on the Costs and Benefits of Federal Regulations,* 66 FR 22041 (May 2, 2001).

[11] U.S. Office of Management and Budget, *Draft Report to Congress on the Costs and Benefits of Federal Regulations,* 69 FR 7987 (Feb. 20, 2004); *see also* U.S. Office of Management and Budget, *Validating Regulatory Analysis: 2005 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities* 107–125 (2005).

[12] President Bush recently signed Executive Order 13422, ''Further Amendment to Executive Order 12866 on Regulatory Planning and Review.'' Among other things, E.O. 13422 addresses the potential need for interagency review of certain significant guidance documents by clarifying OMB's authority to have advance notice of, and to review, agency guidance documents.

[13] *See, e.g.,* note 2, *supra.*

[14] Notice, ''The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents,'' 62 FR 8961 (Feb. 27, 1997).

[15] 21 U.S.C. 371(h).

[16] *See* FDA, ''Administrative Practices and Procedures; Good Guidance Practices,'' 65 FR 7321, 7322–23 (proposed Feb. 14, 2000).

[17] 21 CFR 10.115; 65 FR 56468 (Sept. 19, 2000).

[18] Pub. L. 106–554, § 515(a) (2000). The Information Quality Act was developed as a supplement to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, which requires OMB, among other things, to ''develop and oversee implementation of policies, principles, standards, and guidelines to—(1) Apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and (2) promote public access to public information and fulfill the purposes of this subchapter, including through the effective use of information technology.'' 44 U.S.C. 3504(d).

[19] Executive Order 12866, as further amended, § 2(b).

[20] *Id.*

actions necessary to accomplish their essential missions.

B. Definitions

Section I provides definitions for the purposes of this Bulletin. Several terms are identical to or based on those in FDA's GGP regulations, 21 CFR 10.115; the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.; Executive Order 12866, as further amended; and OMB's Government-wide Information Quality Guidelines, 67 FR 8452 (Feb. 22, 2002).

Section I(1) provides that the term ''Administrator'' means the Administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

Section I(2) provides that the term ''agency'' has the same meaning as it has under the Paperwork Reduction Act, 44 U.S.C. 3502(1), other than those entities considered to be independent agencies, as defined in 44 U.S.C. 3502(5).

Section I(3) defines the term ''guidance document'' as an agency statement of general applicability and future effect, other than a regulatory action (as defined in Executive Order 12866, as further amended), that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue. This definition is used to comport with definitions used in Executive Order 12866, as further amended. Nothing in this Bulletin is intended to indicate that a guidance document can impose a legally binding requirement.

Guidance documents often come in a variety of formats and names, including interpretive memoranda, policy statements, guidances, manuals, circulars, memoranda, bulletins, advisories, and the like. Guidance documents include, but are not limited to, agency interpretations or policies that relate to: the design, production, manufacturing, control, remediation, testing, analysis or assessment of products and substances, and the processing, content, and evaluation/approval of submissions or applications, as well as compliance guides. Guidance documents do not include solely scientific research. Although a document that simply summarizes the protocol and conclusions of a specific research project (such as a clinical trial funded by the National Institutes of Health) would not qualify as a guidance document, such research may be the basis of a guidance document (such as the HHS/USDA ''Dietary Guidelines for Americans,'' which provides guidance to Americans on what constitutes a healthy diet).

Some commenters raised the concern that the term ''guidance document'' reflected too narrow a focus on written materials alone. While the final Bulletin adopts the commonly used term ''guidance document,'' the definition is not limited only to written guidance materials and should not be so construed. OMB recognizes that agencies are experimenting with offering guidance in new and innovative formats, such as video or audio tapes, or interactive web-based software. The definition of ''guidance document'' encompasses all guidance materials, regardless of format. It is not the intent of this Bulletin to discourage the development of promising alternative means to offer guidance to the public and regulated entities.

A number of commenters raised concerns that the definition of ''significant guidance document'' in the proposed Bulletin was too broad in some respects. In particular, the proposed definition included guidance that set forth initial interpretations of statutory and regulatory requirements and changes in interpretation or policy. The definition in the proposed Bulletin was adapted from the definition of ''Level 1 guidance documents'' in FDA's GGP regulations.

Upon consideration of the comments, the need for clarity, and the broad application of this Bulletin to diverse agencies, the definition of ''significant guidance document'' has been changed. Section I(4) defines the term ''significant guidance document'' as a guidance document disseminated to regulated entities or the general public that may reasonably be anticipated to: (i) Lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or (ii) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (iii) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (iv) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as further amended. Under the Bulletin, significant guidance documents include interpretive rules of general applicability and statements of general policy that have the effects described in Section I(4)(i)–(iv).

The general definition of ''significant guidance document'' in the final Bulletin adopts the definition in Executive Order 13422, which recently amended Executive Order 12866 to clarify OMB's role in overseeing and coordinating significant guidance documents. This definition, in turn, closely tracks the general definition of ''significant regulatory action'' in E.O. 12866, as further amended. One advantage of this definition is that agencies have years of experience in the regulatory context applying the parallel definition of ''significant regulatory action'' under E.O. 12866, as further amended. However, a few important changes were made to the definition used in E.O. 12866, as further amended, to make it better suited for guidance. For example, in recognition of the non-binding nature of guidance the words ''may reasonably be anticipated to'' preface all four prongs of the ''significant guidance document'' definition. This prefatory language makes clear that the impacts of guidance often will be more indirect and attenuated than binding legislative rules.

Section I(4) also clarifies what is not a ''significant guidance document'' under this Bulletin. For purposes of this Bulletin, documents that would not be considered significant guidance documents include: Legal advisory opinions for internal Executive Branch use and not for release (such as Department of Justice Office of Legal Counsel opinions); briefs and other positions taken by agencies in investigations, pre-litigation, litigation, or other enforcement proceedings; speeches; editorials; media interviews; press materials; Congressional correspondence; guidances that pertain to a military or foreign affairs function of the United States (other than guidance on procurement or the import or export of non-defense articles and services); grant solicitations; warning letters; case or investigatory letters responding to complaints involving fact-specific determinations; purely internal agency policies; guidances that pertain to the use, operation or control of a government facility; and internal operational guidances directed solely to other Federal agencies (including Office of Personnel Management personnel issuances, General Services Administration Federal Travel Regulation bulletins, and most of the National Archives and Records Administration's records management bulletins). The Bulletin also exempts speeches of agency officials.

Information collections, discretionary grant application packages, and compliance monitoring reports also are not significant guidance documents. Though the Bulletin does not cover

guidance documents that pertain to the use, operation, or control of a Federal facility, it does cover generally applicable instructions to contractors. Section I(4) also provides that an agency head, in consultation and concurrence with the OIRA Administrator, may exempt one or more categories of significant guidance documents from the requirements of the Bulletin.

The definition of guidance document covers agency statements of ''general applicability'' and ''future effect,'' and accordingly, the Bulletin does not cover documents that result from an adjudicative decision. We construe ''future effects'' as intended (and likely beneficial) impacts due to voluntary compliance with a guidance document. Moreover, since a significant guidance document is an agency statement of ''general applicability,'' correspondence such as opinion letters or letters of interpretation prepared for or in response to an inquiry from an individual person or entity would not be considered a significant guidance document, unless the correspondence is reasonably anticipated to have precedential effect and a substantial impact on regulated entities or the public. Thus, this Bulletin should not inhibit the beneficial practice of agencies providing informal guidance to help specific parties. If the agency compiles and publishes informal determinations to provide guidance to, and with a substantial impact on, regulated industries, then this Bulletin would apply. Guidance documents are considered ''significant'' when they have a broad and substantial impact on regulated entities, the public or other Federal agencies. For example, a guidance document that had a substantial impact on another Federal agency, by interfering with its ability to carry out its mission or imposing substantial burdens, would be significant under Section I(4)(ii) and perhaps could trigger Section I(5) as well.

In general, guidance documents that concern routine matters would not be ''significant.'' Among an agency's internal guidance documents, there are many categories that would not constitute significant guidance documents. There is a broad category of documents that may describe the agency's day-to-day business. Though such documents might be of interest to the public, they do not fall within the definition of significant guidance documents for the purposes of this Bulletin. More generally, there are internal guidance documents that bind agency employees with respect to matters that do not directly or substantially impact regulated entities. For example, an agency may issue guidance to field offices directing them to maintain electronic data files of complaints regarding regulated entities.

Section I(5) states that the term ''economically significant guidance document'' means a significant guidance document that ''may reasonably be anticipated to lead to'' an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or a sector of the economy. The relevant economic impacts include those that may be imposed by Federal agencies, State, or local governments, or foreign governments that affect the U.S. economy, as well as impacts that could arise from private sector conduct. The definition of economically significant guidance document tracks only the part of the definition of significant guidance document in Section I(4)(i) related to substantial economic impacts. This clarifies that the definition of ''economically significant guidance document'' includes only a relatively narrow category of significant guidance documents. This definition enables agencies to determine which interpretive rules of general applicability or statements of general policy might be so consequential as to merit advance notice-and-comment and a response-to-comments document—and which do not. Accordingly, the definition of economically significant guidance document includes economic impacts that rise to $100 million in any one year or adversely affect the economy or a sector of the economy.

The definition of economically significant guidance document also departs in other ways from the language describing an economically significant regulatory action in Section 3(f)(1) of E.O. 12866, as further amended. A number of commenters on the proposed Bulletin raised questions about how a guidance document—which is not legally binding—could have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or a sector of the economy. As other commenters recognized, although guidance may not be legally binding, there are situations in which it may reasonably be anticipated that a guidance document could lead parties to alter their conduct in a manner that would have such an economically significant impact.

Guidance can have coercive effects or lead parties to alter their conduct. For example, under a statute or regulation that would allow a range of actions to be eligible for a permit or other desired agency action, a guidance document might specify fast track treatment for a particular narrow form of behavior but subject other behavior to a burdensome application process with an uncertain likelihood of success. Even if not legally binding, such guidance could affect behavior in a way that might lead to an economically significant impact. Similarly, an agency might make a pronouncement about the conditions under which it believes a particular substance or product is unsafe. While not legally binding, such a statement could reasonably be anticipated to lead to changes in behavior by the private sector or governmental authorities such that it would lead to a significant economic effect. Unless the guidance document is exempted due to an emergency or other appropriate consideration, the agency should observe the notice-and-comment procedures of section IV.

In recognition of the non-binding nature of guidance documents, the Bulletin's definition of economically significant guidance document differs in key respects from the definition of an economically significant regulatory action in section 3(f)(1) of E.O. 12866, as further amended. First, as described above, the words ''may reasonably be anticipated to'' are included in the definition. Second, the definition of economically significant guidance document contemplates that the guidance document could ''lead to'' (as opposed to ''have'') an economically significant effect. This language makes clear that the impacts of guidance documents often will be more indirect and dependent on third-party decisions and conduct than is the case with binding legislative rules. This language also reflects a recognition that, as various commenters noted, guidance documents often will not be amenable to formal economic analysis of the kind that is prepared for an economically significant regulatory action. Accordingly, this Bulletin does not require agencies to conduct a formal regulatory impact analysis to guide their judgments about whether a guidance document is economically significant.

The definition of ''economically significant guidance document'' excludes guidance documents on Federal expenditures and receipts. Therefore, guidance documents on Federal budget expenditures (*e.g.,* entitlement programs) and taxes (the administration or collection of taxes, tax credits, or duties) are not subject to the requirements for notice and comment and a response to comments document in § IV. However, if such guidance documents are ''significant,'' then they are subject to the other requirements of

this Bulletin, including the transparency and approval provisions.

Section I(6) states that the term ''disseminated'' means prepared by the agency and distributed to the public or regulated entities. Dissemination does not include distribution limited to government employees; intra-or interagency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.[21]

Consistent with Executive Order 12866, as further amended, Section I(7) defines the term ''regulatory action'' as any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of inquiry and notices of proposed rulemaking.

Section I(8) defines the term ''regulation,'' consistent with Executive Order 12866, as further amended, as an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.

C. Basic Agency Standards

Section II describes basic agency standards for significant guidance documents.

1. Agency Approval Procedures

Section II(1)(a) directs each agency to develop or have written procedures for the internal clearance of significant guidance documents no later than the effective date of this Bulletin. Those procedures should ensure that issuance of significant guidance documents is approved by appropriate agency officials. Currently at FDA the Director in a Center or an Office of Regulatory Affairs equivalent or higher approves a significant guidance document before it is distributed to the public in draft or final form. Depending on the nature of specific agency guidance documents, these procedures may require approval or concurrence by other components within an agency. For example, if guidance is provided on compliance with an agency regulation, we would anticipate that the agency's approval procedures would ensure appropriate coordination with other agency components that have a stake in the regulation's implementation, such as the General Counsel's office and the component responsible for development and issuance of the regulation.

Section II(1)(b) states that agency employees should not depart from significant agency guidance documents without appropriate justification and supervisory concurrence. It is not the intent of this Bulletin to inhibit the flexibility needed by agency officials to depart appropriately from significant guidance documents by rigidly requiring concurrence only by very high-level officials. Section II(1)(a) also is not intended to bind an agency to exercise its discretion only in accordance with a general policy where the agency is within the range of discretion contemplated by the significant guidance document.

Agencies are to follow GGP when providing important policy direction on a broad scale. This includes when an agency communicates, informally or indirectly, new or different regulatory expectations to a broad public audience for the first time, including regulatory expectations different from guidance issued prior to this Bulletin.[22] This does not limit the agency's ability to respond to questions as to how an established policy applies to a specific situation or to answer questions about areas that may lack established policy (although such questions may signal the need to develop guidance in that area). This requirement also does not apply to positions taken by agencies in litigation, pre-litigation, or investigations, or in any way affect their authority to communicate their views in court or other enforcement proceedings. This requirement also is not intended to restrict the authority of agency General Counsels or the Department of Justice Office of Legal Counsel to provide legal interpretations of statutory and regulatory requirements.

Agencies also should ensure consistent application of GGP. Employees involved in the development, issuance, or application of significant guidance documents should be trained regarding the agency's GGP, particularly the principles of Section II(2). In addition, agency offices should monitor the development, issuance and use of significant guidance documents to ensure that employees are following GGP.

2. Standard Elements

Section II(2) establishes basic requirements for significant guidance documents. They must: (i) Include the term ''guidance'' or its functional equivalent; (ii) Identify the agenc(ies) or office(s) issuing the document; (iii) Identify the activity to which and the persons to whom the document applies; (iv) Include the date of issuance; (v) Note if it is a revision to a previously issued guidance document and, if so, identify the guidance that it replaces; (vi) Provide the title of the guidance and any document identification number, if one exists; and (vii) include the citation to the statutory provision or regulation (in Code of Federal Regulations format) which it applies to or interprets.

In implementing this Bulletin, particularly Section II(2)(e), agencies should be diligent to identify for the public whether there is previous guidance on an issue, and, if so, to clarify whether that guidance document is repealed by the new significant guidance document completely, and if not, to specify what provisions in the previous guidance document remain in effect. Superseded guidance documents that remain available for historical purposes should be stamped or otherwise prominently identified as superseded. Draft significant guidance documents that are being made available for pre-adoption notice and comment should include a prominent ''draft'' notation. As existing significant guidance documents are revised, they should be updated to comply with this Bulletin.

Finally, Section II(2)(h) clarifies that, given their legally nonbinding nature, significant guidance documents should not include mandatory language such as ''shall,'' ''must,'' ''required'' or ''requirement,'' unless the agency is using these words to describe a statutory or regulatory requirement, or the language is addressed to agency staff and will not foreclose consideration by the agency of positions advanced by affected private parties.[23] For example, a guidance document may explain how the agency believes a statute or

[21] *See* U.S. Office of Management and Budget's Government-wide Information Quality Guidelines, 67 FR 8452, 8454, 8460 (Feb. 22, 2002).

[22] *See* FDA's Good Guidance Practices, 21 CFR 10.115(e): ''Can FDA use means other than a guidance document to communicate new agency policy or a new regulatory approach to a broad public audience? The agency must not use documents or other means of communication that are excluded from the definition of guidance document to informally communicate new or different regulatory expectations to a broad public audience for the first time. These GGPs must be followed whenever regulatory expectations that are not readily apparent from the statute or regulations are first communicated to a broad public audience.''

[23] As the courts have held, *see supra* note 2, agencies need to follow statutory rulemaking requirements, such as those of the APA, to issue documents with legally binding effect, i.e., legislative rules. One benefit of GGP for an agency is that the agency's review process will help to identify any draft guidance documents that instead should be promulgated through the rulemaking process.

regulation applies to certain regulated activities. Before a significant guidance document is issued or revised, it should be reviewed to ensure that improper mandatory language has not been used. As some commenters noted, while a guidance document cannot legally bind, agencies can appropriately bind their employees to abide by agency policy as a matter of their supervisory powers over such employees without undertaking pre-adoption notice and comment rulemaking. As a practical matter, agencies also may describe laws of nature, scientific principles, and technical requirements in mandatory terms so long as it is clear that the guidance document itself does not impose legally enforceable rights or obligations.

A significant guidance document should aim to communicate effectively to the public about the legal effect of the guidance and the consequences for the public of adopting an alternative approach. For example, a significant guidance document could be captioned with the following disclaimer under appropriate circumstances:

''This [draft] guidance, [when finalized, will] represent[s] the [Agency's] current thinking on this topic. It does not create or confer any rights for or on any person or operate to bind the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach (you are not required to do so), you may contact the [Agency] staff responsible for implementing this guidance. If you cannot identify the appropriate [Agency] staff, call the appropriate number listed on the title page of this guidance.''

When an agency determines it would be appropriate, the agency should use this or a similar disclaimer. Agency staff should similarly describe the legal effect of significant guidance documents when speaking to the public about them.

D. Public Access and Feedback

Section III describes public access procedures related to the development and issuance of significant guidance documents.

1. Internet Access

Section III directs agencies to ensure that information about the existence of significant guidance documents and the significant guidance documents themselves are made available to the public in electronic form. Section III(1) enables the public to obtain from an agency's Web site a list of all of an agency's significant guidance documents. Under section III(1)(a), agencies will maintain a current electronic list of all significant guidance documents on their Web sites in a manner consistent with OMB policies for agency public Web sites and information dissemination.[24] To assist the public in locating such electronic lists, they should be maintained on an agency's Web site—or as a link on an agency's Web site to the electronic list posted on a component or subagency's Web site—in a quickly and easily identifiable manner (e.g., as part of or in close visual proximity to the agency's list of regulations and proposed regulations). New documents will be added to this list within 30 days from the date of issuance. The agency list of significant guidance documents will include: the name of the significant guidance document, any docket number, and issuance and revision dates. As agencies develop or revise significant guidance documents, they should organize and catalogue their significant guidance documents to ensure users can easily browse, search for, and retrieve significant guidance documents on their Web sites.

The agency shall provide a link from the list to each significant guidance document (including any appendices or attachments) that currently is in effect. Many recently issued guidance documents have been made available on the Internet, but there are some documents that are not now available in this way. Agencies should begin posting those significant guidance documents on their Web sites with the goal of making all of their significant guidance documents currently in effect publicly available on their Web sites by the effective date of this Bulletin.[25] Other requirements of this Bulletin, such as section II(2) (Standard Elements), apply only to significant guidance documents issued or amended after the effective date of the Bulletin. For such significant guidance documents (including economically significant guidance documents), agencies should provide, to the extent appropriate and feasible, a Web site link from the significant guidance document to the public comments filed on it. This would enable interested stakeholders and the general public to understand the various viewpoints on the significant guidance documents.

Under section III(1)(b), the significant guidance list will identify those significant guidance documents that were issued, revised or withdrawn within the past year. Agencies are encouraged, to the extent appropriate and feasible, to offer a list serve or similar mechanism for members of the public who would like to be notified by e-mail each time an agency issues its annual update of significant guidance documents. To further assist users in better understanding agency guidance and its relationship to current or proposed Federal regulations, agencies also should link their significant guidance document lists to Regulations.gov.[26]

2. Public Feedback

Section III(2) requires each agency to have adequate procedures for public comments on significant guidance documents and to address complaints regarding the development and use of significant guidance documents. Not later than 180 days from the publication of this Bulletin, each agency shall establish and clearly advertise on its Web site a means for the public to submit electronically comments on significant guidance documents, and to request electronically that significant guidance documents be issued, reconsidered, modified or rescinded. The public may state their view that specific guidance documents are ''significant'' or ''economically significant'' and therefore are subject to the applicable requirements of this Bulletin. At any time, the public also may request that an agency modify or rescind an existing significant guidance document. Such requests should specify why and how the significant guidance document should be rescinded or revised.

Public comments submitted under these procedures on significant guidance documents are for the benefit of the agency, and this Bulletin does not require a formal response to comments (of course, agencies must comply with any applicable statutory requirements to respond, and this Bulletin does not alter those requirements). In some cases, the agency, in consultation with the Administrator of OMB's Office of Information and Regulatory Affairs, may in its discretion decide to address public comments by updating or altering the significant guidance document.

[24] U.S. Office of Management and Budget, Memorandum M–05–04, ''Policies for Federal Agency Public Web sites'' (Dec. 17, 2004), available at: *http://www.whitehouse.gov/omb/memoranda/fy2005/m05–04.pdf;* U.S. Office of Management and Budget, Memorandum M–06–02, ''Improving Public Access to and Dissemination of Government Information and Using the Federal Enterprise Architecture Data Reference Model'' (Dec. 16, 2005), available at: *http://www.whitehouse.gov/omb/memoranda/fy2006/m06–02.pdf.*

[25] In this regard, we note that under the Electronic Freedom of Information Act Amendments of 1996, agencies have been posting on their Web sites statements of general policy and interpretations of general applicability. *See* 5 U.S.C. 552(a)(2).

[26] Regulations.gov is available at *http://www.Regulations.gov/fdmspublic/component/main.*

Although this Bulletin does not require agencies to provide notice and an opportunity for public comment on all significant guidance documents before they are adopted, it is often beneficial for an agency to do so when they determine that it is practical. Pre-adoption notice-and-comment can be most helpful for significant guidance documents that are particularly complex, novel, consequential, or controversial. Agencies also are encouraged to consider observing notice-and-comment procedures for interpretive significant guidance documents that effectively would extend the scope of the jurisdiction the agency will exercise, alter the obligations or liabilities of private parties, or modify the terms under which the agency will grant entitlements. As it does for legislative rules, providing pre-adoption opportunity for comment on significant guidance documents can increase the quality of the guidance and provide for greater public confidence in and acceptance of the ultimate agency judgments. For these reasons, agencies sometimes follow the notice-and-comment procedures of the APA even when doing so is not legally required.[27] Of course, where an agency provides for notice and comment before adoption, it need not do so again upon issuance of the significant guidance document.[28]

Many commenters expressed the desire for a better way to resolve concerns about agency guidance documents and adherence to good guidance practices. To help resolve public concerns over problematic guidance documents, section III(2)(b) requires each agency to designate an office (or offices) to receive and address complaints by the public that the agency is not following the procedures in this Bulletin or is improperly treating a guidance document as a binding requirement. The public also could turn to this office to request that the agency classify a guidance as ''significant'' or ''economically significant'' for purposes of this Bulletin. The agency shall provide the name and contact information for the office(s) on its Web site.

E. Notice and Comment on Economically Significant Guidance Documents

Under section IV, after the agency prepares a draft of an economically significant guidance document, the agency must publish a notice in the **Federal Register** announcing that the draft guidance document is available for comment. In a manner consistent with OMB policies for agency public Web sites and information dissemination, the agency must post the draft on its Web site, make it publicly available in hard copy, and ensure that persons with disabilities can reasonably access and comment on the guidance development process.[29] If the guidance document is not in a format that permits such electronic posting with reasonable efforts, the agency should notify the public how they can review the guidance document. When inviting public comments on the draft guidance document, the agency will propose a period of time for the receipt of comments and make the comments available to the public for review. The agency also may hold public meetings or workshops on a draft guidance document, or present it for review to an advisory committee or, as required or appropriate, to a peer review committee.[30] In some cases, the agency may, in its discretion, seek early public input even before it prepares the draft of an economically significant guidance document. For example, the agency could convene or participate in meetings or workshops.

After reviewing comments on a draft, the agency should incorporate suggested changes, when appropriate, into the final version of the economically significant guidance document. The agency then should publish a notice in the **Federal Register** announcing that the significant guidance document is available. The agency must post the significant guidance document on the Internet and make it available in hard copy. The agency also must prepare a robust response-to-comments document and make it publicly available. Though these procedures are similar to APA notice-and-comment requirements, this Bulletin in no way alters (nor is it intended to interpret) the APA requirements for legislative rules under 5 U.S.C. 553.

Prior to or upon announcing the availability of the draft guidance document, the agency should establish a public docket. Public comments submitted on an economically significant guidance document should be sent to the agency's docket. The comments submitted should identify the docket number on the guidance document (if such a docket number exists), as well as the title of the document. Comments should be available to the public at the docket and, when feasible, on the Internet. Agencies should provide a link on their Web site from the guidance document to the public comments as well as the response to comments document.

After providing an opportunity for comment, an agency may decide, in its discretion, that it is appropriate to issue another draft of the significant guidance document. The agency may again solicit comment by publishing a notice in the **Federal Register**, posting a draft on the Internet and making the draft available in hard copy. The agency then would proceed to issue a final version of the guidance document in the manner described above. Copies of the **Federal Register** notices of availability should be available on the agency's Web site. In addition, the response-to-comments document should address the additional comments received on the revised draft.

An agency head, in consultation and concurrence with the OIRA Administrator, may identify a particular significant guidance document or class of guidance documents for which the procedures of this Section are not feasible and appropriate. Under § IV, the agency is not required to seek public comment before it implements an economically significant guidance document if prior public participation is not feasible or appropriate. It may not be feasible or appropriate for an agency to seek public comment before issuing an economically significant guidance document if there is a public health, safety, environmental or other emergency requiring immediate issuance of the guidance document, or there is a statutory requirement or court order that requires immediate issuance. Another type of situation is presented by guidance documents that, while important, are issued in a routine and frequent manner. For example, one commenter raised concerns that the National Weather Service not only frequently reports on weather and air conditions but also gives consumers guidance, such as heat advisories, on the best course of action to take in

[27] For example, in developing its guidelines for self-evaluation of compensation practices regarding systemic compensation discrimination, the Department of Labor provided for pre-adoption notice and opportunity for comment. *See* Office of Federal Contract Compliance Programs, ''Guidelines for Self-Evaluation of Compensation Practices for Compliance with Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination,'' 69 FR 67,252 (Nov. 16, 2004).

[28] *See, e.g.,* Office of Federal Procurement Policy Act, 41 U.S.C. 418(b) (providing for pre-adoption notice and comment for procurement policies with a significant effect or cost).

[29] Federal agency public Web sites must be designed to make information and services fully available to individuals with disabilities. For additional information, see: *http://www.access-board.gov/index.htm*; *see also* Rehabilitation Act, 29 U.S.C. 701, 794, 794d.

[30] *See* U.S. Office of Management and Budget, ''Final Information Quality Bulletin For Peer Review,'' 70 FR 2664 (Jan. 14, 2005).

severe weather conditions. Even if such notices or advisories had an economically significant impact, subjecting them to the notice-and-comment procedures of Section IV would not be feasible or appropriate. An agency may discuss with OMB other exceptions that are consistent with section IV(2).

Though economically significant guidance documents that fall under the exemption in section IV(2) are not required to undergo the full notice-and-comment procedures, the agency should: (a) Publish a notice in the **Federal Register** announcing that the guidance document is available; (b) post the guidance document on the Internet and make it available in hard copy (or notify the public how they can review the guidance document if it is not in a format that permits such electronic posting with reasonable efforts); and (c) seek public comment when it issues or publishes the guidance document. If the agency receives comments on an excepted guidance document, the agency should review those comments and revise the guidance document when appropriate. However, the agency is not required to provide post-promulgation notice-and-comment if such procedures are not feasible or appropriate.

F. Emergencies

In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with this Bulletin. For those significant guidance documents that are governed by a statutory or court-imposed deadlines, the agency shall, to the extent practicable, schedule its proceedings so as to permit sufficient time to comply with this Bulletin.

G. Judicial Review

This Bulletin is intended to improve the internal management of the Executive Branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.[31]

H. Effective Date

The requirements of this Bulletin shall take effect 180 days after publication in the **Federal Register** except that agencies will have 210 days to comply with requirements for significant guidance documents promulgated on or before the date of publication of this Bulletin.

Bulletin for Agency Good Guidance Practices

I. Definitions

For purposes of this Bulletin—

1. The term ''Administrator'' means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA).

2. The term ''agency'' has the same meaning it has under the Paperwork Reduction Act, 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

3. The term ''guidance document'' means an agency statement of general applicability and future effect, other than a regulatory action (as defined in Executive Order 12866, as further amended, section 3(g)), that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue.

4. The term ''significant guidance document''—

a. Means (as defined in Executive Order 12866, as further amended, section 3(h)) a guidance document disseminated to regulated entities or the general public that may reasonably be anticipated to:

(i) Lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(iii) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as further amended.

b. Does not include legal advisory opinions for internal Executive Branch use and not for release (such as Department of Justice Office of Legal Counsel opinions); briefs and other positions taken by agencies in investigations, pre-litigation, litigation, or other enforcement proceedings (nor does this Bulletin in any other way affect an agency's authority to communicate its views in court or in other enforcement proceedings); speeches; editorials; media interviews; press materials; Congressional correspondence; guidance documents that pertain to a military or foreign affairs function of the United States (other than guidance on procurement or the import or export of non-defense articles and services); grant solicitations; warning letters; case or investigatory letters responding to complaints involving fact-specific determinations; purely internal agency policies; guidance documents that pertain to the use, operation or control of a government facility; internal guidance documents directed solely to other Federal agencies; and any other category of significant guidance documents exempted by an agency head in consultation with the OIRA Administrator.

5. The term ''economically significant guidance document'' means a significant guidance document that may reasonably be anticipated to lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or a sector of the economy, except that economically significant guidance documents do not include guidance documents on Federal expenditures and receipts.

6. The term ''disseminated'' means prepared by the agency and distributed to the public or regulated entities. Dissemination does not include distribution limited to government employees; intra- or interagency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar laws.

7. The term ''regulatory action'' means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of inquiry and notices of proposed rulemaking (see Executive Order 12866, as further amended, section 3).

8. The term ''regulation'' means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency (see Executive Order 12866, as further amended, section 3).

II. Basic Agency Standards for Significant Guidance Documents

1. *Approval Procedures:*

[31] The provisions of this Bulletin, and an agency's compliance or noncompliance with the Bulletin's requirements, are not intended to, and should not, alter the deference that agency interpretations of laws and regulations should appropriately be given.

a. Each agency shall develop or have written procedures for the approval of significant guidance documents. Those procedures shall ensure that the issuance of significant guidance documents is approved by appropriate senior agency officials.

b. Agency employees should not depart from significant guidance documents without appropriate justification and supervisory concurrence.

2. *Standard Elements:* Each significant guidance document shall:

a. Include the term ''guidance'' or its functional equivalent;

b. Identify the agenc(ies) or office(s) issuing the document;

c. Identify the activity to which and the persons to whom the significant guidance document applies;

d. Include the date of issuance;

e. Note if it is a revision to a previously issued guidance document and, if so, identify the document that it replaces;

f. Provide the title of the document, and any document identification number, if one exists;

g. Include the citation to the statutory provision or regulation (in Code of Federal Regulations format) which it applies to or interprets; and

h. Not include mandatory language such as ''shall,'' ''must,'' ''required'' or ''requirement,'' unless the agency is using these words to describe a statutory or regulatory requirement, or the language is addressed to agency staff and will not foreclose agency consideration of positions advanced by affected private parties.

III. Public Access and Feedback for Significant Guidance Documents

1. *Internet Access:*

a. Each agency shall maintain on its Web site—or as a link on an agency's Web site to the electronic list posted on a component or subagency's Web site—a current list of its significant guidance documents in effect. The list shall include the name of each significant guidance document, any document identification number, and issuance and revision dates. The agency shall provide a link from the current list to each significant guidance document that is in effect. New significant guidance documents and their Web site links shall be added promptly to this list, no later than 30 days from the date of issuance.

b. The list shall identify significant guidance documents that have been added, revised or withdrawn in the past year.

2. *Public Feedback:*

a. Each agency shall establish and clearly advertise on its Web site a means for the public to submit comments electronically on significant guidance documents, and to submit a request electronically for issuance, reconsideration, modification, or rescission of significant guidance documents. Public comments under these procedures are for the benefit of the agency, and no formal response to comments by the agency is required by this Bulletin.

b. Each agency shall designate an office (or offices) to receive and address complaints by the public that the agency is not following the procedures in this Bulletin or is improperly treating a significant guidance document as a binding requirement. The agency shall provide, on its Web site, the name and contact information for the office(s).

IV. Notice and Public Comment for Economically Significant Guidance Documents

1. *In General:* Except as provided in Section IV(2), when an agency prepares a draft of an economically significant guidance document, the agency shall:

a. Publish a notice in the **Federal Register** announcing that the draft document is available;

b. Post the draft document on the Internet and make it publicly available in hard copy (or notify the public how they can review the guidance document if it is not in a format that permits such electronic posting with reasonable efforts);

c. Invite public comment on the draft document; and

d. Prepare and post on the agency's Web site a response-to-comments document.

2. *Exemptions:* An agency head, in consultation with the OIRA Administrator, may identify a particular economically significant guidance document or category of such documents for which the procedures of this Section are not feasible or appropriate.

V. Emergencies

In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with this Bulletin. For those significant guidance documents that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule its proceedings so as to permit sufficient time to comply with this Bulletin.

VI. Judicial Review

This Bulletin is intended to improve the internal management of the Executive Branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.

VII. Effective Date

The requirements of this Bulletin shall take effect 180 days after its publication in the **Federal Register** except that agencies will have 210 days to comply with requirements for significant guidance documents promulgated on or before the date of publication of this Bulletin.

Dated: January 18, 2007.

Steven D. Aitken,

Acting Administrator, Office of Information and Regulatory Affairs.

[FR Doc. E7–1066 Filed 1–24–07; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27668; 812–13201]

Hercules Technology Growth Capital, Inc.; Notice of Application

January 19, 2007.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, Hercules Technology Growth Capital, Inc. (''HTGC''), requests an order approving a proposal to issue options to purchase HTGC's common stock (''Common Stock'') to directors who are not officers or employees of HTGC (''Eligible Directors'') pursuant to HTGC's 2006 Non-employee Director Plan (the ''Plan'').

FILING DATES: The application was filed on June 21, 2005 and amended on December 12, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 13, 2007, and

Exhibit 129

CHAPTER SEVEN

Attention Capture and Maintenance

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This chapter describes the processes involved in attention to warnings. Attention has two stages. One is the capture or switch stage in which the warning must capture attention by standing out from other stimuli in cluttered and noisy environments. Attention is more likely to be drawn to a warning if it has features that enhance its conspicuousness. The second stage, maintenance, holds attention while and until information from the warning is extracted. Features such as legibility and intelligibility are involved. Recommendations for research and application are presented.
Note: Figures that do not appear in the text of this chapter are shown in the color plate section.

7.1 INTRODUCTION

Most environments are cluttered and noisy, and frequently people's attention is divided among various stimuli. According to most modern theories of attention, people have limited pools of mental resources that are used for attending and for working (conscious) memory (e.g., Baddeley, 1986). In other words, we cannot simultaneously attend to everything around us, as it would exceed the available attention capacity. Nevertheless, we can do several tasks simultaneously if they are highly practiced, automatic procedures that consume a fraction of the available capacity. Less practiced tasks are more effortful, consume more resources, and tend to require more serial, one-at-a-time, processing that can exceed capacity and degrade performance if performed concurrently with another task.

In general, we tend to look at, listen to, or think about the most salient features of our external environment or internal thought processes. As we attend to the most salient stimuli, memories of that information are produced. As memory is formed, the stimulus becomes relatively less salient, and other stimuli or thoughts become relatively more salient. Thus, as salience diminishes for one stimulus, attention may switch to a more salient stimulus. In other words, there is an on-going, continuous process of holding and switching attention to the most salient current stimulus or thought.

Warnings and Risk Communication, edited by Michael S. Wogalter, David M. DeJoy, Kenneth R. Laughery. Published in 1999 by London: Taylor & Francis. ISBN 0-7484-0266-7.

As the above description suggests, there are two stages of attention. One is the capture or switch stage in which a good warning serves as an attractor that draws or captures attention away from other stimuli or thoughts. To capture attention, the warning needs to be more salient than other events in the environment or those being internally processed. The second stage of attention is maintenance. Here, attentional focus is retained on the warning message while information is extracted and memory is formed (e.g., while a person examines the stimulus material). To expedite information extraction, a visual warning needs to be easy to read and legible. Likewise, an auditory warning must be easy to listen to and intelligible. In this chapter, we will focus on factors that affect both capturing and maintaining attention to visual and auditory warnings.

7.1.1 Modalities

Most warnings are transmitted visually (e.g., signs and labels) or auditorily (e.g., tones and speech). These two sensory channels or modalities are the most frequently studied in research and used in applications and, as a consequence, they are the primary foci of this chapter. Vision and audition have somewhat different characteristics (e.g., different temporal and spatial attributes), and because of these differences, certain warning features that are effective for one sensory channel are not appropriate for the other channel and vice versa. Compared to visual warnings, relatively less research has been performed on the factors that influence attention capture and maintenance of auditory warnings. However, research in this domain is increasing rapidly (see Stanton, 1994; Edworthy, Stanton, and Hellier, 1995; Edworthy and Adams, 1996).

Hazard information can be transmitted also through other sensory modalities. Examples include the olfactory sense (e.g., the odor added to natural gas to aid detection of leaks), the gustatory sense (e.g., an extremely bitter taste added to some household cleaning products), and the kinesthetic/tactile senses (e.g., a 'stick-shaker' that vibrates aircraft control sticks to warn pilots of an impending stall). These examples show that these 'other' sensory modalities may be quite useful in communicating hazard information, and probably should be used more frequently when applicable and practical. Example situations include (a) communicating to individuals who have limited visual and auditory capabilities, and (b) providing an extra, redundant cue when other cues might be missed or not easily given. We return to the issues associated with sensory capabilities and multiple cues at a later point in this chapter.

The next section reviews factors that can influence attention capture and maintenance. An immense amount of research has been conducted on factors that influence attention. Consequently, we have had to be somewhat selective in the breadth and depth of the material covered. We refer readers to the cited references for further details.

7.2 ATTENTION CAPTURE

To attract attention while other stimuli are being processed, warnings must be adequately conspicuous relative to the particular background context in which they occur (Wogalter *et al.*, 1987; Young and Wogalter, 1990; Sanders and McCormick, 1993). Warnings must possess characteristics that make them prominent and salient so that they stand out from background clutter and noise (Frantz and Miller, 1993; Wogalter, Kalsher, and Racicot, 1993a).

In the sections that follow we describe factors that influence attention capture to warnings. We first describe the effects relevant to visual warnings followed by those relevant to auditory warnings.

7.2.1 Vision

Visual warnings are provided in a variety of media including printed labels, posters, signs, brochures, inserts, and product manuals. Some types of visual warnings are presented electronically in the form of simple on/off lights, gauges, video displays, etc. Perceptual enhancements that increase the noticeability of warnings can facilitate attention capture, whereas deficiencies in these characteristics can cause a failure to attract attention. The following sections describe some factors that influence attention capture.

Environmental conditions

Environmental conditions can adversely impact warning detection. One common problem is low illumination. Insufficient light makes printed warnings less visible. Warning visibility can be aided by adding an artificial light source directed at the surface or by back lighting it. Another strategy is to make maximum use of the light that exists, by using, for example, a retroreflective surface coating.

Too much light also can impair visibility. Glare occurs when large amounts of light reflect off a warning surface into the eyes, overpowering the print. Glare can be caused also by intense light emanating directly from a nonwarning source, such as oncoming headlights (cf. Dahlstedt and Svenson, 1977), or certain kinds of neon sign and strobe light. Wogalter *et al.* (1993a) noted that a warning sign with an attached very bright strobe light which had been intended to capture attention caused some research participants to avoid looking in the direction of the warning sign because of the strobe's intensity. Such glare sources can cause light adaptation (or a decrement in dark adaptation) which makes it difficult to see dimmer objects. Another consideration with respect to natural lighting is that the amount and direction of light can vary with the time of day and with the seasons. Other environmental conditions that can have effects similar to low illumination include the presence of smoke, fog, rain, and humidity (see, e.g., Lerner and Collins, 1983).

Duration/flash rate

Sometimes a warning is a simple visual stimulus such as an indicator light on an automobile dashboard. Such lights usually stay 'on' until the problem is corrected or the circuit disengaged. The continued presence of an indicator light increases the likelihood that individuals will detect it, but it does not ensure detection. Better than continuous indicator lights are flashing lights. Flash rates of around 10 Hz are recommended by Sanders and McCormick (1993). The flash rate should not be greater than the critical flicker fusion frequency (i.e., 24 Hz), as this produces the appearance of continuous light. If flash rates are very slow, it is important that the 'on' time is long enough that an operator will not miss the light when glancing at the display panel during its 'off' time.

Brightness contrast

One of the factors influencing whether we can see a stimulus in a particular environment is the figure–ground relationship. In a good figure–ground relationship, the figure or

object is readily discernible from the background context. Discernibility is facilitated by brightness contrast, which is a function of reflectance ratios of the figure and ground. Black print on a white background or white print on a black background provides maximum brightness contrast, while gray print on a similar shade of gray background produces little contrast. Research shows that features with greater contrast are detected and localized faster than those of lower contrast (e.g., Brown, 1991; Sanders and McCormick, 1993). Lighting conditions can also affect brightness contrast. In particular, extremely dim and extremely bright light can reduce the apparent difference in light reflectance between the figure and ground.

Color contrast

Certain color combinations produce contrast that is nearly as good as black and white (e.g., black on a saturated yellow or white on saturated red). However, certain hue combinations (e.g., dark blue on dark purple or yellow on white) do not produce distinguishable figure–ground patterns and should not be used (Sumner, 1932).

Some individuals have color-vision deficiencies. Some of these persons are unable to distinguish readily between certain colors, such as between red and green or between yellow and blue because of a genetic defect. These color combinations should be avoided as figure–ground combinations.

In recent years, fluorescent-type colors have become available. Previously, fluorescent pigments tended to fade relatively quickly from exposure to environmental elements such as sunlight. Fluorescent colors interact with ultraviolet light making them appear brighter than nonfluorescent colors. In the US, fluorescent orange is now being used in many localities in signs for road construction/work zones and strong yellow/green has been used for pedestrian-crossing signs. Recent studies show benefits of fluorescent colors in warning applications (Dutt, Hummer, and Clark, 1998; Zwahlen and Schnell, 1998). Unfortunately, not all colors are available as a fluorescent. The fluorescent red is not really red; it is pink. Additional research is needed to determine the benefit of fluorescent colors with respect to their use on product labels (Wogalter, Magurno, Dietrich, and Scott, 1999).

Concern with brightness and color contrast should not be limited to the warning itself, but consideration should be given also to the predominant colors in the environment that will surround the warning. For example, in a largely red environment or context (e.g., the walls of a building, or the main parts of a product label), a red warning will be less noticeable than other colors (Young, 1991). Fullest advantage should be taken of color contrast to distinguish the warning from other colored surrounding stimuli.

Highlighting

Research indicates that when warnings are embedded in other text some form of highlighting (usually with color) helps make them stand out. Strawbridge (1986) found that participants using a glue product were more likely to notice when the embedded warning was highlighted. Young and Wogalter (1990) found that participants who were preparing to use a gas powered electric generator or a natural gas oven were more likely to remember and understand highlighted compared to nonhighlighted warning material in product manuals.

Borders

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Borders

Another way to highlight safety information is to surround the warning with a distinctive border. Some research suggests that having a border around a warning sign or label enhances figure–ground differences (e.g., Ells, Dewar, and Milloy, 1980; Rodriguez, 1991). Rashid and Wogalter (1997) found that certain border conditions (e.g., having thick, colored diagonal stripes) were rated to be more attention-capturing than other border conditions (e.g., no border or a thin black line border). Example borders are shown in the next chapter (**see Figure 8.10 in color section** from Chapter 8 by Leonard, Otani, and Wogalter). Further, Wogalter and Rashid (1998) manipulated the border of a posted warning placed at a high volume pedestrian area. Their results replicated the pattern found in the earlier rating study. However, positive results have not always been found. Laughery, Young, Vaubel, and Brelsford (1993) did not find an effect of a rectangular border around a warning in a reaction time search task. Swiernega, Boff, and Donovan (1991) observed that the presence of a border slowed performance in a rapid recognition task. The latter result may be similar to a perceptual effect called lateral masking, in which it has been found that stimulus markings presented close in time and distance to target stimuli interfere with the ability to distinguish their features (Averbach and Coriell, 1961).

Size

Large objects tend to be more salient than smaller objects, and are more likely to capture attention. Highway signs are massive to ensure that drivers will see them at distances that allow enough time to attend to them, and if necessary, react to the message. Obviously, we cannot have billboard-size warnings everywhere, but the point is that generally greater size within existing constraints is desirable.

Signal word panel and multiple feature combinations

The ANSI (1991, 1998) Standards on sign and label warnings recommend that all warnings contain a signal word panel on the uppermost portion of the display. ANSI-style warnings include a rectangular-shape signal word panel on the top section. This panel usually includes a signal word (e.g., DANGER, WARNING, CAUTION), color (e.g., red, orange, yellow), and a signal icon/alert symbol (a triangle enclosing an exclamation point) or some other shape (e.g., oval, hexagon) which together comprise a multiple-feature configuration (e.g., Westinghouse Electric Corporation, 1981; FMC Corporation, 1985). Examples are shown in **Figures 7.1 and 7.2 (see color section)**. These stimuli were tested by Wogalter, Kalsher, Frederick, Magurno, and Brewster (1998d). This research is detailed in the next chapter.

Although there has been considerable research on the panel's components, individually and in combination, most of it has concerned measurement of hazard connotation (Chapanis, 1994; Kalsher, Wogalter, Brewster, and Spunar, 1995; Wogalter *et al.*, 1995b, 1998d; see also Chapter 8 by Leonard, Otani, and Wogalter). Relatively few empirical studies have investigated the attention attracting effects of the signal word and other associated components. Laughery *et al.* (1993), using reaction time measures, found that an alcohol warning printed in red with a signal icon was detected on labels significantly faster than a black warning without a signal icon. Similarly, Bzostek (1998), using pharmaceutical labels, found that warning detection was significantly faster when they contained a colored signal word (that distinguished it from other text), and/or contained one of several icons.

Generally, warnings having more prominence-type features are more salient and easier to find and more likely to be noticed than those having fewer prominence-type features. Multiple features provide several cues that individually or in combination could capture attention. Additionally, warnings with multiple salient features should benefit people with sensory or perceptual deficiencies. For example, persons who are color blind might not distinguish some of the colors but may notice the warning because of the bold printing of the signal word or shapes that are used. Additional research on the relative added value of the various prominence features, separately and together, is needed to give warnings designers a better basis upon which to make decisions.

Pictorial symbols

Another component of many multi-feature warnings is pictorial symbols (or icons). Most research on pictorial symbols concerns comprehension, a topic that will be covered in Chapter 8 by Leonard, Otani, and Wogalter. However, a frequently overlooked benefit of symbols is that they are attention getting also. Research shows that warnings with pictorial symbols are rated more noticeable (Kalsher, Wogalter, and Racicot, 1996; Sojourner and Wogalter, 1997, 1998) than warnings without them. Research also shows that a warning that includes an icon is easier to detect (Laughery *et al.*, 1993). The attention-getting benefit of symbols might have little or no dependence on their understandability. Thus, even if a symbol is not highly understandable, its inclusion in a warning might still be warranted as long as the critical-confusion errors are low. According to ANSI (1991, 1998), a pictorial symbol should produce no more than 5% critical confusion in a comprehension test. See Chapter 8 by Leonard, Otani, and Wogalter for more discussion on comprehension testing and critical confusion.

Location

In general, warnings should be located so that individuals who need to see them do in fact notice them. The layout of the environment and what people do in the environment need to be considered in placing a warning properly. Determining the best location(s) may require task analyses (e.g., Lehto, 1991; Frantz and Rhoades, 1993), where the work or other tasks are broken down into cognitive and motor units and are analyzed to determine the locations where people tend to focus their visual attention as they perform the work or other activity. See Chapter 13 by Frantz, Rhoades, and Lehto for a more detailed discussion on task analysis.

In general, a warning's attention-getting power will be facilitated by placing it close to the hazard. Thus, in most cases warning noticeability will be benefited by its attachment directly to the product (or its container) as opposed to a more 'distant' placement such as in a separate instruction manual (Wogalter *et al.*, 1987; Frantz and Rhoades, 1993; Racicot and Wogalter, 1995; Wogalter, Barlow, and Murphy, 1995a). Although this recommendation is reasonable in most cases, in certain circumstances a warning placed too close to the hazard can be ineffective and sometimes dangerous. An example would be a roadway work-zone sign that is first visible close to or within the work zone itself. A better placement would provide sufficient advance notice about the upcoming hazard. The warning should not be too distant, however, as it might be forgotten. Analysis of the task and foreseeable circumstances can help to reveal one or more potentially appropriate placement locations to enhance warning noticeability (see Chapter 13 by Frantz, Rhoades, and Lehto).

Most people's relaxed looking angle for straight-ahead viewing is between 15° and 35° below horizontal straight ahead of them. Warning locations considerably different from

where people tend to look, such as higher (or lower) in the horizontal periphery will be less likely to be noticed (Cole and Hughes, 1984).

Sometimes warnings cannot be placed at optimal locations. For some products and environments, aesthetics need to be considered. For example, people would not like having a highly conspicuous warning displayed on the front panel of a stereo receiver in their living room entertainment system. Where else might a warning for the stereo receiver be properly placed? Some potential locations are better than others. For this example, suppose a warning is needed for hazards associated with improperly connecting peripheral components to it. Besides the front panel, other potential locations for this warning could be on the top or the rear of the receiver's case. A warning at these locations would be apparent to users connecting the cables. The rear location is better than the top because people installing the receiver probably would be looking at the back panel when performing the wiring task, whereas the top might be obscured by another stacked component (and it may be considered aesthetically displeasing). The bottom of the receiver is a poor location, because most installers would not see the warning label when doing the wiring. However, the underside could be an appropriate place to put certain other kinds of warning message (e.g., a warning intended to prevent unqualified persons from removing the cover). This would be a good location for this warning because the screws are located there. Another potential location is in the product manual. Certainly warnings belong there because people may assume that the manual contains a complete listing of all relevant hazards. However, if it is a very important warning (e.g., because of severity, frequency of occurrence, etc.), then the warning should be located also on the product itself (or container of the product), because people may not read the manual or may not have it available at all. Nevertheless, sometimes poor placement options can be compensated for when used in conjunction with a well located brief accessory warning (e.g., on a front panel of a product) that directs them to look at another specific location for more detailed information (Wogalter *et al.*, 1995a). Because there is no guarantee that every person will look where we think they will look, placing important warnings in multiple locations (e.g., both on the product and in a product manual) will increase the chance that one of them will be seen.

7.2.2 Audition

For the purposes of this chapter, we will assume that any sound stimulus, whether simple or complex, can alert and attract attention (unless masked by other sounds). Complex sounds, like voice, also have the potential of conveying general or specific information on what the problem is. In this chapter we will not be discussing the processes involved in comprehending the intended meaning of complex sounds (see Chapter 8 by Leonard, Otani, and Wogalter).

Auditory warnings are used commonly to alert people to various problems. Even relatively simple sounds, such as sirens, tones, buzzers, bells and whistles, produce an alerting reaction and sometimes a startle response. Sounds like these are a powerful way to get people's attention. Good warning alerts will arouse people from tasks on which they are highly focused. This 'kick-in-the-head' alerting characteristic makes auditory warnings a favorable tool for attracting attention.

Another major advantage of auditory warnings is the omnidirectional nature of most sounds (Wogalter and Young, 1991; Wogalter *et al.*, 1993a). Auditory signals spread out in all directions from the source, usually reflecting off multiple surfaces before arriving at

the receiver's ears. Thus, unlike visual warnings, persons at risk need not be looking at a specific location to be alerted.

Although sounds spread out, they can give directional cues also. Generally, mid to high frequency sounds direct to the ears from the source can provide location cues based on small differences in the time of arrival and intensities of certain frequencies of the sounds between the two ears. For example, a tone coming from a speaker on a control panel can cue the operator to attend to a particular visual display on the panel so that the specific reason for the auditory signal can be determined (Eastman Kodak Company, 1983; Sorkin, 1987; Sanders and McCormick, 1993). Unfortunately, location detection is poor in some circumstances. The sirens of emergency vehicles often are hard to localize amongst walls of city buildings, and can be particularly confusing when a single window of a car is open but the sound source is actually emanating from the opposite direction.

The human auditory system is more sensitive to some sounds than others. The frequencies of the human voice are those for which the auditory system is most sensitive (1000–4000 Hz) (Coren and Ward, 1989). It might be assumed that one would want to provide the auditory warnings within this frequency range because of our increased sensitivity to them. However, warning signals within this range could interfere with the reception of relevant verbal discourse in an emergency situation (which, too, might carry warnings). Thus, an important aspect for the auditory alert signal is that it be comprised of frequencies different from the expected non-warning sounds in the environment, as well as other warning sounds, that might mask it. While the warning(s) should be different from other sounds, it should still be within the sensitive regions of the frequency spectrum.

The above discussion indicates that interference is an important consideration in the design of auditory warnings. There are three kinds of interference of concern. One is masking by noise or other signals that cover up or obscure parts or all of the sound. Background noise, such as machinery in an industrial environment and music blaring in vehicles, can vary in loudness, frequency and complexity. Where possible, the warnings designer should consider whether and how other sounds might affect the auditory warning's signaling ability.

A second type of interference is attenuation (reduction in intensity). Ear protection (e.g., plugs, muffs) is used in many industrial work environments to shield workers from loud extraneous sounds and to prevent hearing loss. Closed car windows also attenuate sounds from outside the car, including sirens from emergency vehicles. Thus, auditory warnings need to be designed to be heard distinctly above the expected background din or within sound shielded conditions. One potential solution in industrial settings is to include headphone speakers inside ear muffs to allow information to get through electronically. Similarly, in automobiles and other enclosed spaces outside signals can be transmitted to within the shielded environment.

A third kind of interference is distraction of the receiver's mental processing by the warning itself. The considerable alerting value that makes auditory warnings useful for capturing attention can be a hindrance when it gets in the way of (distracts from) a very critical task—such as making corrections to the problem the warning is signaling. A loud blaring buzzer from a cockpit warning might interfere with a pilot's ability to carry out proper emergency maneuvers. The more intrusive a sound is, the more likely it will interfere with thought processes. Further, very loud sounds can cause threshold shifts which can cause temporary or permanent reduction in the ability to detect subsequent sounds (Ward, Glorig, and Sklar, 1958; Kryter, Ward, Miller, and Eldredge, 1966).

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Thus to attract attention a warning should be louder and spectrally different from the expected background noise, but also it should be given at frequencies for which we are sensitive. At the same time, it should not be so loud that it distracts the listener from performing important tasks. Therefore, numerous foreseeable conditions must be evaluated when designing an auditory warning system to attract attention.

7.3 ATTENTION MAINTENANCE

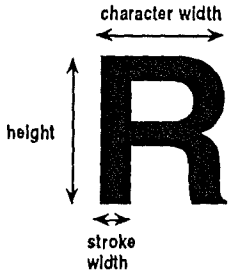
A warning does little good if it just captures attention but the person gets nothing out of it or the person immediately redirects his or her attention to something else. Once attention has been attracted to the warning, it is important that the warning retain attention so that information can be encoded (see also Rousseau, Lamson, and Rogers, 1998). During this active attention period, the message text is read and/or the pictorial is examined. The warning must hold attention for the time necessary to encode and store the message contained in the warning. The warning should prevent attention from being distracted by and to other stimuli before the message is satisfactorily encoded. These processes involved in knowledge and comprehension are covered in Chapter 8 by Leonard, Otani, and Wogalter. As we did in the section on attention capture, we discuss the visual and auditory factors involved in attention maintenance.

7.3.1 Vision

If the warning is difficult to read because individuals have difficulty making out the letters comprising the words, they are less likely to devote the time and energy necessary to decipher them. In this case, the warning fails to maintain attention. An important factor for maintaining attention to a visual warning is legibility. Legibility refers to how well the separate features or markings of letter characters and pictorials can be distinguished so that they can be identified and recognized. Some writers have mistakenly confused legibility with readability. Both are concerned with ease of reading. However, readability concerns larger groups of characters (e.g., words, sentences) in which comprehension of the material is a consideration (see Chapter 8 by Leonard, Otani, and Wogalter). Legibility concerns whether the individual characters and their features are distinguishable. It concerns the way the text looks; whereas, readability concerns its content or meaning.

Size and visual angle

Frequently legibility is tied to size or, more specifically with respect to text messages, to letter height. Underlying the visual size dimension is visual angle (Smith, 1984) which relates to the area occupied on the retina by the feature's image. With a small retinal image, fewer receptors register the individual components, resulting in poorer visual acuity. If the visual angle is very small, the viewer may see a gray blur instead of separate dark and light elements. The visual angle is a function of both the stimulus size and its distance away from the eye. At greater distances, a given stimulus produces a smaller image than if it were closer. If users are expected to hold a product while examining its label, then the size of the letter characters should be based on the expected distance from the hand-held label to the eye. Letter heights for a 'Keep Out' sign at an electric utility power station should be based on the distance from the sign to the peripheral approaches to the site.



This is Horizontal Compression
This is Normal
This is Horizontal Expansion

Leading is the vertical space between lines of text.
Leading is the vertical space between lines of text.

Leading is the vertical space between lines of text.

Leading is the vertical space between lines of text.

Figure 7.3 Example typographical characteristics.

While generally large print is preferred to small print, there are limits. There cannot be monumental warnings everywhere. If people are able to read the warning under all foreseeable risk conditions, then the print does not need to be any larger. If the print is too large it will be difficult to encompass the information in a glance.

There is more to recognizing characters than simply their height. Other factors include the thickness of the character stroke, height-to-width ratio, character compression, and leading. Figure 7.3 illustrates these characteristics. See Tinker (1963) and Sanders and McCormick (1993) for more information on these and other typographical characteristics.

Sometimes warnings are printed in all upper case (capital) letters. Given the same point size, upper case letters are physically larger than lower case letters as in the following example:

Warning versus WARNING

Because of their generally smaller size, lower case letters produce smaller visual angles than larger upper case letters. By considering only character size, upper case letters might be more legible than lower case letters (Foster and Bruce, 1982). However, experts on typefaces have noted that mixed-case materials (both upper and lower case) are easier to read (Tinker, 1963; Williams, 1994). Lower case letters are more distinctive in shape, thereby making them easier to differentiate than upper case letters. Upper case letters have a block-like appearance making them highly similar and confusable with one another under low-legibility conditions (e.g., small visual angle, low illumination). Garvey,

Figure 7.4 Example of a
drinking or smoking'.

Pietrucha, and Meeker (
highway signs. Clearview
found that increasing the
'footprint' space as the
scores than the standard

Research has shown t
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Laughery, and Bell (1992
Watanabe (1994) also fou

Font

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the font size is small (as
serif fonts to be less fati
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Symbols

As we have suggested
legible. Too much detail
at a distance. Most desig
ponents in safety symbol
illegible. Figure 7.4 show

A frequently used gra
This symbol is a red circl
to the bottom right quadr
overlays another symbol
under the symbol or an X

Figure 7.4 Example of a nearly illegible pictorial symbol. It is supposed to mean 'no eating, drinking or smoking'.

Pietrucha, and Meeker (1998) compared the font Clearview to the fonts on standard highway signs. Clearview's lower case letters are 12% larger than the standard font. They found that increasing the physical size of the lowercase letters (but still using the same 'footprint' space as the standard font) produced better recognition and reaction time scores than the standard font.

Research has shown that under certain conditions reducing the space between individual letter characters enhances reading speed (Moriarity and Scheiner, 1984). When the print is above threshold legibility, closer-spacing of characters requires fewer eye movements to read. However, character spacing must be adequate for the letter components to be seen distinctly. This might account for why Anderton and Cole (1982) and Young, Laughery, and Bell (1992) found that reduced spacing between letters reduced legibility. Watanabe (1994) also found horizontally compressed characters were less legible.

Font

Font style can affect legibility particularly when highly elaborate, unusual, unfamiliar fonts are used. The ANSI (1991, 1998) Z535 Standards recommend sans serif fonts (without character embellishments) such as Helvetica over fonts with serifs (with character embellishments) such as Times Roman. Serif fonts are considered acceptable when the font size is small (as in many product labels and most manuals). Proof readers report serif fonts to be less fatiguing than sans serif fonts. Serif fonts facilitate reading under low contrast conditions because the serifs aid in letter distinguishability, and by putting more ink on the page. The presence or absence of serifs probably does not have a substantial effect as long as the font style is not extremely unusual or elaborate.

Symbols

As we have suggested earlier, the relevant features of pictorial symbols need to be legible. Too much detail can make a graphic illegible when it is reduced in size or viewed at a distance. Most design standards and guidelines recommend using large bold components in safety symbols. However, large blobs of ink can render a pictorial symbol illegible. Figure 7.4 shows a pictorial symbol with legibility problems.

A frequently used graphic shape in warnings is the prohibition or negation symbol. This symbol is a red circle with a single diagonal slash going from the top left quadrant to the bottom right quadrant. Usually the negation symbol is configured so that the slash overlays another symbol placed within the circle (but occasionally the slash is placed under the symbol or an X is used instead). The intended meaning is to prohibit whatever

the internal symbol depicts. **Figure 7.5 (see color section)** shows an instance where, on the same street corner in San Francisco, both the over and under slash are used.

It is particularly important that the over slash or X does not obscure the critical details of the underlying symbol necessary for its interpretation. Dewar (1976) and Murray, Magurno, Glover, and Wogalter (1998) found that sometimes the slash can obscure critical features of symbols, decreasing their recognizability. Murray *et al.* (1998) showed that simple adjustments, such as horizontally flipping asymmetric pictorials, can aid identification performance. Examples are shown in **Figure 7.6 (see color section)**.

Figure–ground contrast

As with attention capture, figure–ground contrast is important for attention maintenance. Legibility is reduced when the contrast between the characters relative to its background is low. Ideally, the print and background should be comprised of dark print on light background (or vice versa, light print on a dark background) or of two highly distinguishable colors (e.g., red on yellow or vice versa) rather than two shades of gray or two similar shades of another single color.

Environmental conditions

The presence of smoke, fog, rain, reduced light, etc. can limit the discernibility of the individual warning features (e.g., Lerner and Collins, 1983). Another environmental-related concern is that the color red, the most important hazard color, does not maintain its hue well under dim lighting. As light is reduced, red darkens in appearance before the other hues do, thereby reducing its contrast with dark backgrounds. For expected dim lighting conditions, red printed on a light background is preferred. Another frequently used safety color, orange, can get washed out under certain kinds of artificial lighting.

Printing

Legibility can be affected adversely by poor reproduction at the printing stage where wet paint or ink may spread or 'bleed' and sometimes fill in important details that would otherwise help to distinguish the characters. A similar problem can occur with projected light displays (e.g., on computer screens). Here the stroke width of light letters on dark backgrounds generally needs to be somewhat thinner than for dark letters on a light background. Light comprising the letters spreads out making the stroke width appear wider than it is; this phenomenon is called irradiation (Sanders and McCormick, 1993).

Durability

Over time, exposure to sunlight, air pollution, dirt, grime, water, cold, and heat could cause the color and brightness contrast of the pigments and the material comprising the warning to degrade, making the warning less legible than when it was newer and in better condition. Also, colors degrade at different rates. Red and magenta pigments on outside signs fade more quickly than other colors, primarily from exposure to the sun and other environmental elements. This can create a serious problem beyond simply making the warning more difficult to detect.

Consider what can happen with negation-type symbols where the red of the circle/slash may fade faster than the black. As a consequence, the 'inside' portion of the symbol may be seen clearly while the 'red' prohibitive portion may not. **Figure 7.7 (see color section)** shows a photograph of a 'no pedestrian crossing' symbol sign where the red circle/slash negation portion has completely faded. In this case, people might interpret the exact opposite of the intended meaning!

The conditions under which the label or sign can reasonably be expected to be used and stored must be considered when choosing materials. The warning must remain in a satisfactory condition over the expected existence of the hazard. Moisture on a paper label will cause it to disintegrate, and some glue compounds will break down with extreme temperatures. The print pigments and the materials constituting the warning should be chosen so they remain in good condition throughout the effective life of the sign or product. Therefore, one should not simply assume that a warning will hold up for the entire time that the sign or the product is in use. Hazard signs (and where applicable, product labels) should be inspected, maintained, repaired, or replaced. In commercial and industrial settings, signs and labels should be inspected periodically. The warnings should be repaired when the materials degrade, become dirty, or are vandalized. Such procedures also provide the opportunity to replace the old warning with a newer version if new materials, designs, and information have become available since its original placement. We recommend the warning designer seek professional consultation in determining the materials that will preserve it over time and in foreseeable conditions of use and abuse.

Target audience

Legibility also depends on the target audience. The persons at risk might have an assortment of vision problems, most notably uncorrected vision with acuity worse than 20/20. For example, older individuals as a group are more likely to have vision problems (Rousseau *et al.*, 1998), and are more comfortable with and prefer larger size type than younger adults (Vanderplas and Vanderplas, 1980; Zuccollo and Liddell, 1985).

Formatting

The appearance of the warning can influence whether individuals will choose to maintain attention to the material or look elsewhere. Desaulniers (1987) showed that people were more willing to read text structures arranged in an outline or list format, with spaces and bullets separating the main points, instead of continuous paragraph-type prose. We suspect that this result is due partly to people being more likely to look at and examine aesthetically pleasing material.

Location

Warnings should be placed so that people can read and examine them comfortably. A posted sign warning that is positioned at an angle, instead of straight on, can be more difficult to see and may discourage further looking. One illustration of this is the warning on one department store brand of top-load washing machines. The lid is hinged on the left side, and printed on the underside of the lid is a set of operating instructions and warnings. In order to read the horizontal print straight on while standing in front of the machine, one must cock the head sideways over the machine. Few people will make the effort to get into this awkward position to read the material.

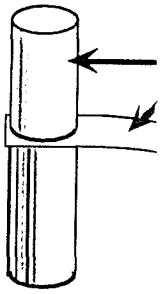
Limited space

In many situations the types of information and feature that can be included in a warning are constrained by the space available. Limited space is a particular problem for products that have multiple hazards and are held in small containers. A complete warning of all hazards on the label would force the use of very small print, and consequently legibility would be reduced and fewer people could or would read it. Therefore, on some hazardous products one cannot print everything of relevance on labels directly attached to the product. Nevertheless, several alternative strategies can be considered in dealing with this limited space problem. One alternative is to select certain information for emphasis (Young, Wogalter, Laughery, Magurno, and Lovvoll, 1995) and exclude less important information. The abbreviated warning label could refer users to a more complete set of information in some other location (Wogalter *et al.*, 1995a). This strategy may be acceptable if indeed complete information is actually available. Ready access to product manuals cannot be guaranteed as some are thrown away or lost after the product is first used (Wogalter, Vigilante, and Baneth, 1998c).

A second alternative is to increase the size of the label or sign to allow for more information, and/or larger print. Highway signs are sized to enable motorists to see the information legibly at a distance. Additionally, research shows consumers prefer a glue product having a container label design that increases the label's available surface area to make room for a larger warning compared to a more conventional label design with a smaller warning (Barlow and Wogalter, 1991; Wogalter, Forbes, and Barlow, 1993b; Wogalter and Young, 1994; Wogalter and Dietrich, 1995; Kalsher *et al.*, 1996). Several alternative methods for increasing label space on small glue and pharmaceutical containers have been examined including a tag, wrap-around, and cap label designs (Wogalter and Young, 1994; Wogalter *et al.*, 1999). Figure 7.8 has three example container label designs having additional surface area that could be used for larger print and/or additional material. Research has shown that people (particularly older adults) prefer container label designs such as those shown in Figure 7.8 and acquire more information from the label. There is also higher compliance than with conventional container label designs.

Integration or separation from instructions

Most products come with information on how to operate, maintain, and service the equipment, in addition to warning about hazards. How warnings should be presented with respect to procedural instructions and other information has been debated and frequently has been the subject of guidelines by various groups. The Environmental Protection Agency (1991) and other US agencies have suggested that precautionary statements should be in a distinct section separate from the instructions. However, research shows some conflicting results on whether warnings should be separated or integrated with the operating instructions. Friedmann (1988) noted that many individuals skipped the warning to go to the procedural/operating instructions. Venema (1989) found that twice as many individuals reported that they examined product labels for the purpose of reading the operating instructions than to read about safety instructions. Strawbridge (1986) found that more individuals read the warning on a glue label when it was placed together with the instructions. Additionally, Frantz (1992, 1994) found greater warning compliance if the warnings were included within the instructions, as compared to separate sections of warnings and instructions. Other studies have found different results. Karnes and Leonard (1986) found a positive effect of a separate warning section, but this finding is complicated by the fact



Additio
Label S

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An effective auditory warn
to the auditory stimulus m

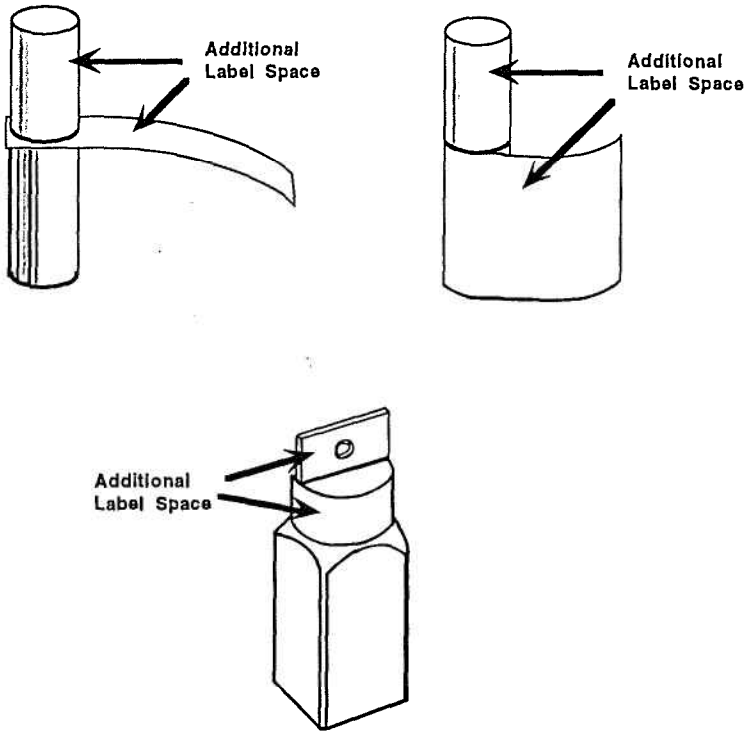

Figure 7.8 Example bottle label designs where there is additional surface space for larger print and/or important/additional material.

that the separate warning differed somewhat from the embedded version. Wogalter *et al.* (1993a) found that a warning within a set of instructions was complied with more frequently than a (larger separated) sign warning. In another study, Wogalter, Mills, and Paine (1998b) manipulated the format of risk information in the consumer portion of prescription drug advertisements. They found that a separate enhanced warning similar to the style recommended by the ANSI (1991, 1998) guidelines produced higher knowledge scores in a comprehension test than either a simple separated or integrated warning.

As the above descriptions indicate, research on integrated versus separated warnings has produced equivocal findings. Probably some of the differences are attributable to familiarity with and the complexity of the product or task and the perceived risk. Products and tasks perceived to be familiar, simple, and of low risk produce less concern than those perceived to be less familiar, complex and of high risk (Wright *et al.*, 1982). With greater familiarity, separate highly conspicuous warnings placed at strategic locations might be better than warnings integrated with the instructions. In the less familiar case, people are likely to go through the instructions step by step and, consequently, it is probably better to integrate the warnings with the operating instructions. These speculations, however, need to be verified.

7.3.2 Audition

An effective auditory warning alerts the receiver but after attention is captured, attention to the auditory stimulus may need to be maintained over time in order to process message

content. This is not an issue for short duration stimuli, yet even here attention might still need to be held (e.g., to the representation in memory). With long duration auditory stimuli (e.g., a voice message), attention must be held while the message manifests itself. For the most part, attention maintenance in the auditory realm involves voice communications, as speech more frequently requires across-time processing than most nonverbal auditory stimuli.

Intelligibility

The concept of intelligibility of auditory stimuli corresponds to the concept of legibility for visual stimuli. A large body of research exists on the factors that influence intelligibility. Most of the work was done in military and aviation contexts. Some of the most important factors are described below.

A perfectly clear message at the source can be made unintelligible if played back through defective or low fidelity systems. Many people have had the experience of unsuccessfully trying to decode the speech of an order taker at a restaurant drive-through. Defective equipment (e.g., a blown loudspeaker) makes it difficult to discern the different speech components. Of course, the problem may be the order taker's enunciation, too! A person who speaks with a heavy foreign accent or with a speech impediment also decreases intelligibility.

In addition to above-noted effects attributable to the source of the message, intelligibility can be affected also by numerous other factors related to the channel, context, receiver, and the message itself. Intelligibility is reduced by (a) low level signals, (b) the presence of high levels of masking noise, (c) the receiver's low familiarity with the message, (d) a wide ranging possible vocabulary from which the message is conceived, (e) low redundancy of the sound components, (f) very fast or very slow rate of transmission, and (g) high similarity of the target voice relative to other background sounds/voices. Two excellent reviews of this literature are provided by Edworthy and Adams (1996) and Sanders and McCormick (1993). Additional information can be found in Mulligan, McBride, and Goodman (1984).

Annoyance and false alarms

As noted earlier, auditory warnings can annoy people. Highly intrusive sounds can interfere with the receiver's thought processes making some activities more effortful and error prone. Also people can become quite disturbed when too many false alarms occur. High rates of false alarms happen when the detection system's sensitivity is very high. Usually there is good reason for making a safety system highly sensitive, for example when the hazard could produce devastating results. Most people want airport bomb detectors to be highly sensitive so that no explosives make it onto passenger aircraft even though more people and baggage are searched causing delays and frustration among travellers. These efforts are worth the trouble, given the possible consequences. Besides the annoyance problem, high false alarm rates can produce the 'cry wolf' phenomenon—people ignore the warning signal because they believe that it is false. Unfortunately, the warning might actually be properly signaling a true hazard, producing tragic consequences. Frequent false alarms can increase the likelihood that people waste time searching for a way to eliminate the warning rather than trying to correct the condition which caused the warning, and purposely attempting to defeat the system. In some cases, elimination of the condition causing the signal may be simple, such as buckling lap belts or closing an unlatched car

door by slamming it shut. In complex industrial environments, it may not be so simple. A means of turning off the warning might be needed. Of course the system should be designed so that if the warning is turned off, it would be automatically reset (perhaps after a short delay) so that it is available for any recurrence of the problem. Ideally, an auditory warning should always sound when it is needed and never when it is not.

Multiple voice warnings

Some systems employ multiple voice warnings. The problem is that some of these systems do not account for the possibility that they might be deployed simultaneously, a situation which could be highly confusing to the operator. How do you deal with the possibility of several simultaneous speech warnings? Some possibilities are: (a) presenting simultaneous messages in distinctly different voices that are discriminable from one another (male versus female versus synthetic voice); (b) prioritizing the order of messages so that the most important are given first; (c) having messages appear to be coming from spatially distinct locations; (d) giving the most important message(s) prominence features (e.g., loudness) based on urgency; (e) enabling playback of the message if part of it is missed the first time; and/or (e) combining a concise voice warning with a more detailed print warning (Wogalter and Young, 1991; Wogalter *et al.*, 1993a; Edworthy and Adams, 1996). In the latter case, the voice warning can serve to capture attention, concisely present the most important information, and then orient the person to a more detailed visual warning.

7.4 OTHER FACTORS AND ISSUES

7.4.1 Multi-modal warnings

As noted above, sometimes auditory and visual warnings can be combined. A benefit of having both types of warnings in a warning system is that they provide redundant cues. If one modality for the warning is blocked, information is available in the other modality. Visual and auditory cues can be combined also with cues from other sensory modalities, including smell, taste, and tactile/kinesthetic. The smell of smoke, the taste of something bitter, or the rumbling of a car over paving strips, are examples. Corrugated-pavement strips on roadways provide auditory and tactile alerting cues to reinforce the visual cues from the road and from signs indicating a reduced speed limit or imminent hazard.

Another example of multi-modal cues is interactive warnings (e.g., Hunn and Dingus, 1992; Dingus, Wreggit, and Hathaway, 1993; Frantz and Rhoades, 1993; Duffy, Kalsher, and Wogalter, 1995; Wogalter *et al.*, 1995a). Interactive warnings provide tactile/kinesthetic (touch) cues while the participant is performing a task (such as having to touch and move a warning while installing or using a product). Theoretically, interactive warnings cause a break in the performance of a familiar task by causing attention to be switched to the warning (Gill, Barbera, and Precht, 1987; Rasmussen, 1987; Lehto, 1991; Frantz and Rhoades, 1993).

7.4.2 Overloading

Overloading occurs when the amount of information is more than a person is able or willing to process. Many separate warnings or a single extensive one will be less likely to attract and maintain attention than having a few brief warnings. Prioritizing hazard

communications is critical (Vigilante and Wogalter, 1997). To reduce the possibility of overloading or excessive on-product warnings, the most important information should be placed on the product and less relevant material placed in an accompanying product manual or package insert (see also Wogalter *et al.*, 1995a).

Overloading should not be confused with overwarning. Overwarning is the notion that people encounter too many warnings in the world, and it is thought that people will be less likely to attend to warnings as a consequence of this inundation. In other words, overloading means that processing capacity is overwhelmed or exceeded by the amount of information in a given situation, whereas overwarning involves being habituated by one's overall life experience. Although overloading and overwarning are theoretically possible, research has not yet verified their occurrence clearly. Nevertheless if either occurs, it means that there should be even greater emphasis on prioritization of content, formatting, and placement.

7.4.3 Habituation

In Chapter 2 by Wogalter, DeJoy, and Laughery, the communication-human information processing (C-HIP) model was described as having a nonlinear flow of information among the processing stages. It was noted that later processing stages in the model feed back onto the attention stage (in a loop-type fashion). One example of this is habituation. Habituation is an outgrowth of the mental events described at the outset of this chapter. Initially, attention is attracted to the most salient stimulus and, while it is maintained on the stimulus, memory is formed causing the stimulus to become less salient. As a consequence of this reduction in salience, other stimuli of greater relative salience will attract attention away from the warning stimulus. Habituated warnings have inadequate salience to attract and maintain attention.

In a different, and perhaps less obvious sense habituation indicates that there is some information about the warning in memory. However, this does not mean that all of the relevant information is known. Individuals might have incomplete knowledge yet not be motivated to seek additional information.

Several design factors may help to retard or counteract habituation. The first is to incorporate the prominence features (size, color, loudness) described earlier in this chapter. Another method is stimulus variation. This can be done by modifying the warning periodically so that it looks or sounds different. Technology has now enabled control and presentation of many signs so that warnings are presented only when they are needed. One example is electronic signs on busy roadways. In the workplace and in hazardous environments, warnings could be presented at the points in time when risky behavior might be exhibited. Highly sophisticated detection and warning systems could enable personalization of the sign also (e.g., using the targeted individual's name) and varied presentation patterns (partial, irregular reinforcement) that will prevent or delay habituation (Wogalter, Racicot, Kalsher, and Simpson, 1994; Racicot and Wogalter, 1995).

Unfortunately, changing the warning is not always possible. Product manufacturers cannot visit people's homes and alter the warning label on their appliances and power tools every so often. However, some kinds of stimulus change on consumer products are possible. One is to change the styles and formats of warning labels on frequently purchased (nondurable) consumer products according to some regular schedule. For durable goods such as appliances and power tools, it may be possible to send revised warnings to consumers for previously purchased products using data bases containing purchase, rebate/coupon, warranty, and repair records.

7.4.4 Familiarity

In the last section, we described habituation as an example of a later stage of the C-HIP model that affects the 'early' stage of attention. Habituation involves memory affecting attention. Another example of feedback from a later stage of processing on attention is the effect of familiarity (see Chapter 9 by DeJoy). Numerous studies show that persons familiar with a product or task are less likely to look for or read a warning than those who are less familiar (e.g., Godfrey, Allender, Laughery, and Smith, 1983; Godfrey and Laughery, 1984; Leonard, Hill, and Karnes, 1989; Wogalter, Brelsford, Desaulniers, and Laughery, 1991; Wogalter *et al.*, 1995a).

7.4.5 Standardization

There has been an increasing effort in recent years to produce standards that specify certain design characteristics (see Chapter 12 by Collins). An example is the ANSI (1991, 1998) Z535 format described earlier. A positive aspect of standardization is that, given its relatively constant physical characteristics, people will eventually learn what a warning looks or sounds like. In this sense, a standard warning in clutter or in noise might stand out because people will know immediately that it is a warning. A further advantage of standardization is that relatively little effort may be needed to produce a warning that conforms to the standard. However, standardization could produce problems. Unfortunately, these problems have not been thoroughly considered by advocates for standards. The purpose of standardization is to promote similarity across warnings which will exacerbate the habituation problem. If all warnings look or sound about the same, then it is quite possible that over time people will pay less attention to them, and this could have disastrous consequences. We believe that standards and guidelines are good starting points for initial warning designs. But they are minimum standards. There should be flexibility to allow the warning designer to deviate from the standards when it is useful and beneficial to do so. Testing can reveal other design variants that may be better than those specified by the standards. For example, test data might show that for a particularly important warning, the word 'DEADLY' and a diagonal stripe border capture attention better than an ANSI (1991, 1998) warning with the word 'DANGER' and a thin plain black line border. With good data to support them, modifications from the standard's specifications should not only be permitted, but encouraged.

7.4.6 Processing Mode and Relevance

A warning will more likely capture and maintain attention when individuals are in an information seeking mode than in other modes of thinking (Lehto and Miller, 1986; DeTurck and Goldhaber, 1988; Lehto, 1991). In other words, a person who is actively looking for hazard-related information, will be more likely to see, hear, and encode a warning than a person who is occupied with other tasks.

Stimuli that are personally relevant and interesting tend to elicit attentional processes. Because people's interests differ, people will look at and listen to different things. Our own name is one of the most relevant and attention-attracting stimuli. Moray (1959) found that auditory presentation of a person's name had a strong effect on attention attraction. Similarly, Wogalter *et al.* (1994) showed that displaying a person's first name on an

electronically presented sign led to higher warning compliance with more people donning protective equipment in a chemistry laboratory situation than a generic warning signal word (CAUTION) in its place.

7.4.7 Characteristics of the Target Population

As noted earlier, an important concern in developing warnings is the intended target population. In some cases, the target population is the general population; in other cases, the population is more constrained (e.g., healthy, young military recruits). Not infrequently, broad target audiences will contain individuals having some form of limited sensory capability, such as vision or hearing impairments among older adults (Rousseau *et al.*, 1998; Wogalter and Young, 1998). The warnings designer should take care to consider the target audience's characteristics and, where applicable, specify warnings designs that compensate for potential impairments. For example, for older adults, warnings could be made larger or louder (Laughery and Brelsford, 1991; Rousseau *et al.*, 1998).

Impairments also can occur situationally. Attention to a warning can be attenuated under conditions of time stress (Wogalter, Magurno, Rashid, and Klein, 1998a), from physical or mental fatigue, alcohol or drug consumption or illness. If these conditions are likely, then consideration should be given on how they might affect attention and what might be done to compensate for the effects.

7.4.8 Testing

How can you know whether a warning attracts and maintains attention adequately? The best way to determine this capability is to test a representative sample of the target population. Other chapters in this volume provide more information about testing methods (e.g., Chapter 3 by Young and Lovvoll; Chapter 13 by Frantz, Rhoades, and Lehto). In this chapter, we mention briefly some of the most pertinent testing factors with respect to attention capture and maintenance. Some of the basic methods include: (a) having individuals rate or rank the noticeability of various prototype designs; (b) having individuals take part in legibility or intelligibility assessments that might include the warnings being presented at a distance or under degraded conditions; (c) assessing memory to determine whether participants remember seeing or hearing the warning; (d) measuring reaction time to detect and find target information in displays with and without a warning (where quicker response times indicate better noticeability); and (e) recording looking behavior to determine whether and how quickly individuals orient to the warning (e.g., eye and/or head movement), and for how long they examine it. The best evaluations are those that most closely replicate the real risk conditions and tasks. For example, measurement of looking behavior using a hidden camera is a more externally valid assessment of warning salience than subjective ratings of warnings presented in a questionnaire booklet.

7.5 IMPLICATIONS AND RECOMMENDATIONS

If people are unaware of an existing hazard, they need to be warned about it. First, attention needs to be captured and then maintained on the warning. Highly salient warnings are more likely to attract and hold attention than less salient warnings. Generally, incorporating features that add prominence to the warning is desirable. The exception to this rule is when attention to a warning adds danger to the situation. Examples include

warnings that divert a pilot's attention away from highly critical displays during takeoff or a flashing dashboard light that draws a motorist's attention away from the road.

In this chapter we focused on the factors that influence the switching and holding of attention to warnings presented in the visual and auditory modalities. For visual warnings, we considered contrast, color, size and legibility, surround contours and borders, internal shapes such as pictorials and symbols, location, signal words, limited surface area, degraded environments, and durability. For auditory warnings, we considered simple and complex nonverbal signals, voice presentation, salience, and omnidirectionality, plus the problems of annoyance and false alarms. Other issues discussed included the use of multi-modal warnings (including visual and auditory presentation together, as well as other modalities), overload, habituation, interactive warnings, standardization, stimulus relevance, target population characteristics, influence by other stages of processing, and test methodology. Because attention to warnings is a function of many factors, we offer a general set of recommendations or guidelines below. The guidelines cannot be followed in every case, because in some situations they may conflict with each other and in others they may involve practical constraints.

To maximize the attention capture and maintenance, visual warnings should:

- Accentuate figure–background contrast
- Be brief
- Use large, legible print
- Include features that add prominence such as a signal word panel containing a signal word, color, and an alert symbol
- Include a pictorial symbol when possible
- Present information by way of multiple features and modalities to serve as redundant cues
- Make the formatting attractive, for example, use an outline or list format with spaces and bullets separating the main points instead of continuous, paragraph-type prose
- Be durable to endure the life of the product or hazardous condition
- Make better use of the available space on products/containers for warnings (to make the print larger or to include more information). Consider using methods that can enlarge the space for warnings. If this is not possible, refer users to another accessible source for more information
- Be located when and where the information is needed.

To maximize attention capture and maintenance, auditory warnings should:

- Be brief
- Have a high signal-to-noise ratio, but not be so loud that it badly annoys people
- Be clear and distinguishable from other sounds
- Have low false alarm rates
- Allow adjustments in detection sensitivity.

The warning development procedures should:

- Consider the sensory capabilities of the target population
- Consider the tasks and the environment in which the warning will be located
- Test a representative sample of target users.

We also recommend that, after a warning is placed into service, follow-up assessments be conducted of the warning's attentional effects. The purpose is to determine whether the warning is meeting the goals of attention capture and maintenance. If it is not working as intended, or its effectiveness has degraded over time, etc., the warning should be replaced with a better one.

By incorporating the above characteristics (and other recommendations suggested in this chapter), a warning is more likely to be successful in attracting and maintaining attention. In doing so, it paves the way for additional processing described in the next set of chapters.

We close this chapter by making a final comment. Today's increasingly sophisticated desktop publishing systems allow considerable freedom and flexibility in constructing warnings. Producers of signs and labels are free from simple typewriters that could produce only one size of type and a limited number of embellishments (i.e., all capital letters or underlining). Today's warning designers have access to word processing, graphic image processing, page layout, and document management software. Recently, some specialized sign- and label-making programs have become available. Thus, current desktop publishing capabilities make it easy to produce warnings. Similarly, computer-based sound processors can aid in the design of appropriate verbal and nonverbal auditory warnings by allowing the manipulation of loudness, frequency and complexity, rate, etc. Today's technology allows anybody with a modern computer and a color printer to construct warnings. However, it is important that warnings designers consider in their designs the factors discussed in this and other chapters.

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