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Senate

The Senate met at 10:15 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Glory to God in the Highest, on earth, peace, good will toward men.—Luke 2:14.

Almighty God, we praise You for Your faithfulness. Now in this sacred season, we join with Jews all over the world as they light their menorahs and remember Your faithfulness in keeping the eternal light burning in the temple. We gather with Christians around a manger scene and praise You for Your faithfulness to send the Light of the world to dispel the darkness. Your indefatigable love is incredible. You never give up on us. You persistently pursue us offering us the way of peace to replace our perversity. You offer Your good will to replace our grim wilfulness. In spite of everything we do to break Your heart, here You are, once again sending Your angel to tell us of Your good will to all humankind, Your pleasure in us just as we are, and for all we were intended to be. Change all our grim bah humbugs into humble adoration.

Make us Your Christmas miracles. Help us to be as kind to others as You have been to us, to express the same respect and tolerance for the struggles of others as You have been to help us turn our struggles into stepping stones, to understand us as we wish to be understood. Light up the candles of our heart, Lord, and help us shine with Your peace and good will. In the name of the Light of the world. Amen.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. DOLE. Mr. President, we will immediately begin 30 minutes of debate on the veto message on H.R. 1058, the securities litigation bill. Following that debate, we will begin 30 minutes on the welfare reform conference report. At approximately 11:15 we will begin two consecutive rollcall votes, first on the veto message, to be followed by a vote on the welfare reform conference report.

Following those votes, the Senate will turn to consideration of the START II Treaty. Additional votes are therefore possible today on that treaty or any other matter that may become available, including a CR, if one is received from the House—I do not think that will happen—a Veterans' continuing resolution, which is at the desk, and any other available conference reports.

I will just indicate that the leaders will start their meeting with the President at 12 o'clock today in an effort to make progress on the balanced budget over the next 7 years. That meeting will last approximately 3 hours. I do not have any idea what may develop during that session, but at least it is another indication that some progress is being made. We are negotiating. I hope that we can come to some agreement soon. I yield the floor.

Mr. DASCHLE addressed the Chair.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The able minority leader is recognized.

SECURITIES LITIGATION REFORM

Mr. DASCHLE. I wish the President pro tempore a good morning.

Mr. President, I would like to make a couple remarks, if I can, about the securities litigation reform legislation.

The bill before us highlights the real problem that faces companies when frivolous lawsuits are filed against them by lawyers for a quick profit. Our goal should be to address this problem without undermining the ability of investors to protect themselves against real fraud. Regrettably, the bill reported from conference goes too far, effectively closing the courthouse door on investors with legitimate claims.

While fixing the problem presented by frivolous lawsuits requires remedy, this bill goes beyond that and, as a result, leaves investors unprotected against fraud in many instances.

NOTICE

LOBBYING DISCLOSURE ACT OF 1995

A special joint notice from the Secretary of the Senate and the Clerk of the House concerning implementation of the Lobbying Disclosure Act of 1995 (P.L. 104–65) appears in this issue of the Record following both the proceedings of the Senate and the House. See pages S19290–91 and H15634–35.

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

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The well-targeted veto of the President can force this bill back on the right track. Proponents and opponents of this legislation recognize that our first priority must be to protect investors. Families, senior citizens, and working people need to feel secure when they invest. They need to be encouraged to save and invest for their health care, their retirement, and their education.

But such investors will only have confidence in the market if they consider them to be fair. They must expect that they will be protected if they are defrauded. They need to know that the law will continue to protect small investors, pension funds, and taxpayers against another Charles Keating. Yet, under this bill, when the next Charles Keating appears, and one will, victims will recover almost none of their losses. The victims of the Keating fraud recovered over $260 million. Future victims will get a mere fraction of that. The lawyers who sued Keating say they would only have recovered $16 million under the new bill—$16 million—a fraction of the $260 million under the current law they have received.

The President indicated in his veto message that he would be willing to sign this bill if improvements were made. By sustaining his veto, we can address real problems raised by frivolous lawsuits, while avoiding the overly broad language that is now in the bill.

The President's veto message focuses on three problems with the conference report.

First, the bill allows corporate insiders to make false statements, so long as they are accompanied by ''cautionary language.''

Second, it raises the bar so high on pleading standards that victims of fraud cannot get into court.

Finally, it forces victims to risk paying legal fees of wealthy defendants if they want their day in court.

Each of these problems should be addressed before this bill becomes law. Because the President's concerns are drawn very narrowly, a new bill with revisions to address these shortcomings can be written and approved. We can craft a better approach that protects investors while ending frivolous lawsuits. That should be the goal of this legislative exercise.

Mr. President, let me commend the distinguished Senator from Nevada, the Senator from Maryland, and others, who have laid out in a much more elaborate fashion over the last couple of days many of the same reservations that I just expressed this morning. We need to join them in sustaining the President's veto.

I yield the floor. I suggest the absence of a quorum.

Mr. President, I withhold that request.

SECURITIES LITIGATION REFORM ACT—VETO

The PRESIDING OFFICER (Mr. CAMPBELL). Under the previous order, the Senate will resume consideration of the veto message with respect to H.R. 1058, the securities litigation bill. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1058) to reform Federal securities litigation, and for other purposes.

The Senate resumed the reconsideration of the bill.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York [Mr. D'AMATO] is recognized.

Mr. D'AMATO. Mr. President, I urge my colleagues to see to it that the much-needed reform in the area of securities litigation is undertaken. By overriding the President's veto, that reform would be ensured.

I have notes here, comprehensive notes that detail the reasons why we have to change this system—one reform the bill makes is to bar professional plaintiffs, people who have little interest in a corporation who might own 10 shares of stock who are literally hired by the lawyers to bring these suits. That is wrong, but that is what is going on.

The legislation makes all kinds of improvements, but let me put my notes aside and refer to this morning's Washington Post. In its lead editorial, the Washington Post says quite clearly: ''Override the Securities Bill Veto.''

Let me refer to just one part of it:

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness.

Mr. President, that is exactly what this legislation does. It corrects the law to protect investors. It gives to those people who are defrauded the opportunity, for the first time, to see to it that lawyers who will really represent their interests lead the case, as opposed to having a lawyer in charge who says, ''I have the best practice in the world because I have no clients.''

Imagine this attorney who, by the way, has contributed millions of dollars to a political party and who is exerting incredible pressure, who has paid millions of dollars for people to take out ads, phony groups, little startup groups, groups that then say, ''Protect the investors, protect the investors''. He has spent millions of dollars to oppose this bill—millions of dollars, and he brags about the fact that he makes his living—a very comfortable one of millions of dollars—because he has no clients. ''I have no clients. That's the best kind of practice to have.''

We have to put those lawyers out of business. Let me say, when it comes to protecting the interests of attorneys and litigants and seeing to it that claims can and should be sustained where there is merit, this Senator has been there with his support every time. I am not suggesting to you that this bill is perfect. I am not suggesting to you that there may not be some areas in which we will have to reform this legislation, but to suggest that we are now going to permit fraud is as wrong as it is to suggest that what is taking place now is preferable to reform. It is not and this legislation is not going to permit fraud.

This practice is wrong. This is bilking the system. This is bilking the small investor. This system as it stands is encouraging the kind of operation that hurts small investors and makes no sense; this legislation is long overdue.

I ask unanimous consent that the full text of the Washington Post editorial that appeared today be printed in the RECORD.

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

[From the Washington Post, Dec. 22, 1995]

OVERRIDE THE SECURITIES BILL VETO

President Clinton was wrong to veto the securities bill. He caved to the trial lawyers' lobby, big contributors to the Democratic Party, in a dark-of-night action. Congress should override him. The House of Representatives voted the other day to do just that, with 89 Democrats joining the Republicans. Now it's up to the Senate.

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness. When the price of a company's stock drops sharply, the present law invites suits on the questionable grounds that the company's past expressions of hope for its future misled innocent stockholders.

This kind of suit has turned out to be a special danger to new companies, particularly high-technology ventures with volatile stock prices. The country has a strong interest in encouraging these companies and

shielding them from a style of legal assault that is not far from extortion. The bill would protect companies' forecasts as long as they did not omit significant facts.

Under present law, the first lawyer to file one of these strike suits controls the litigation regardless of who else might sue on the same grounds later. Frequently the lawyers who specialize in this work settle their suits on terms that bring trivial benefits to the shareholders but fat fees to the lawyers themselves. The bill that Mr. Clinton vetoed would instead give the judge the authority to pick the lead plaintiff—usually the plaintiff with the biggest stake in the outcome. Plaintiffs would then choose their own lawyers and make their own decisions on whether and how to settle. That is clearly a desirable reform and a major improvement in shareholders' rights.

Mr. Clinton vetoed the bill because, he said, it would make too many difficulties for shareholders with legitimate grievances. There are two things to be said about that. This bill has been under intense debate and negotiation between the two parties for nearly a year, and if these defects are as significant as the president suggests, it's strange that the administration did not make an issue of them earlier.

More broadly, Mr. Clinton speaks of future injustices that he believes this bill might create but has little to say about the real and substantial injustices that the present law is creating. Overriding his veto will end an egregious misuse of securities laws in ways that harm both companies and shareholders.

Mr. D'AMATO. I yield the floor.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Maryland has 9 minutes 4 seconds. The Senator from New York has 8 minutes 20 seconds.

Mr. SARBANES. Mr. President, I yield myself 3 minutes and ask the Chair to let me know when the 3 minutes have been used.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. SARBANES. Mr. President, I rise to urge my colleagues to support the veto. We have a number of public interest groups that are in strong support of this veto. The North American Securities Administrators Association and the Association of the States Securities Regulators have written to Members of the Senate to urge us ''to sustain President Clinton's veto.''

They go on to say—and this is a very important point that we have continually emphasized during the debate:

> While everyone agrees on the need for constructive improvement in the Federal securities litigation process, the reality is that the major provisions of H.R. 1058 go well beyond curbing frivolous lawsuits and will work to shield some of the most egregious wrongdoers from legitimate lawsuits brought by defrauded investors.

That is the whole point. This legislation goes well beyond the purpose of curbing frivolous lawsuits. The examples that are always cited on the other side are examples with which we do not take issue. We would like to curb those kinds of examples, but we do not want to go beyond that, as the North American Securities Administrators say, ''to shield some of the most egregious wrongdoers from legitimate lawsuits brought by defrauded investors.''

I will ask unanimous consent that this letter be printed in the RECORD at the conclusion of my remarks, along with a letter from the National League of Cities, the National Association of Counties, the National Association of County Treasurers and Finance Officers, U.S. Conference of Mayors, Government Finance Officers Association, the Municipal Treasuries Association, which also states that those organizations support ending frivolous lawsuits, but pointing out that they are major investors of public pension funds and taxpayer moneys, who want to ensure that litigation reform is balanced and does not harm investors. They go on to say, unfortunately, H.R. 1058 is a bill that is special-interest excess masquerading as reform, and it makes a mockery of our world-renowned system of investor protection.

I ask unanimous consent that they be printed in the RECORD.

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

(See exhibit 1.)

Mr. SARBANES. This is not only State regulators and local government officials, whom I just cited, but consumer groups and legal experts.

Money magazine has editorialized on this issue, and I ask unanimous consent that it be printed in the RECORD.

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

[From Money magazine, December 1995]

NOW ONLY CLINTON CAN STOP CONGRESS FROM HURTING SMALL INVESTORS LIKE YOU

(By Frank Lalli)

The debate over Congress' reckless securities litigation reform has come down to this question: Will President Clinton decide to protect investors, or will he give companies a license to defraud shareholders?

Late in October, Republican congressional staffers agreed on a so-called compromise version of the misguided House and Senate bills. Unfortunately, the new bill jeopardizes small investors in several ways. Yet it will likely soon be sent to Clinton for his signature. The President should not sign it. He should veto it. Here's why:

The bill helps executives get away with lying. Essentially, lying executives get two escape hatches. The bill protects them if, say, they simply call their phony earnings forecast a forward-looking statement and add some cautionary boiler-plate language. In addition, if they fail to do that and an investor sues, the plaintiffs still have to prove the executives actually knew the statement was untrue when they issued it, an extremely difficult standard of proof. Furthermore, if executives later learn that their original forecast was false, the bill specifically says they have no obligation to retract or correct it.

High-tech executives, particularly those in California's Silicon Valley, have lobbied relentlessly for this broad protection. As one congressional source told Money's Washington, D.C. bureau chief Teresa Tritch: ''High-tech execs want immunity from liability when they lie.'' Keep that point in mind the next time your broker calls pitching some high-tech stock based on the corporation's optimistic predictions.

Investors who sue and lose could be forced to pay the winner's court costs. The idea is to discourage frivolous lawsuits. But this bill is overkill. For example, if a judge ruled that just one of many counts in your complaint was baseless, you could have to pay the defendant firm's entire legal costs. In addition, the judge can require plaintiffs in a class action to put up a bond at any time covering the defendant's legal fees just in case they eventually lose. The result: Legitimize lawsuits will not get filed.

Even accountants who okay fraudulent books will get protection. Accountants who are reckless, as opposed to being co-conspirators, would face only limited liability. What's more, new language opens the way for the U.S Supreme Court to let such practitioners off the hook entirely. If such a lax standard became the law of the land, the accounting profession's fiduciary responsibility to investors and clients alike would be reduced to a sick joke.

Moreover, the bill fails to re-establish an investor's right to sue hired guns, such as accountants, lawyers and bankers, who assist dishonest companies. And it neglects to lengthen the tight three-year time limit investors now have to discover a fraud and sue.

Knowledgeable sources say the White House is weighing the bill's political consequences, and business interests are pressing him hard to sign it. ''The President wants the good will of Silicon Valley,'' says one source. ''Without California, Clinton is nowhere.''

We think the President should focus on a higher concern. Our readers sent more than 1,500 letters in support of our past three editorials denouncing this legislation. As that mail attests, this bill will undermine the public's confidence in our financial markets. And without that confidence, this country is nowhere.

Mr. SARBANES. They conclude by saying: ''This bill will undermine the public's confidence in our financial markets and, without that confidence, this country is nowhere.''

I am fearful that that is the price we will pay for this legislation.

Finally, I ask unanimous consent to have printed in the RECORD a letter from Prof. Arthur Miller at the Harvard Law School.

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

HARVARD LAW SCHOOL,
Cambridge, MA, December 19, 1995.

Hon. WILLIAM J. CLINTON,
President of the United States, The White House, Washington, DC. 20500.

DEAR MR. PRESIDENT: On December 12 I wrote to you concerning the so called ''securities reform'' legislation, then embodied in Senate Bill 240. I urged you to oppose that legislation because (1) it was based on a totally erroneous assumption that there had been a sharp increase in securities litigation in the recent past, which is completely belied by every statistical measure available, (2) the federal courts, exploiting a variety of procedural tools such as pretrial management, summary judgment motions, sanctions, and enhanced pleading requirements, were achieving many of the goals of the so called reformists, most particularly the deterrence of ''frivolous'' litigation; (3) recent history suggests that the same vigilance is needed today to guard against market fraud as was needed during the superheated activity in the securities business in the mid–1900's; and (4) the SEC simply is unable to perform the necessary prophylaxis to safeguard the nation's investors, and private enforcement is an absolutely integral part of policing the nation's marketplaces.

I am writing again because the latest version of the legislation, H.R. 1058, contains provisions regarding pleading in securities cases and sanction procedures that, if anything, make the legislation even more draconian and access-barring than Senate Bill 240. It simply is perverse to consider it a ''reform'' measure.

I have always taken great pride in the fact that the words ''equal justice under law'' are engraved on the portico of the United States Supreme Court. I fear, however, that if the proposed legislation is signed into law, access to the federal courts for those who have been victimized by illicit practices in our securities markets will be foreclosed, effectively discriminating against millions of Americans who entrust their earnings to the securities markets. As difficult as the existing Federal Rules of Civil Procedure already make it to plead a claim for securities fraud sufficient to survive a motion to dismiss, especially given existing judicial attitudes toward these cases, the passage in House Bill 1058 requiring that the plaintiff ''state with particularity facts giving rise to a strong inference'' that the defendant acted with scienter, in conjunction with the automatic stay of discovery pending adjudication of dismissal motions, effectively will destroy the private enforcement capacities that have been given to investors to police our nation's marketplace. Despite misleading statements in the Statement of Managers that this provision is designed to make the legislation consistent with existing Federal Rule 9, the truth is diametrically the opposite, since the existing Rule clearly provides that matters relating to state of mind need not be pleaded with particularity. Indeed, it would be more accurate to describe the proposal as a reversion to Nineteenth Century notions of procedure. The proposed legislation also does considerable damage to notions of privilege and confidence by demanding that allegations on information and belief must be accompanied by a particularization of ''all facts on which that belief is formed.''

The situation is compounded by the proposed fee shifting and bond provisions that relate to the enhanced sanction language in the legislation. It is inconceivable that any citizen, even one with considerable wealth and a strong case on the merits, could undertake securities fraud litigation in the face of the risks created by these provisions. As the person who was the Reporter to the Federal Rules Advisory Committee during the formulation and promulgation of the 1983 revision of Federal Rule 11, the primary sanction provision in these Rules, I can assure you that no one on that distinguished committee would have possibly supported what is now so cavalierly inserted into the legislation.

I use the word ''cavalierly'' intentionally, because, as I indicated to you in my earlier letter, there is not one whit of empiric research that justifies any of the procedural aspects of this so called ''reform'' legislation. Not only does every piece of statistical evidence available belie the notion that there is any upsurge in securities fraud cases, but these proposals, with their devastating impact on our nation's investors, have completely bypassed the carefully crafted structure established in the 1930's for procedural revision that has enabled the Federal Rules to maintain their stature as the model for procedural fairness and currency. Thus, the proposed legislation represents a mortal blow both to the policies that support the private enforcement of major federal regulatory legislation and to the orderly consideration and evaluation of all proposals for the modification of the Federal Rules. From my perspective, which is that of a practitioner in the federal courts, a teacher of civil procedure for almost thirty-five years, and a co-author of the standard work on federal practice and procedure, I fear that all of that is extremely regrettable.

I hope you will give serious consideration to vetoing the legislation. If I can be of any further assistance to you or your staff in considering these and related matters, please do not hesitate to inquire. My telephone number is 617/495–4111.

My very best to you and your family during this wonderful holiday season.

Sincerely yours,

ARTHUR R. MILLER,
Bruce Bromley Professor of Law.

Mr. SARBANES. Professor Miller says in the course of this letter,

I have always taken great pride in the fact that the words 'equal justice under law' are engraved on the portico of the Supreme Court. I fear, however, that if the proposed legislation is signed into law, access to the Federal courts for those who have been victimized by illicit practices in our securities markets will be foreclosed, effectively discriminating against millions of Americans who entrust their earnings to the securities markets.

Do not make the mistake of exposing our investors to the pitfalls that the public officials, State security regulators, and these distinguished academics have pointed out. I urge sustaining the veto.

EXHIBIT 1

[Letter from National League of Cities (NLC), National Association of Counties (NACo), National Association of County Treasurers and Finance Officers (NACTFO), U.S. Conferences of Mayors (USCM), Government Finance Officers Association (GFOA), and Municipal Treasurers' Association (MTA), Dec. 21, 1995]

Hon. BOB DOLE,
U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: On behalf of the state and local government officials we represent, we urge you to vote to sustain President Clinton's veto of the Private Securities Litigation Reform Act of 1995 (H.R. 1058) and support legislation in Congress that truly accomplishes the goal of reducing frivolous litigation. Our organizations all support ending frivolous lawsuits because as issuers of municipal securities, we too may be sued, especially in light of the new Securities and Exchange Commission requirement for issuers to disclose annual financial information. On the other hand, we also are major investors of public pension funds and taxpayer monies who want to ensure that litigation reform is balanced and does not harm investors. Unfortunately, H.R. 1058 is a bill that is special interest excess masquerading as reform and it makes a mockery of our world-renowned system of investor protection. The over 1,000 letters from state and local government officials from all over the country that have been sent to Congress in the last few weeks attest to our deep conviction that this bill should not become law.

The following are the major concerns state and local governments have with the bill and the major reasons we supported a veto:

Safe Harbor for Forward-Looking Statements—The safe-harbor provision relating to forward-looking statements would allow false predictions to be made as long as they are accompanied by cautionary language. Municipal bond issuers take great care to provide full and accurate disclosure related to their finances and operations and cannot countenance a lesser standard for corporate issuers under any circumstances. No issuer, whether governmental or corporate, should be able to mislead potential investors. In addition, these provisions will be particularly harmful to state and local government pension funds, which rely on corporate information to assist in their investment decisions and would be denied recovery under this section.

Aiding and Abetting Liability—There is no language in the bill making aiders and abettors liable for fraud. If aiders and abettors of fraud are immune from civil liability, state and local governments, as issuers of securities, would become the ''deep pockets'' in a lawsuit and, as investors, we would be limited in our ability to recover losses. Our confidence in consultants who assist us in complex municipal bond transactions and in investing public funds is diminished by this bill because these consulting professionals have been granted immunity from responsibility. It is not reasonable to hold out the hope that this important issue can be dealt with in a subsequent bill. It must be dealt with as part of this reform effort or the opportunity will have been lost.

Statute of Limitations—It is equally important that the statute of limitations be extended. Otherwise, investors will be harmed by wrongdoers who are able to conceal fraud beyond the allowable period. Again, we do not believe this important change will be given serious consideration in the future if H.R. 1058 is passed in its present form.

Loser-Pays Provision—Finally, under the bill, fraud victims would face a potential ''loser-pays'' sanction and possible bond posting requirement at the beginning of a case. We are sure you are aware of the difficulty public officials would have in justifying proceeding with an investor lawsuit if there was also the risk that the injured government investor would have to pay the legal fees of a Wall Street investment banking firm, which is a defendant in a securities lawsuit. To us, this is an unacceptable and unfair approach to investor protection.

We urge you to support the President on this important issue. We are not asking you to support frivolous litigation. To the contrary, we want you to support legislation that stops the deplorable strike suits that are the target of securities litigation reform. However, a new law can be fashioned that deals with lawsuit abuses without jeopardizing our most basic and essential investor protections. Our groups pledge to work with the President and members of Congress so that a new law can be fashioned that deals with these concerns.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, December 20, 1995.

Re securities litigation reform.

ALL MEMBERS,
U.S. Senate, Washington, DC.

DEAR SENATOR: I am writing today on behalf of the North American Securities Administrators Association (NASAA) to urge you to sustain President Clinton's veto of H.R. 1058, the ''Securities Litigation Reform Act.'' In the U.S., NASAA is the national organization of the 50 state securities agencies.

While everyone agrees on the need for constructive improvement in the federal securities litigation process, the reality is that the major provisions of H.R. 1058 go well beyond curbing frivolous lawsuits and will work to shield some of the most egregious wrongdoers from legitimate lawsuits brought by defrauded investors.

NASAA supports reform measures that achieve a balance between protecting the rights of defrauded investors and providing relief to honest companies and professionals who may unfairly find themselves the target of frivolous lawsuits. Unfortunately, H.R. 1058 does not achieve this balance. NASAA's

concerns with H.R. 1058 go beyond those articulated by President Clinton in his veto message. In sum, NASAA has the following concerns with H.R. 1058;

The bill fails to incorporate a meaningful statute of limitations. This single omission means that all but the most obvious frauds likely will be shielded from civil liability.

The bill's safe harbor lowers the standard for assuring the truthfulness of predictive statements about future performance. While we believe that information flow to the marketplace is a vital component of strong markets, we also believe that we should take prudent and reasonable steps to ensure that the information is reasonably reliable. However, rather than assuring the reliability of the forward-looking statement, the bill instead focuses on cautionary statements. Indeed, these cautionary statements likely will become the vaccine to immunize a host of intentional wrongdoing.

The bill fails to include aiding and abetting liability for those who participate in fraudulent activity. Failure to include such a provision makes recovery for investors doubtful in cases where the principal defendant is bankrupt, as was true in the notorious Keating/Lincoln Savings and Loan case. The result is that professionals who assisted, and perhaps could have prevented the fraud, would be virtually unreachable in civil actions. Since the bill proposes a proportionate liability system, rather than joint liability, it makes sense to require aiders and abettors of securities fraud to pay their fair share.

A provision of the bill's proportionate liability section is unworkable and disfavors older Americans. Under current law, a successful plaintiff may recover judgment from one or more of the defendants responsible. Under H.R. 1058, each defendant will be liable only for his or her proportionate share of the harm. Congress did make an exception in cases where a plaintiff can prove that his or her net worth is less than $200,000. This presents two problems. First, the provision is entirely unworkable in a class action involving hundreds of plaintiffs; because each plaintiff must meet the net worth test, proving individual net worth for hundreds of plaintiffs would not justify the effort for the meager rewards provided for in the bill. Second, the provision specifies that the value of a personal residence must be included in the net worth calculation. This provision will work against older Americans who usually have paid for their homes, although their annual income may be relatively modest. Consequently, if personal residence is not removed from the net worth calculation, these seniors likely will be unable to avail themselves of this provision, even though seniors as a group are more devastated by fraud because many live on fixed incomes and what little they get from investment of their savings.

NASAA's view from the outset has been that it is possible to curb frivolous lawsuits without making it equally difficult to pursue rightful claims against those who commit securities fraud. NASAA respectfully urges you to sustain the President's veto and to draft a balanced reform measure that does not harm our system of saving for retirement and preserves the rights of defrauded investors to bring suit under federal securities law.

Sincerely,

MARK J. GRIFFIN,
NASAA President-elect.

WHY SUPPORT THE SECURITIES LITIGATION REFORM CONFERENCE REPORT?

Mr. BRADLEY. Mr. President, when the Senate considered its version of securities litigation reform, I supported a number of amendments to it and eventually voted for the bill. I did so because it is my belief that that the bill stuck the best available balance between protecting investors from fraud perpetuated by unscrupulous issuers and shielding growing businesses seeking investment capital from frivolous and costly lawsuits.

Currently, frivolous lawsuits act as a damper on economic growth—imposing additional costs to growth and expansion that are both unwarranted and unnecessary. Lawyers can now tie up businesses in years of seemingly endless discovery and litigation—thus creating incentives for innocent issuers to settle rather than go through a protracted legal battle. There is little doubt that these suits impose a burden on the economy and should be stopped.

At the same time, individual investors need to be able to rely on the information that they receive about potential products and they need to know that the legal system is there to protect them in the case of an unscrupulous issuer.

As it has emerged from conference, the bill has been modified in a number of ways. Much attention has been directed to the pleading standard, the safe harbor, and the fee shifting provisions among other issues. The President identified these three area of concern in his veto message.

I have carefully reviewed the conference report and weighed the arguments on both sides. My conclusion is that the conference report would, on balance, achieve the goals of I sought when I voted for the Senate-passed bill—stemming the tide of meritless litigation while at the same time putting in place certain pro-investor measures. How does the bill do this?

First, it ensures that lawsuit must have merit by setting forth pleading standards which require that plaintiffs must have a basis for their case before they are allowed to proceed. Many times, a case is brought with little evidence and legal fishing expedition ensues through the defendant's files. In some cases, firms will settle the suit in order to save themselves the long-run costs associated with discovery and litigation of the case.

Now much has been made of the exact specifications surrounding the pleading standard in the bill. A number of critics contend that it goes beyond the already stringent standards of the second circuit—and would have the effect of closing the courthouse door for many small plaintiffs. Ambiguities in the statement of managers have served only to heighten these criticisms. In fact, the language of the bill does codify the second circuit standard in part—and the statement of managers says so.

But even within the second circuit, there are varying interpretations of the standard. That is why the conference report deliberately rejects a complete codification of the second circuit and adopts language which is substantially similar to the language in the Senate-passed bill and its report language. The major change, the substitution of the words ''state with particularity'' for ''specifically allege,'' was made at the request of the Judicial Conference and therefore does not substantially modify the language as passed by the Senate.

For investors, the bill would also ensure much greater accuracy in the statements made by issuers of debt and, at the same time, encourage them to disclose more fully, relevant information. The bill achieves this end by creating a workable safe harbor for so-called forward-looking statements—i.e. predictions about the future of a particular security. In essence, issuers are required to accompany their predictions by ''meaningful cautionary'' language—language that should serve as ample warning to potential investors about the risks that the particular security may entail. This safe harbor has been endorsed by the chairman of the SEC.

But the SEC has a further role to play to ensure the fairness of the safe harbor. Many critics contend that it will create a ''license to lie'' and lead to the duping of unwary investors by unscrupulous issuers. There is a strong need for the SEC to add content to the regulations written to interpret this bill. Specifically, it will need to set out in a clear, rigorous and responsible manner, the facts that should be included in forward-looking statements so that they are truly ''meaningful and cautionary''. In addition, the Commission needs to make clear which part of the second circuit pleading standard is to be enforced and how. The SEC has a role in making this bill work, and its involvement in the process will be critical to achieving the goals the underlie the conference report.

The bill also creates incentives against filing meritless litigation by bolstering the use of rule 11—which provides sanctions for filing frivolous lawsuits. Though it exists in current law, rule 11 is rarely used. The conference report requires a judge to make a finding as to whether rule 11 has been violated and then to impose sanctions subject to the discretion of the court. In addition, the report sets forth circumstances under which the sanctions under rule 11 could be mitigated.

The bill also contains a number of other provisions designed to first reduce the pressure to settle frivolous claims by reforming the liability system, second, produce meaningful information about the fairness of a settlement by requiring accurate disclosure of settlement terms, and third make it easier for participants in a class action to understand how lawyers are being compensated and to challenge attorney's fees by reforming the way in which attorney's fees may be calculated in these suits.

Finally, some critics have contended that the bill will truly mean that the small investor will not have access to the judicial system. I believe that this

is not the case. I have already discussed may of the major issues of concern above. There is one additional area that gives me pause. The conference report includes a discretionary bonding requirement that was not in the Senate bill. Opponents claim that the possibility of requiring a bond is yet another impediment to small investor access to the judicial system. In fact, the bonding provision is at the discretion of the judge. Similar bonding options exist in other parts of the securities law and have not proven to be particularly burdensome. Of course, should the bonding provision prove unworkable or a true bar to the courthouse, it should be revisited, as should any other portion of this bill which becomes problematic. I certainly stand ready to reconsider this bill should it not achieve the goals which I have set out, but on balance I think its advantages outweigh its disadvantages.

Mr. DOMENICI. Mr. President, there is an old gypsy curse that goes like this: May you be the innocent defendant in a frivolous law suit.

It is a curse stopping companies from creating good, high paying jobs. It is the curse of our economy, of Silicon Valley, our high tech biotech and high-growth companies.

Frivolous law suits are the curse of our capital markets.

These companies have volitile stock prices. But stock volitility is not stock fraud, yet it is the basis for multi-million lawsuits that yield investors pennies on the dollars for their losses and millions for a handful of strike suit lawyers.

This legislation had 182 cosponsors in the House and 51 cosponsors in the Senate. It is legislation that was cosponsored by a bipartisan group of Senators spanning the ideological spectrum—Senator HELMS and Senator MIKULSKI.

We had 12 days of hearings, hundreds of submissions. Countless meetings and negotiating sessions.

The major reforms—the safe harbor and the proportionate liability provisions were not mentioned in the President's veto message. The SEC supports the current safe harbor and its principle concerns have been met regarding the rest of the bill.

The President objected to the pleading standard. Yet it is the Second Circuit's pleading standard. It is written to the specifications of SEC Chairman Arthur Levitt.

The only difference between the Senate Banking Committee pleading standard and the standard the administration endorsed in June is three words.

The Senate Banking Committee provision provided that the complaint must specifically allege facts giving rise to a strong inference.

The conference report states that the complaint must ''state with particularity fact . . .''

There is no difference between these two statements of the law. The change was made at the request of the Judicial Conference.

The President objected to rule 11 attorney sanctions.

The sanctions provide greater protections to plaintiffs than defendants.

First, a complaint must have substantially violated rule 11 before the attorneys' fees sanctions would be imposed on plaintiffs. Defendants can be sanctioned for mere violations of rule 11.

Also, the bill gives courts discretion not to award fees in cases where an award would be unjust or would impose an unreasonable burden on a party. Providing extraordinary protection to plaintiffs litigating against corporate defendants.

It is one of the only bipartisan attempts at enacting legislation this Congress.

I ask unanimous consent that today's Washington Post editorial be printed in the RECORD as well as the letter from the National Association of Investors Corporation representing 360,000 investors calling for veto override. I also ask that a summary of the bill also be printed in the RECORD.

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

[From the Washington Post, Dec. 22, 1995]

OVERRIDE THE SECURITIES BILL VETO

President Clinton was wrong to veto the securities bill. He caved to the trial lawyers lobby, big contributors to the Democratic Party, in a dark-of-night action. Congress should override him. The House of Representatives voted the other day to do just that, with 89 Democrats joining the Republicans. Now it's up to the Senate.

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness. When the price of a company's stock drops sharply, the present law invites suits on the questionable grounds that the company's past expressions of hope for its future misled innocent stockholders.

This kind of suit has turned out to be a special danger to new companies, particularly high-technology ventures with volatile stock prices. The country has a strong interest in encouraging these companies and shielding them from a style of legal assault that is not far from extortion. The bill would protect companies' forecasts as long as they did not omit significant facts.

Under present law, the first lawyer to file one of these strike suits controls the litigation regardless of who else might sue on the same grounds later. Frequently the lawyers who specialize in this work settle their suits on terms that bring trivial benefits to the shareholders but fat fees to the lawyers themselves. The bill that Mr. Clinton vetoed would instead give the judge the authority to pick the lead plaintiff—usually the plaintiff with the biggest stake in the outcome. Plaintiffs would then choose their own lawyers and make their own decisions on whether and how to settle. That is clearly a desirable reform and a major improvement in shareholders' rights.

Mr. Clinton vetoed the bill because, he said, it would make too many difficulties for shareholders with legitimate grievances. There bill has been under intense debate and negotiation between the two parties for nearly a year, and if these defects are as significant as the president suggests, it's strange that the administration did not make an issue of them earlier.

More broadly, Mr. Clinton speaks of future injustices that he believes this bill might create but has little to say about the real and substantial injustices that the present law is creating. Overriding his veto will end an egregious misuse of securities laws in ways that harm both companies and shareholders.

NATIONAL ASSOCIATION OF INVESTORS CORP.,
Royal Oak, MI, December 21, 1995.

Hon. CHRISTOPHER DODD,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: On behalf of the more than 360,000 individual members and 18,000 investment clubs belonging to the National Association of Investors Corporation, I am writing to commend your efforts to override the misguided presidential veto of H.R. 1058, the Securities Litigation Reform Bill of 1995. Founded in 1951, NAIC is by far the largest membership organization of investors in the United States.

H.R. 1058 is an investor protection bill. It strengthens the government's tools for fighting corporate securities fraud, while it imposes long-awaited curbs on ''strike suits''—fraudulent lawsuits that cheat investors while pretending to help them. We urge you to work your hardest to override the veto and give investors relief from meritless litigation.

Sincerely,

KENNETH S. JANKE,
President & CEO.

SELECTED BILL PROVISIONS OF THE CONFERENCE REPORT TO H.R. 1058/S. 240

The federal securities laws provide a comprehensive legal framework designed to protect investors in the securities markets, to provide ground rules for companies seeking to raise money in our capital markets and to encourage disclosure of more, and accurate information about publicly traded companies. This bill updates our securities laws to better achieve these objectives in a balanced way. It restores integrity to securities class action litigation by filtering out abusive, frivolous class action lawsuits that harm investors and only benefit class action attorneys.

Adequate plaintiff standard.—Same as Senate-passed bill, with minor technical changes.

The objective: To provide a mechanism for ''plaintiff empowerment.'' To diminish the likelihood that these cases will be class action attorney-driven in the future. To allow real clients with real financial interests to be appropriately in charge of the lawsuit. To restore to real clients traditional control over their entrepreneurial counsel.

Under the private rights of action provisions of our securities laws, investors may sue to recover damages they incur as a result of the actions of corporations and other firms who violate the federal securities laws. These private lawsuits should serve a dual role. First, they should provide a means for investors to obtain recovery for damages caused by fraudulent activity. Second, they should serve as an important adjunct to the SEC's enforcement efforts.

Class actions should protect the public and compensate the injured. Increasingly, however, private securities class action litigation has become dominated by entrepreneurial attorneys who decide which companies to sue, when to sue and when and for how much to settle. Investors play an insignificant role in these multi-million dollar lawsuits. The situation is best illustrated by one prominent securities class action lawyer declaring: ''I have the best practice of law in the world:

I have no clients.'' This provision reasserts plaintiffs' role by: allowing any party who receives notice of the suit to come forward within 60 days of the filing of the suit to petition the court to act as lead plaintiff; creating a presumption that the ''most adequate plaintiff'' is the party with the greatest financial interest in the outcome of the litigation; allowing the ''most adequate plaintiff'' to exercise traditional plaintiff functions, including selecting lead counsel and negotiating counsel's fees; allowing ''most adequate plaintiff'' to make decisions regarding settlements; replacing the ''plaintiff steering committee'' and ''guardian ad litem'' provisions in the original S. 240.

Second circuit pleading standard becomes the uniform rule.—Same as Senate-passed bill; Senator Specter's amendment deleted from conference report.

The objective: To provide a filter at the earliest stage (the pleading stage) to screen out lawsuits that have no factual basis. To provide a clearer statement of plaintiffs' claims and scope of the case. To encourage attorneys to use greater care in drafting their complaints. To make it easier for innocent defendants to get cases against them dismissed early in the process. To eliminate the split among circuits dealing with pleading requirements for scienter. To codify the requirements in the 2nd Circuit.

A complaint should outline the facts supporting the lawsuit. Too often, complaints consist of boilerplate legalese and conclusions. An alleged Rule 10(b) or 10b–5 violation is a very serious charge. Asserting simply that ''the defendant acted with intent to defraud'' is a conclusion that should be insufficient to start a multi-million dollar lawsuit. Under the Conference Agreement, the complaint must set forth the facts supporting each of the alleged misstatements or omissions and must include facts that give rise to a ''strong inference'' of scienter or intent. If the complaint does not meet these requirements, the lawsuit will be terminated. This is a codification of the 2nd Circuit rule.

Too often, securities class action suits are characterized by the ''sue them all and let the judge sort it out'' mentality. But before the judge can sort it out, innocent defendants are required to spend a great deal of time and money to defend against specious claims. This bill corrects that problem by requiring plaintiffs to specify the statements alleged to have been misleading. This conforms securities actions with Rule 9(b) of the Federal Rules of Civil Procedure.

Safe harbor for predictive statements.—New provision; Changes address concerns raised by the SEC and during the floor debate.

The objective: To encourage disclosure of information by companies. To provide a procedural mechanism for responsibly-acting companies who make predictive statements to be protected from frivolous litigation if their prediction does not materialize. To provide judges with additional procedural tools to deal with frivolous cases involving predictive statements.

A central principle underlying our securities laws is that investors should receive accurate and timely information about publicly traded companies. By its definition, a forward-looking statement is a prediction about the future. Earnings projections, growth rate projections, dividend projections, and expected order rates are examples of forward-looking statements.

Forward-looking information is of significant value to investors in making informed investment decisions. It is this forward-looking information that allows efficient allocation of resources, ensuring that the market prices of publicly traded securities best reflect their intrinsic value. The SEC Rule 175 permits issuers to make forward looking statements about certain categories of information provided that the prediction is made in ''good faith'' with a ''reasonable basis.'' Currently, this SEC ''safe harbor'' rule actually discourages issuers from voluntary disclosing this information. To quote the SEC:

''Some have suggested that companies that makes voluntary disclosure of forward-looking information subject themselves to a significantly increased risk of securities antifraud class actions.'' As such, ''contrary to the Commission's original intent, the safe harbor is currently invoked on a very limited basis in the litigation context.'' Critics state that the safe harbor is ineffective in ensuring quick and inexpensive dismissal of frivolous private lawsuits.'' (SEC Securities Act of 1993 Release No. 7101, October 1994)

An American Stock Exchange survey supports that conclusion. It found that 75 percent of corporate CEOs limit the information disclosed to investors out of fear that greater disclosure would lead to an abusive lawsuit.

As the SEC has realized, forward-looking statements are predictions—not promises. This Conference Report creates a statutory ''safe harbor'' which:

Provides a clear definition of ''forward looking statement'' for both the '33 and '34 Acts.

Permits greater flexibity by creating a bifurcated safe harbor.

The safe harbor's first prong expands upon the judicially created ''bespeaks caution'' doctrine. This safe harbor:

1. Protects a written or oral statement that is identified as forward-looking.

2. Requires that the predictive statement contain a meaningful cautionary statement which identifies business factors describing why the prediction may not come true.

3. Focuses on the statement and how it was made.

4. Does not allow an inquiry into the state of mind of the speaker.

The safe harbor's second prong provides an alternative analysis if the statement is not made in a way consistent with the warning requirements of the bespeaks caution test. This prong:

1. Applies to written and oral statements.

2. Focuses on the speaker's state of mind.

3. Protects companies from liability unless the prediction was made with actual knowledge that it was false.

4. Protects companies from liability unless the prediction was made or ratified by an executive officer with actual knowledge that it was false.

5. Gives no safe harbor protection for ''knowingly false or misleading'' statements. This addresses Senator Sarbanes concern that the safe harbor would permit corporate executives to mislead investors. There is no so-called ''license to lie''.

The Conference Report also creates a new safe harbor for oral statements which requires that the oral statement warn listeners that the statement is a prediction, that the prediction may not come true, and tell investors where they can find additional information about the prediction in SEC filings or press releases.

Both safe harbors protect statements made by issuers, persons acting on their behalf such as officers, directors, employees, outside reviewers retained by the issuer and underwriters with respect to information they receive from issuers. Accounting and law firms are eligible for the safe harbor, brokers and dealers are not.

The safe harbor provides no protection for certain transactions and parties, like initial public offerings (IPOs), penny stocks, roll-up transactions, going private transactions, tender offers, partnerships, limited liability corporations or direct participation investments and issuers who have violated the securities laws. Also, the safe harbor does not protect forward-looking statements included in financial statements.

Conference report drops the provision authorizing the SEC to sue for damages on behalf of investors in predictive statement cases. (Senate-passed bill provision).

Encourages SEC to review the need for additional safe harbors.

Litigation cost containment provisions—Discovery Stay.—Same as Senate-passed bill.

The objective: To limit the in terrorem nature of defending a frivolous class action securities lawsuit. To require the judge to determine whether the case has any merit prior to subjecting the defendants to the time and expense of turning over the company's records. To provide for a ''stay of discovery'' pending a motion to dismiss. This ''stay'' provides the defendants with the opportunity to have a motion for a dismissal considered prior to the plaintiffs' lawyers beginning ''discovery.'' This discovery usually consists of requests for voluminous documents and time consuming depositions of company CEOs and other key employees.

A typical tactic of plaintiff lawyers is to request an extensive list of documents and to schedule an ambitious agenda of depositions that often distract the company CEO and other key officers and directors. Discovery costs comprise eighty percent of the expense of defending a securities class action lawsuit. To minimize the in terroem impact of the frivolous cases, the Conference Report:

Requires the court to suspend discovery during the pendency of any motion to dismiss unless discovery is needed to preserve evidence or prevent undue prejudice. A stay of discovery puts such requests for documents and deposition schedules on hold until the judge rules on whether the case should be kicked out of court.

Prohibits parties in securities fraud cases to destroy or alter documents.

Attorney sanctions for filing frivolous securities fraud suits—enhanced rule 11.—Same as Senate-passed bill, with technical changes.

The objective: To deter plaintiffs' attorneys from filing meritless securities class actions. To make attorneys, not investors, bear responsibility of filing frivolous cases. To require judges to review the conduct of attorneys and to discipline those who file frivolous law suits and abuse our judicial system. To encourage attorneys to use greater care in drafting complaints and create a speed bump to slow the ''race to the courthouse.''

Frivolous securities suits filed with little or no research into their merits can cost companies hundreds of thousands of dollars in legal fees and company time. According to a sample of cases provided by the National Association of Securities and Commercial Law Attorneys (NASCAT), 21 percent of the class action securities cases were filed within 48 hours of a triggering event such as a missed earnings projection announcement.

Innocent companies pay millions of dollars defending these frivolous cases. Even when firms are exonerated they have large defense attorney's bills to pay. Our current system is a ''winner pays'' system.

Attorneys should be required to exercise due diligence before they file these expensive lawsuits and they should be sanctioned if they fail to exercise proper care. Accordingly, this Conference Agreement:

Requires the judge, upon final disposition of the case, to make specific findings regarding whether the complaint, responsive pleadings and dispositive motions complied with the requirements of Rule 11(b) of the Federal

Rules of Civil Procedures. Rule 11 provides sanctions for filing frivolous lawsuits. (This differs from the Senate-passed bill, which required judges to review the entire record; judges felt that this was too burdensome given the voluminous record in these class actions.)

Requires the judge to discipline lawyers if the judge finds that the lawyer violated the rule. Under the Conference Agreement, the judge would require an offending attorney to pay the reasonable attorneys' fees and costs of the innocent party as the punishment for filing a frivolous lawsuit. This is a rebuttable presumption.

A party may rebut the presumption with proof that the award of fees and costs will impose an undue burden on the violator, provided that the failure to impose fees and costs does not impose a greater burden on the victim of the violation. Also, may rebut the presumption with proof that the Rule 11 violation was de minimis.

Does not create a ''loser pays'' rule. It merely adds teeth to existing Rule 11.

Attorney fee reform: Limits the use of the lodestar method of calculating attorneys' fees, and replaces it with a more easily understood disclosure of attorneys' fees.—Same as Senate-passed bill.

The objective: To closer align the interests of the plaintiffs with their entrepreneurial lawyers. To make it easier for the class to understand how the lawyers are being compensated and to challenge attorneys' fees. To ensure that attorneys' fees do not unnecessarily conflict with the interests of the plaintiffs.

Plaintiffs' attorneys fees are often calculate by the ''lodestar method.'' Under this calculation, a lodestar amount is determined by multiplying the attorney's hours worked by a reasonable hourly fee, adjusted by a multiplier to reflect the risk of litigation and other factors. It encourages abuses, (like performance of unjustified work), which protracts the litigation. From the judiciary's point of view, lodestar adds inefficiency to the process. From the investors' point of view, it is difficult to figure out what the lawyer did and how much they are getting paid for doing it.

This Conference Report limits attorney's fees in a class action to an easy to understand percentage of the amount actually recovered as a result of the attorney's efforts—rather than allowing attorneys to recover their fees without regard to how well the class does. This gives lawyers an incentive to get higher recoveries for investors, not just bill more hours. This is extremely important in ensuring that the attorneys' incentives coincide with those of the class. This bill also provides the class members with the information they need to make an informed judgment on attorneys' fees and settlement offers. The provision provides better disclosure to the injured parties so they can determined whether they may want to challenge their attorneys' claim to the settlement fund.

Disclosure of settlement terms.—Same as Senate-passed bill.

The objective: to replace meaningless legalese and boilerplate conclusions with meaningful information about the per share amount a proposed settlement would provide. To provide information about the fairness of the settlement and an evaluation of whether more could be obtained if the case went to trial.

The Conference Agreement would provide class members with information about the proposed settlement, including the total amount of the settlement, and the total amount of attorneys' fees sought from the settlement fund. If the parties cannot agree upon the amount of damages which would be recoverable, the disclosure of the settlement offer must state the reasons why the parties disagree.

Proportionate liability.—Same as Senate-passed bill, with technical changes.

The objective: To reduce the pressure to settle frivolous claims. To provide a two-tier liability system which retains joint and several liability for those participants who ''knowingly'' engage in a fraudulent scheme and proportionate liability for those participants who are only incidentally involved (those who are ''less than knowing in their conduct.'')

The Conference Agreement ensures that those primarily responsible for the plaintiffs' loss bear the primary burden in making the plaintiffs whole. Under current law, co-defendants each have ''joint and several'' liability for 100 percent of the damages—irrespective of their role in a fraudulent scheme. This has caused ''deep pockets'' such as law firms, accounting firms, and securities firms to be named as defendants merely to extract a settlement from them.

The Conference Report requires that each co-defendant pay for his share of the damages caused. Provisions protect investors in the event a co-defendant is insolvent. The National Association of Securities and Commercial Law Attorneys (NASCAT) submission suggested that of the 66 cases they provided us with information on, 25 percent had an insolvent co-defendant. The bill contains provisions to ensure that investors are compensated in cases where there is an insolvent co-defendant. Specifically, the Conference Report—

Requires the courts to determine who has committed a ''knowing securities violation'', and holds them jointly and severally liable for the plaintiff's damages. All others are held proportionately liable.

Protects plaintiffs from insolvent co-defendants. Provides that when plaintiffs are unable to collect a portion of their damages from an invovlent co-defendant, the proportionately liable defendants would chip in additional funds. Proportionally liable co-defandants could be required to pay up to 150% of their share of the damages.

Provides special protection for small investors by holdings all defendants jointly and severally liable for the uncollectible shares of insolvent co-defendants for certain plaintiffs whose damages are more than 10% of their net worth, and if their net worth is less than $200,000.

Contribution reform.—Same as Senate-passed bill, with minor change involving indemnification agreements.

The objective: To provide uniformity among the circuits. To ensure that defendants are not unfairly required to pay more than their fair share of damages.

If a plaintiff is unable to recover damages from a defendant, the Conference Report requires the remaining defendants to make up at least a portion of that difference. Those co-defendants may then recover contributions from any other person who would have been liable for the same damages. Contribution claims will be based upon the percentage of responsibility of the claimant and the parties against whom contribution is sought. Further, the Conference Report:

Encourages settlement by discharging from liability any defendant who enters into a good faith settlement with the plaintiff before a verdict or judgment.

Allows parties to take advantage of indemnification agreements with issuers and recover fees and costs associated with the action as long as the defendant prevails at trial.

Fraud detection and disclosure.—Same as Senate-passed bill.

The objective: To exposure fraud before investors lose money.

The Conference Agreement establishes a clear and immediate duty on the part of auditors to inform company management of any material illegal acts they uncover in their audit. If the auditors fail to take appropriate action promptly they are subject to a civil penalty.

This is a Kerry-Wyden bill and the conferees believe it belongs in the package or reforms. It is very important for the accounting profession to be vigilant in their public watchdog role.

Other provisions retained in the conference agreement.—Same as Senate-passed bill, except for minor change to RICO provision.

Makes sure all shareholders are treated equally by greatly restricting lawyers' ability to negotiate bonus payments for their ''pet plaintiffs'' or ''professional plaintiffs'' who let the lawyers use their names to file lawsuits.

Prohibits brokers and dealers from receiving referral fees for giving names of clients to class action attorneys.

Requires a court to determine whether an attorney who own stock in the company he is suing constitutes a conflict of interest that should disqualify him from action as counsel.

Prohibits the payment of SEC disgorgement funds to plaintiffs' lawyers.

Prohibits keeping settlement terms a secret by greatly limiting the use of settlements under seal.

Eliminates private actions for securities fraud under the ''civil RICO'' (the Racketeer Influenced and Corrupt Organization Act), except against those previously criminally convicted of securities fraud. (this is the minor change).

Requires the court to submit to the jury a written interrogatory (question) on the issue of each defendant's state of mind at the time of the alleged violation to make it less likely that individuals only accidentally involved in the scheme are held liable.

Mr. DOLE. Mr. President, I was very surprised and disappointed yesterday when I heard that President Clinton had vetoed the Private Securities Litigation Reform Act of 1995. Two weeks ago the Senate passed this bill by a bipartisan vote of 65 to 30 and until 30 minutes before the deadline Tuesday night, President Clinton indicated that he would support this bill.

As I pointed out when the Senate was debating the conference report to this bill, President Clinton had a clear choice. If he supported this bill, he supported creating jobs for Americans by reducing frivolous, costly lawsuits on businesses. If he opposed it, he only supported enriching the pockets of wealthy trial lawyers at the expense of consumers and investors. It's too bad he chose the latter.

President Clinton talks a lot about being concerned about middle-class Americans. It is my understanding that he invited some wealthy trial lawyers over for dinner the other night to thank them for a million dollar contribution. It's unfortunate that he decided to come down on their side, instead of the side of ordinary working Americans and small investors.

These wealthy trial lawyers devote their professional lives to gaming the system by filing ''strike'' suits alleging violations of the Federal securities laws—all in the hope that the defendant will settle quickly in order to avoid the expense of drawn-out litigation.

Of course, these strike suits are often baseless. If a stock price falls, these lawyers will file a class-action suit claiming that the company was too optimistic in their projections. If the stock price soars, these same lawyers will file suit saying that the company withheld information that caused shareholders to sell too early. In effect, the lawsuits act as a litigation tax that raises the cost of capital and chills disclosure of important corporate information to shareholders.

The high-tech, high-growth companies of Silicon Valley, CA are particularly vulnerable to these fraudulent and abusive lawsuits because of the volatility of their stock prices. Over 50 percent of the top 100 businesses in Silicon Valley have been sued at least once. And the $500 million in so-called damages, the majority of which goes to the wealthy trial lawyers, is money that could have been used to create jobs and pay higher salaries to the working-class in the high-tech industry.

Mr. President, the Senate has been working for years in a bipartisan manner to pass legislation on this issue. Yesterday, the House, in an overwhelmingly bipartisan fashion, voted 319 to 100 to override President Clinton's veto. This is a good and fair bill, and I urge my colleagues on both sides of the aisle to do likewise and support it.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. Mr. President, I yield 5 minutes to Senator DODD.

Mr. DODD. Mr. President, I thank my colleague from New York. Let me start where I did yesterday, Mr. President. It is no great pleasure that I stand here this morning urging my colleagues to override President Clinton's veto of this bill. This is not something that I sought or welcome at all. I regret that it has come to this, particularly since about 98 percent of this legislation the President endorsed. It is on about 2 percent, on technical points, over 11 words—there are 12,000 words, roughly, in this legislation, and 11 words out of the 12,000, we were informed after all the negotiations, would be a problem.

Therefore, I regret deeply that we are in this situation, after 4 years, 12 congressional hearings, over 100 witnesses, 5,000 pages of testimony, and committee reports, and truly a bipartisan effort, going back to 1991. It has come down to a pleading standards disappointment and a disagreement over rule 11. Consider all of the other things that have been accomplished with this legislation dealing with proportionate liability and safe harbor, the lead plaintiff issues—they were all major, major efforts that involved a tremendous amount of work.

I will point out, as my colleague from New York has, this morning's lead editorial in the Washington Post. I ask unanimous consent that it be printed at this point in the RECORD.

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

[From the Washington Post, Dec. 22, 1995]

OVERRIDE THE SECURITIES BILL VETO

President Clinton was wrong to veto the securities bill. He caved to the trial lawyers' lobby, big contributors to the Democratic Party, in a dark-of-night action. Congress should override him. The House of Representatives voted the other day to do just that, with 89 Democrats joining the Republicans. Now it's up to the Senate.

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness. When the price of a company's stock drops sharply, the present law invites suits on the questionable grounds that the company's past expressions of hope for its future misled innocent stockholders.

This kind of suit has turned out to be a special danger to new companies, particularly high-technology ventures with volatile stock prices. The country has a strong interest in encouraging these companies and shielding them from a style of legal assault that is not far from extortion. The bill would protect companies' forecasts as long as they did not omit significant facts.

Under present law, the first lawyer to file one of these strike suits controls the litigation regardless of who else might sue on the same grounds later. Frequently the lawyers who specialize in this work settle their suits on terms that bring trivial benefits to the shareholders but fat fees to the lawyers themselves. The bill that Mr. Clinton vetoed would instead give the judge the authority to pick the lead plaintiff—usually the plaintiff with the biggest stake in the outcome. Plaintiffs would then choose their own lawyers and make their own decisions on whether and how to settle. That is clearly a desirable reform and a major improvement in shareholders' rights.

Mr. Clinton vetoed the bill because, he said, it would make too many difficulties for shareholders with legitimate grievances. There are two things to be said about that. This bill has been under intense debate and negotiation between the two parties for nearly a year, and if these defects are as significant as the president suggests, it's strange that the administration did not make an issue of them earlier.

More broadly, Mr. Clinton speaks of future injustices that he believes this bill might create but has little to say about the real and substantial injustices that the present law is creating. Overriding his veto will end an egregious misuse of securities laws in ways that harm both companies and shareholders.

Mr. DODD. Mr. President, just reading the last paragraph:

> More broadly, Mr. Clinton speaks of future injustices that he believes the bill might create but has little to say about the real and substantial injustices that present law is creating. Overriding his veto will end an egregious misuse of securities laws in ways that harm both companies and shareholders.

That is the thrust of all of this. The present system is fatally flawed and broken. It is costing billions of dollars each year to maintain the present system. That we all know.

As I said yesterday, if in the pleading standards—which we adopted, by the way, and the administration last June endorsed the language in the bill, calling them sensible and workable—we adopted the language as recommended by the Judicial Conference, not proponents or opponents of the legislation, but the Judicial Conference, who represents the Federal judiciary, the judges in this country. They recommended the language we included in the bill.

Therefore, I am mystified why one would object to the language that the judges who sit and preside over these matters have recommended. Rule 11 is a very simple matter. Rule 11 exists in order to penalize the attorneys who bring frivolous lawsuits. We put some teeth in it. If you bring a frivolous lawsuit and you cause a defendant tremendous economic harm through attorney's fees, as we saw in one case where a $15,000 contract that one company entered into cost them $7 million in legal fees, that the case was thrown out of court. The people who pay that $7 million are usually not the chief executive officers of those companies, but the employees, shareholders, investors, and others who bear the financial burden. It is estimated that some $32 billion each year is put in play as a result of these strike suits. We hoped that we would be able to have a Presidential signature confirming the bipartisan effort in this area.

Mr. President, it is with a deep sense of regret that I am on the opposite side of my President on this issue. But I believe that the override is the proper course to follow here. For those reasons, I urge my colleagues to continue to support this legislation, as many have over the last 4 years, in committee votes, votes here on the floor of the U.S. Senate and, of course, in the conference report, as well, that has come back from the House and the Senate after the negotiations.

This is a very important issue, Mr. President. It sends a very important signal. We have these new startup, high-technology companies that represent, I think, the future of employment for this country for the 21st century. These companies where a stock fluctuates a few points and there is complaint filed against them, covering millions of dollars in settlement fees, is something that ought to be changed.

We have put together a good, strong bill that I think addresses the major concerns that people raised over the years about this issue. I am pleased so many of my colleagues—almost 70 of them here, as well as in excess of 300 in the House—have supported this effort. I regret, again, that the President decided to veto the legislation. We can correct that this morning by overriding this veto, adopting this legislation, and getting about the other business of this body.

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

Mr. SARBANES. I yield the remainder of our time to the distinguished Senator from Nevada.

Mr. BRYAN. I thank the distinguished Senator from Maryland.

Mr. President, this vote is on an important piece of legislation, but it also

sends a message about what this Congress is all about and what its Members stand for. First, I would like to compliment the proponents of this legislation. They have done an artful and a masterful job in framing the issue in the context of the lawyers, and this is lawyer bashing. No one loves lawyers, and no would fails to acknowledge that there is clearly some abuse on the part of some lawyers, but if we listen to the arguments the proponents have advanced this morning, you would think that a relatively small group of lawyers, who specialize in representing consumers and small investors in class actions, who have been swindled as a result of investor fraud, would be responsible for all of the ills that confront modern civilization, from the Federal deficit that we wrestle with today, to the spread of communism in the 1950's, 1960's, 1970's, and 1980's.

At the same time, the proponents of this legislation have obscured the fact that troubles me most, and that is that this legislation will affect a lot of innocent people who have lost money as a result of investor fraud.

Somehow, the voices of seniors and consumers, small investors, firefighters, policemen, attorneys general, mayors and securities regulators, State treasurers, local government treasurers, treasurers involved with universities and colleges, somehow their concerns which have been advanced and articulated have been ignored.

If I impart nothing else to my colleagues today, I would like everyone who is listening to this debate to know that this bill will, in fact, adversely affect meritorious lawsuits and small investors who find it much more difficult to recover their savings. There is no doubt that this bill will address frivolous lawsuits. But that could have been done, Mr. President—nobody disagrees with the need to correct those abuses. We could have crafted a narrow piece of legislation that would have addressed that issue and yet, at the same time, protected small investors.

What will the impact be of precluding countless meritorious suits being filed? Nobody knows, but it is safe to say crooks will be emboldened, investor confidence in our markets will go down, and defrauded investors will not be compensated. The integrity of America's security markets, the envy of the world, will suffer as a consequence.

As some indication as to how overreaching this piece of legislation is, how one-sided it is, can anyone tell me what the logic is to say if a plaintiff's lawyer files a frivolous motion the attorney pays the cost of the entire lawsuit, but if a defense lawyer files a frivolous motion, he or she pays only the cost of that motion? It seems to me what is sauce for the goose is sauce for the gander. There ought to be equal sanctions both as to plaintiff's lawyers and defendant's lawyers who act in an irresponsible, frivolous fashion.

I have yet to hear an argument advanced on the floor as to why we do not extend the statute of limitations as has been requested. Why should a crook who disguises his fraud for 3 years be able to avoid the class action penalty? I know of no reason why we should not correct a situation which currently exists that those who aid and abet fraud currently face no liability. What is the logic of that? What does that have to do with frivolous lawsuits?

That, Mr. President, is why I am so deeply troubled by the message that we send today. President Clinton has said he is prepared to sign a good bill. Senator SARBANES, Senator BOXER, and others who have taken the floor to express concerns, we are prepared to support legislation that deals with frivolous lawsuits. But what we have is a piece of legislation that moves to the floor and apparently will now move to be enacted that is not designed solely for frivolous lawsuits but goes much further.

What happens if the President's veto is sustained? The sponsors can come back with a bill that fixes the excesses.

We are going to have securities litigation reform legislation this Congress. President Clinton has said he is prepared to sign a good bill, and there is unanimity that measures to curb abuses should be enacted.

What we are in disagreement over is will we enact balanced, reasonable reforms or will we go overboard in our zeal.

What message are we sending by overrriding the President's veto today? We are saying forget about balance, forget about reasonableness. If you got the votes to crush small investors and consumers, go for it.

I can honestly say this bill is the most one-sided, anticonsumer bill I have seen.

This will be a sad day if we fail to sustain the President's veto. I urge my colleagues to vote ''no'' on this override and let us come back and send the President a balanced bill.

Mr. D'AMATO. Mr. President, I think we have said everything that has to be said. I know we want to commence voting at 11:15, so I yield back. Unless any of my colleagues on the other side want to use the balance of the time, I yield back our time so we can take up the other matter.

PERSONAL RESPONSIBILITY AND WORK ACT OF 1995—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes for closing remarks on the conference report accompanying H.R. 4, to be divided in the usual form.

The clerk will report.

The legislative clerk read as follows:

A conference report to accompany H.R. 4 to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

The Senate resumed consideration of the conference report.

Mr. MOYNIHAN. Mr. President, to begin, I ask there be printed in the RECORD an editorial in this morning's Washington Post entitled ''Hard Hearts, Soft Heads.''

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

[From the Washington Post, Dec. 22, 1995]

HARD HEARTS, SOFT HEADS

President Clinton earlier this year gave way too much ground in endorsing one bad welfare bill. Yesterday, he finally took the right stance in announcing that he would veto a successor bill that is even worse. Better late than never, and not a moment too soon.

His announcement came as the House passed this terrible piece of legislation and the Senate prepared to take it up. This time, Mr. Clinton should stick to his position, and the bill's opponent should have the political will to sustain any veto. That would provide the one chance of passing welfare reform that does what it claims—or, failing that, of at least avoiding a dangerous step toward something worse even than the current system.

Advocates of this bill's deep cuts in programs for the poor and its ending of welfare's ''entitlement'' status like to cast themselves as true friends of the poor and foes of ''dependency.'' Their hardheadedness, they insist, grows from warm-heartedness and a desire to promote work.

But the House Ways and Means subcommittee on human resources heard a very different analysis from Lawrence M. Mead, a welfare expert much respected by Republicans and conservatives. Prof. Mead was not at all confident that Congress's welfare proposal would do much to promote work. On the contrary, he said, it imposes theoretical ''work requirements'' that states will have great trouble meeting. He suggested that the states might just dump work requirements entirely and take the modest 5 percent cut in federal aid that the bill proposes. This is ''workfare''?

But hear out Mr. Mead's argument. ''To promote serious reform, it is crucial that Congress manifest that work requirements are serious, and also that it is possible to meet them,'' he said. ''I fear that the new stipulations are not credible as they stand. They call for participation rates never before realized except in a few localities, yet they provide no specific funding or program comparable to JOBS [the Job Opportunities and Basic Skills program] to realize them. The demands made look excessive, but it is also doubtful whether Congress really means to enforce them.'' Imagine that: a bill that claims to be historic whose work requirements are essentially rhetorical.

If Congress wants a welfare ''reform'' that will do little to encourage work while endangering the basic systems of support for poor children, this bill is just the ticket. But that's a strange place for a ''revolutionary'' Congress to end up.

Mr. MOYNIHAN. Mr. President, last evening, I had occasion to remark that persons most specifically critical of the welfare measure before the Senate have been conservative social scientists who understand the extent of the problem we face and the resources needed if we are going to achieve anything.

I mentioned Prof. Lawrence Mead. It turns out he prepared a report for the Republican Caucus in the House saying ''Your bill is a disaster, can't you see that?'' and readers will do so.

Several of those of us who voted against this measure in September are

on the floor. My friend from Minnesota, may I yield him 1½ minutes.

Mr. WELLSTONE. I thank the Senator from New York. Mr. President, I voted for this piece of legislation when it first came to the Senate. I asked the question, will this bill called ''reform'' lead to more children who are impoverished and more hunger among children? I said, if so, I would vote ''no.'' I voted ''no.''

Two studies have come out since that time that said that is exactly what would happen. Now we have a conference report even more harsh, even more punitive, without basic medical assistance, guarantees of medical assistance coverage, with even more drastic cuts in nutrition programs for children.

Mr. President, this is too harsh. It is too extreme. It is beyond the goodness of America. It is punitive toward children. We should not vote for a piece of legislation that will mean there will be more impoverished children and more hungry children and more children without health care. That is not what we are about. That is not what America is about. I urge my colleagues to vote against this.

Mr. MOYNIHAN. I yield 5 minutes to the distinguished minority leader.

Mr. DASCHLE. I thank the Senator from New York. Mr. President, this bill represents a lost opportunity. Democrats and Republicans share the view that the current welfare system needs to be reformed. We recognize that the current system does not work. It does not enable people to become self-sufficient. It does not contain the resources to put people to work. It is not flexible enough for the States. It sends mixed messages to welfare recipients.

Welfare can become a trap, that work does not pay. In short, most recognize that welfare should not be a way of life. We also recognize the twin goals of creating incentives to work, to provide the opportunity for welfare offices to truly become employment offices. That is No. 1—giving people a chance to work, people who want to work, who have no skills to work, who need to work. They want that opportunity, Mr. President, and that ought to be the goal of welfare reform.

Our second goal ought to be to protect children, to provide them the nutrition, to provide them the housing, and most importantly, if we are going to ensure that parents have the confidence that they can leave their homes and go to work, that their children will be cared for while they are gone.

There is no perfect solution, no easy solution, but Democrats in a unanimous demonstration of support proposed what we called the Work First bill. The Senate-passed bill was passed with the support of many of us and we recognized it as really, just a first step—a minimal bill in many respects, minimally acceptable in the view of many of us, but certainly a bill that represented an improvement over the current system.

The pending conference report, Mr. President, has fallen way below that minimum standard of acceptability. It will move more children into poverty, not less. It provides virtually no protections for children. It particularly targets disabled children.

The pending bill falls far short of real welfare reform. It fails to achieve the goals. It punishes children and it does not move people to work. It does not provide the resources necessary to move people from welfare to work. It does not provide sufficient child care funds. It slashes assistance for disabled children and abused and neglected children.

So the conference bill in our view is a deep disappointment. It is not only a lost opportunity for millions of men and women and children, it may also do real harm to the very people that it is supposed to help. It reduces or terminates benefits for 1 million disabled children receiving supplemental security income. It endangers the lives of millions of abused and neglected children. Most importantly, it terminates Medicaid coverage for the poor, and begs the question, where do we expect them to go?

It is a lost opportunity as well for the working poor. While simultaneously threatening real harm for them, too, by slashing food stamp funding important to millions of low-income working families and the elderly, it slashes the earned income tax credit, the most effective effort to move low-income people into the work force and retain them in the work force that we have today.

It underfunds child care assistance, which we know is the linchpin between welfare and work. It dismantles the current health and safety standards contained in the child care development block grant. So the conference bill falls far short of the minimum standard of acceptability which many of us supported in the Senate-passed bill. It reneges on nearly every improvement Democrats made to the bill before it passed in the Senate.

Let there be no mistake. Democrats strongly support welfare reform, but this legislation threatens single women and children, the disabled, and the working poor. This is not primarily a debate about spending.

The PRESIDING OFFICER. The time of the leader has expired.

Mr. DASCHLE. I ask unanimous consent I be allowed to use 3 minutes of my leader time to complete my statement.

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

Mr. DASCHLE. Democrats proposed over $20 billion in welfare savings as part of a Democratic alternative, debated in September. Earlier this week we proposed over $40 billion in welfare savings as part of an overall budget being negotiated. So, this is a debate about policy, about changes in funding with a serious regard for reform. It is about a real effort to move people from welfare to work.

In the name of reform, this bill boxes up the current system and shifts it off to the States. It says, ''You do it. We do not care if you have the resources or not, you, Governors, you fix it.'' It is ironic that in the same session we passed legislation to prohibit unfunded mandates, some now propose we pass the biggest one of all.

So it is with deep regret we cannot support this attempt at welfare reform. We had hoped to work with conferees to improve the Senate bill. We had hoped we could continue to work in a bipartisan manner. We regret the political process led to this political document that falls far short of real reform. We regret that this bill is not about work, that it does not protect children. At best, it is a recognition of a vexing national problem which must be addressed. At worst, it is an experiment set up for failure.

A defeat of this conference report is the first step to a bipartisan effort to create real welfare reform, just as we did with the Senate-passed bill. This bill is going nowhere. The President will veto it if we fail to defeat it now. So let us get down to business. Let us work in a bipartisan fashion to draft a real welfare reform bill.

It should not take a veto to achieve that objective. This opportunity, this lost opportunity, is not our last chance. Together, as Republicans and Democrats determined to solve a real problem, we can seize the opportunity to make welfare work.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, as I stated on repeated occasions in last evening's debate, this is not welfare reform; this is welfare repeal. It is repeal of title IV(A) of the Social Security Act, something never done, never contemplated in this Congress in 60 years.

I am happy to yield a minute and a half to my valiant comrade in this regard, the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois [Mr. SIMON] is recognized for a minute and a half.

Mr. SIMON. Mr. President, I do not ordinarily mention religion on the floor of the U.S. Senate, but in 3 days we will celebrate the birth of Jesus, and the majority of Americans claim affiliation with his religion. And he said, in the Biblical account in Matthew 25, whatever you do for poor people you do to me. That is the judgment day scene that he describes. We, in the U.S. Congress, are going to celebrate Christmas by trashing poor people. What a record: Reducing food stamps, abused children, foster care children, cutting them by 23 percent when the numbers are going up, disabled children, 160,000—sorry, you are off of SSI. For 750,000 disabled children, cutting it by 25 percent.

Real welfare reform, not just public relations, will have to deal with jobs for people of limited ability. It will have to deal with problems of poverty.

But we are going to celebrate Christmas by trashing poor people.

It is not a record we can be proud of. I am going to vote no, and be proud to vote no.

Mr. MOYNIHAN. The people of Illinois can be proud of you, sir.

Mr. SIMON. I thank my colleague.

The PRESIDING OFFICER. Who yields time? The Senator from Delaware [Mr. ROTH] is recognized.

Mr. ROTH. Mr. President, I yield myself such time as I may use.

Mr. President, 3 months ago the Senate passed H.R. 4 by an overwhelming bipartisan vote of 87 to 12. Republicans and Democrats worked together on the floor of the Senate to forge an agreement to deliver a comprehensive, bipartisan welfare reform package which has been promised for so long.

In a few minutes we will vote on a final conference report on H.R. 4, the Personal Responsibility and Work Opportunity Act of 1995. There has been a great deal of misinformation about this conference report, as President Clinton has issued his unfortunate veto threat against this legislation. Instead of ending welfare as we know it, it seems he prefers to continue business as usual.

Let me say to each of the 87 Members who voted for authentic welfare reform last September, you should not hesitate to vote for this conference agreement. Overall, you will find H.R. 4 remains true to the goals we share and to the most important agreements we made.

Members know that from the early days of his administration, the President has outlined principles for welfare reform. H.R. 4 meets these principles.

I invite Members to go back through the record of this past year. You will find there were substantial differences between the House and Senate versions of welfare reform. Those who examine the conference report in all its details will surely agree it more closely reflects the Senate positions on the major issues at stake.

We have, in fact, added more money for the block grants for temporary assistance for needy families. We have, in fact, increased funding for child care. We have retained the Senate position on requiring the States' maintenance of effort. We rejected House provisions which would have converted SSI assistance to children into a block grant. We have improved child support enforcement provisions. We have preserved the current law entitlements to foster care and adoption assistance maintenance payments. We are keeping our commitment to children in the foster care system. Contrary to some disinformation, they will continue to be eligible for Medicaid coverage.

So I hope all Members will objectively examine the conference report and compare it to the House and Senate version passed earlier this year. But more important, I invite Members to open their minds to what the States are doing when they get the opportunity to design modifications to the current welfare system. Look at what is being done in Massachusetts, Michigan, Wisconsin, Delaware, Virginia, and Iowa when the States are allowed at least some measure of control over the welfare system.

For a reassuring glimpse of the future, I recommend an article by Massachusetts Gov. William Weld entitled, ''Release Us From Federal Nonsense,'' which appeared in the Wall Street Journal last week.

As for me, I have greater confidence in the Governor and State legislature in Delaware than I do in the careerists in the Hubert Humphrey building. We know why the number of people in poverty has continued to increase despite the best efforts and intentions. But after 30 years of failed experimentation, it is clear the Washington bureaucracy cannot tell us how to break the vicious cycle of dependency. Complex human behavior cannot be reduced to a mathematical diagram. We have not found the wisdom of Solomon in the Federal Register.

President Clinton has stated he will veto H.R. 4. Last night, a number of my colleagues on the other side of the aisle stated that we should wait for a bipartisan bill. Mr. President, we have a bipartisan bill. The Senate bill passed 87 to 12. President Clinton promised welfare reform 34 months ago. Today, we are delivering welfare reform to the American people. There is no need to wait any longer. Welfare reform is here.

I yield the floor, Mr. President.

Mr. FORD. Mr. President, according to the latest figures I have, there are 92,160 unemployed individuals in Kentucky. Eight counties in my State still have double-digit unemployment rates.

There is widespread support for putting welfare recipients to work. But one of the questions I frequently get when I talk to constituents about welfare reform is ''Where will the jobs come from?'' I still do not know the answer. I do not think we have thought through that simple question very well.

I also get asked two conflicting questions about welfare. One is ''Why don't you cut spending on welfare?'', and ''What are you going to do to enable those on welfare to find jobs?''

These are legitimate questions. I hear about three common barriers to those on welfare who truly want to work:

First, fear of losing health care for their kids—and that is Medicaid;

Second, lack of affordable child care; and

Third, inadequate educational or job training opportunities.

I supported the earlier version of welfare reform because I thought it was a good faith attempt to address these competing priorities. It did reduce overall spending on welfare programs, and it also attempted to address some of the obstacles to finding jobs—particularly child care.

Unfortunately, the conference report before us today, in my opinion, has shifted entirely toward cutting spending. It cuts spending far more than the Senate-passed bill, and it retreats from putting people to work.

When you combine this with the impact of the Republican budget proposal, you see even further that this conference report just simply will not work:

First, the proposed Republican budget cuts in Medicaid will be devastating for those trying to get off of welfare and go to work.

Second, the proposed Republican tax increases on low-income families will hurt many just as they try to get off welfare.

Third, the revised, pessimistic CBO numbers on the unemployment rate assume that unemployment will remain virtually unchanged at 6 percent over the next 7 years even if we pass a balanced budget plan. This means jobs will be at least as scarce as they are today for those trying to go from welfare to work.

Mr. President, I do believe this welfare conference report will succeed in reducing Federal spending on welfare programs. But I believe it will—

First, fail to put people to work;

Second, underfund child care; and

Third, increase poverty among our children.

For these and other reasons, I cannot support this conference report, because I simply do not believe it will work.

WELFARE SIDE BY SIDE

	Senate-passed bill	Conference report
Work	measures work	measures work.
	work bonus	no bonus; lowers maintenance of effort for successful States instead.
	$8 billion child care over 5 years	$7.0 billion child care over 5 years.
	80 percent maintenance of effort	75% State maintenance of effort.
	personal responsibility contract required	no Personal Responsibility Contract.
	work exemption for moms w/kids under 1	work exemption for moms w/kids under 1.
	work after 3 months	no work for 2 years.
Time limits	20 percent exemption	15% exemption.
Protect kids	$8 billion child care over 5 years	$7.0 billion child care over 5 years.
	100 percent maintenance of effort for child care	75% maintenance of effort for child care.
	no transfer for CCDBG	no transfer of CCDBG.
	retains health and safety standards for child care	eliminates health and safety standards for child care.
	no mom w/child under 6 can be sanctioned due to inability to find or afford child care	No mom w/child under 6 can be sanctioned due to inability to find or afford child care.
	State option to allow mom w/kids under 6 to work 20 hours per week	mom w/kids of any age required to work 35 hours per week by 2002.

WELFARE SIDE BY SIDE—Continued

	Senate-passed bill	Conference report
	time limit exemption raised from 15 to 20 percent but no specific voucher option for kids	time limit exemption lowered to=15% and no specific voucher option for kids.
	all children remain eligible for Medicaid	eliminates the guarantee of Medicaid eligibility for welfare recipients.
Teens	required to stay at home or in adult-supervised group home	required to stay at home or in adult supervised group home.
	$150 million over 7 years for second-chance homes	no money for second chance homes.
	State option to deny teen moms money	State option to deny teen moms money.
	family cap at State option	mandatory family cap; States may opt out.
Funds	AFDC block grant	AFDC block grant.
	$1 billion contingency grant fund and $1.7 billion loan fund	contingency grant fund $1 billion and $1.7 billion loan fund.
	food stamp block grant at State option, but Wellstone amendment requiring sunset of block grant if HHS finds 2 successive findings of increased child hunger	food stamp block grant at State option.
	school lunch program left intact	cuts child nutrition programs and allows 7 State demo fro school lunch block grant.
	child protection programs left intact	block grants child protection programs.

Mr. BIDEN. Mr. President, last September I voted for a tough welfare reform bill. I supported—and I still strongly support—a comprehensive overhaul of the welfare system.

Too many welfare recipients spend far too long on welfare and do far too little in exchange for their benefits. Many of those who manage to get off the welfare rolls only end up back on them after a short period of time. And, for some, generations have made welfare their way of life.

This is unacceptable. And, the American people rightly are demanding reform.

Last September, I outlined how I think we should reform the welfare system. Welfare recipients would be required to work in exchange for their benefits. The time a person could spend on welfare would be limited. Child care would be provided so that children would not be left home alone. A safety net would be retained for the innocent children. And, we would be as tough on the deadbeat dads who did not pay child support as we would be on the welfare mothers who did not work.

That is what I supported last September. And, that is what I voted for last September.

But, Mr. President, I did not vote to dismantle the child protection system. I did not vote to cut foster care. I did not vote to gut the Child Abuse Prevention and Treatment Act. I did not vote to end the Federal Government's effort to help States prevent child abuse. I did not vote to cut the school lunch program. I did not vote to cut child nutrition programs. I did not vote to take away health care for pregnant women and children. And, I did not vote to eliminate the health and safety protections for kids in day care.

I voted for welfare reform. I did not vote for this bill.

I am reminded of the children's fable where the lesson was: beware of the wolf in sheep's clothing.

Mr. President, this bill is a wolf in sheep's clothing. This bill uses welfare reform as a mask for an all-out assault on the most vulnerable of America's children—many of whom are not on welfare. This bill uses welfare reform as a cover for the extreme, mean-spirited policies emanating from the House.

Look behind the so-called welfare reform. Strip away the wool of the sheep, Mr. President, and you are left with an awfully extreme wolf.

It did not have to be this way.

When I voted for the original welfare bill last September, I noted at the time that I had some reservations. But, the final product was a good-faith effort at a bipartisan compromise. And, despite the fact that I thought it could have been both tougher on work and more compassionate toward innocent children, I was not going to undermine the bipartisan compromise. Working out differences and coming to an agreement is what the American people sent us here to do.

But, what happened? The Senator from New York has pointed out that the House-Senate conference met once—for opening statements. Everything else was done behind closed doors without any participation by Democrats. The bipartisan compromise left the Senate and became the victim of House Speaker GINGRICH's extremism.

So, Mr. President, while I was willing to overlook a few reservations last September for the sake of a bipartisan compromise on welfare reform, I am not willing to sacrifice my principles for the sake of one party's extremists—just because they call it welfare reform.

I urge my colleagues to reject this conference report and demand that we take up and pass real welfare reform.

Mr. HEFLIN. Mr. President, I must oppose the conference report on welfare reform despite my support for the original version of this bill, which previously passed the Senate.

The conference report on welfare reform goes far beyond the bill passed by the Senate and consequently, Republican efforts to reduce the budget fall heavily on working poor families, unemployed workers, the elderly and the disabled.

Welfare reform, in my mind, is about moving people from welfare to work. This conference report undermines that goal. The bill's apparent emphasis on transforming the welfare system to a work system is undermined by the failure to provide States with adequate resources for work programs and child care while maintaining a basic safety net of poor children and the elderly.

The bill combines cash assistance and work programs into a single block grant. According to CBO estimates, block grant funding, combined with State spending, would fall $5.5 billion short of what will be needed to fund the work program in 2002 alone, assuming States maintain their safety net for poor children and the elderly. Over the 7-year period, funding for the work program would fall about $14 billion short of what the CBO projects will be needed. Furthermore, this bill also contains provisions which allow States to escape the work requirements the bill seeks to impose by cutting needy families off the rolls instead.

This bill also makes deep cuts in basic benefits for the elderly poor. The conference report would likely deepen poverty among the elderly due to a series of provisions that would reduce or eliminate SSI, food stamps, and Medicaid for various groups of elderly people living below the poverty line.

The conference agreement would raise from 65 to 67 the age at which impoverished elderly people can qualify for SSI, thus effectively eliminating SSI to eligible people 65 and 66 years old. Not be coincidence, the change in the age requirement for SSI eligibility would be raised in tandem with the scheduled increase to 67 at which retirees may receive full Social Security benefits. If the Social Security retirement age is raised in the future, the SSI eligibility would automatically raise as well. In addition, since receiving SSI is a qualification for Medicaid, persons denied SSI would most likely lose Medicaid coverage as well.

This conference agreement also falls seriously short in that the provision of current law which assures that AFDC families receive Medicaid coverage would be repealed. Roughly 1.5 million children and at least 4 million mothers could lose Medicaid coverage as a result and join the ranks of the uninsured. Also, changes made in eligibility rules would mean a reduction in benefits for most disabled children by 25 percent. This Medicaid provision was in neither the House nor the Senate bills.

The school lunch and other child nutrition programs are programs that I have long supported and strongly believe that they have made considerable contributions to the overall improving health of our school-aged children. These programs must be maintained as they provide an important safety net for young children and establish a solid foundation for future development.

However, the welfare conference report contains provisions that could undermine the school lunch program. The conference report would allow for seven States to block grant the school lunch program. In these States, sufficient funds would no longer be available in the event of an economic recession. States that have a history of budget reductions through proration, like Alabama, will be hard hit. In times of an

economic downturn, the fixed amount going to these States would not be sufficient to provide adequate assistance to the rolls of the needy that would expand as a result of the recession. This could ultimately lead to the serving of lower quality meals in an effort to cut corners. This is absolutely not in the best interest of our young children for whom we are responsible.

The bill also includes more than $32 billion in food stamp benefit cuts affecting the working poor, the elderly and disabled poor, and all others receiving food stamp assistance. There has been much talk about reducing the waste, fraud and abuse associated with this program. Actually, less than three percent of the bill's food stamp savings come from cutting administrative costs, reducing fraud or imposing tougher sanctions on people who fail to follow program requirements. Instead, these cuts would hit families with low incomes.

Also, for no reason that I can see, food stamp benefits would be cut for those receiving low-income energy assistance.

For the many reasons stated, and for many more that have gone unmentioned, I must oppose the conference report. This bill does little to encourage people to move from welfare to work by removing the safety net for individuals as they make that transition. Basic assistance for the elderly and child nutrition programs are cut without must consideration of the impacts that they will have on those that are least able to support themselves. We should not punish people for being young, or old or poor. We should, instead, provide for the necessary safeguards for people who want to move from welfare to work. This does not preclude our efforts to identify and deal with those taking advantage of the system, it simply signals our willingness to help those that are trying to help themselves and not punishing those that need our help.

Mr. FEINGOLD. Mr. President, I am deeply disappointed that the conferees refused to follow the path of the bipartisan welfare reform bill that was passed by the Senate by a wide margin last September.

Instead of following the bipartisan framework set out in the Senate bill, the conferees produced a bill that is punitive in nature and is likely to hurt innocent children, rather than help their families move off welfare into the work force. I will vote against it.

Mr. President, when I voted for the Senate-passed welfare reform bill, I expressed my hope that the conferees would return a bill that tracked the Senate measure and avoided the kind of mean-spirited, destructive provisions proposed by the House.

Instead, we have a final product that slashes funding for the child care that is essential if we want to avoid leaving young children unsupervised and unattended while their parents are at work, that allows States to immediately reduce their contributions by 25 percent, thereby rewarding States which already spend low levels of their own funds for families while States like Wisconsin which make substantial investments will bear the burden of potential welfare migration, and imposes punitive provisions denying benefits for newborn infants. It also adds harsh new provisions slashing assistance for families with disabled children and an important safety net for impoverished elderly.

This is not meaningful welfare reform. It is an abandonment of the bipartisan agreement reached in the Senate-passed bill that has focused upon helping families escape the welfare cycle and gain self-sufficiency.

I think the current system is broken and is badly in need of reform, but this is not the way to reform.

Mr. BINGAMAN. Mr. President, I rise today to oppose the conference report on welfare reform, H.R. 4. I would like to briefly explain my reasons for doing so.

First of all, I regret that we are planning to vote on this legislation at this time. It is my understanding that the conference report we are considering was released on Wednesday. Two days later, we are voting on this important piece of legislation that would dismantle the social safety net we have known for decades, and replace it with block grants to the States loaded with numerous requirements limiting the amount of assistance to some of our society's most vulnerable members. Although I voted for the Senate-passed version of this legislation to send a message that our current system can certainly stand some improvement, I would be reluctant to support any conference report on such a complex issue without having an adequate opportunity to review it, and to get the best information on its likely impact on my State. I regret that we have not had adequate opportunity to do that sort of analysis on the legislation before us.

Nevertheless, I have had an opportunity to review the broad provisions of this agreement, and I do not believe that is likely to result in a better system for welfare recipients, or the States and communities involved in the current system.

WELFARE RECIPIENTS

Mr. President, the current system is not serving its clients as well as it should. In too many cases, welfare and other public assistance has become a way of life, not a brief interlude of assistance. We have children growing up in a welfare culture, always living at the margin, and sometimes shuffled through the foster care systems of our various States. Their parents never seem to get the skills or opportunities that would enable them to support their families. Many of us have expressed the concern that too often, these parents are single parents trying to raise their families alone.

Our current system, which knits together Aid for Families With Dependent Children [AFDC], Medicaid, food stamps, school lunch programs, and child protection moneys, seeks to provide a basic safety net. It seeks to ensure that in America, even the poorest of poor have food, shelter, basic clothing, safe homes for children, and an opportunity for something better. The main problem welfare reformers have sought to address this year is making sure that the safety net is not the primary means of support for families, and that people use this safety net for a short time before finding a means to become self-sufficient. Again, I share these goals.

But what have the conferees returned to us to meet these goals? They have given us a system that will limit the time a person may receive benefits to 5 years in a lifetime, and imposed unrealistic requirements to work. They have limited the amount of time a recipient can spend training to get the skills that will enable them to find work that will make them self-sufficient.

Let me talk for just a minute about what this bill does not do for recipients. Every credible expert agrees that the work requirements will be very difficult to meet without additional child care dollars. We are asking States to ensure that the number of working single parents go from about 20 percent now to 50 percent by 2002. These parents are not going to leave young children alone, so they will need day care. Still, while we are expecting to increase the work force participation of single parents by 150 percent, we are only increasing the core child care money in this bill by a little more than 20 percent—$1.9 billion over a baseline of $9.3 billion. This juxtaposition will prove to be totally unworkable.

Another issue that has not been given adequate thought is why we assume merely taking an entry-level job will lead to economic independence for welfare recipients. I recently came across a University of Wisconsin-Madison Institute for research on poverty study on welfare recipients which reported that to replace the benefits received on welfare, the average mother will need a job providing at least $8 to $9 an hour. The average job available to a person with the skills of the average working mother is only about $5.15 per hour, with little hope of real advanement. Obviously, this leaves a huge gap in income if the family this mother heads is going to be able to keep its members fed, clothed, and sheltered. I want to emphasize that we are not talking about the wage needed to live the middle class dream of home ownership in a nice suburb and a vacation every year. We are talking here about maintaining a subsistence standard of living. If we adopt the provisions included in this conference report it is likely that many families that are somehow surviving now are going to find themselves making choices between shelter, food, and clothing. In all likelihood, as my colleague Senator

Moynihan pointed out on this floor last week, we are going to see a surge in the number of homeless families within a few years.

The obvious solution here is to ensure that recipients have the skills they need to get better jobs, and that economy produces high wage jobs that they can fill. This bill unreasonably limits the amount of time recipients can take to upgrade their skills.

Another issue I would like to address is the cuts to the food stamp program included in this legislation. I have heard some of colleagues tout that food stamps will remain an entitlement in most States. What they fail to mention is that this legislation severely cuts that and other nutrition programs. Food stamps alone would be cut by $32 million under the legislation before us.

Although there are many other concerns raised in how people currently served by welfare will be affected by these provisions, the final point I want to raise concerns child protective services. The advocates of this conference agreement have stated that funds for foster care support are not being block granted. They fail to note, however, that funds for investigations, court procedures, quality assurance, professional training, and other services are block granted and capped by this conference report. Inevitably, these provisions will result in less protection for children suffering from neglect and abuse in this Nation. In States like my own, where protective services are under State supervision, the capped block grants will likely be unable to pay for the changes mandates in these services.

THE STATES AND COMMUNITIES

Clearly, the welfare proposal will not work from the perspective of welfare recipients. I doubt it will work from the perspective of the States and communities these recipients live in, either.

I have not yet seen the final amount New Mexico will receive under the conference agreement. I believe, however, that the number touted by proponents for New Mexico under the vetoed budget agreement was about $135 million for the TANF portion of this welfare reform package. According to Department of Health and Human Services figures, however, New Mexico received $141.5 million in fiscal year 1995. Clearly, my State will not be getting a large increase in funding. Yet the mandate for child care inherent in the work requirements imposed by this bill are huge. New Mexico, and other States, will face a shortfall at a time when many States, including my own, are under extreme budget constraints already.

The picture gets worse when one considers the other Republican proposals being tossed around the Capitol. The Republican budget contained significant reductions to the earned income tax credit. It also proposed substantial cuts in homeless assistance. At a minimum the Republican proposal cut homeless funding 32 percent. When eligibility for welfare runs out, and families are on the streets, they are going to have even fewer resources to draw on to help.

I know that many of my colleagues on the other side of the aisle believe that private giving and State resources will take up the slack. That is pure fantasy.

CONCLUSION

In short, Mr. President, I have yet to hear a coherent statement from the proponents of this conference report regarding how communities will meet the needs of poor children and their families that will be generated by this legislation. If it were to become law, we would be trading in an admittedly imperfect system for one that is certainly not better, and perhaps is much worse.

It seems particularly ironic to me that we are considering this ill-conceived legislation right before Christmas. Indeed, it is difficult not to think of Dickens' ''A Christmas Carol.'' I am particularly reminded of the statement of the ghost of Scrooge's business partner, explaining why he is fated to be a miserable ghost: ''Business! Mankind was my business. The common welfare was my business; charity, mercy, forbearance, and benevolence were, all, my business. The dealings of my trade were but a drop of water in the comprehensive ocean of my business!''

Meaningful welfare reform is our business, Mr. President. It is my understanding that the President intends to veto this legislation. I hope that after that veto, we can get down to that business.

Until then, God bless us, every one.

Mr. PELL. Mr. President, on September 19, 1995, after 2 weeks of floor debate and over 40 rollcall votes, the Senate passed welfare reform legislation by a vote of 87 to 12.

At that time, I voted for the welfare reforms measure. I did, however, make it clear in remarks here on the Senate floor, that I was doing so with some reluctance. I was concerned that the legislation did not go far enough in protecting our children and in providing adults with the important tools needed to help them move off welfare and into meaningful, long-term employment.

I voted for the measure because it included the Dole-Daschle compromise amendment, providing additional protections for children and families.

I said at that time that I would oppose the conference report if it were to return from the conference committee without the moderating provisions found in the Dole-Daschle amendment. This final bill erodes the important protective safety net and it is punitive and harmful.

In particular, I am concerned that the conference report is weaker on work requirements than the Senate-passed bill because of a $5 billion reduction of funds available to put people back to work. The report significantly reduces important child care protections, one of the major components of the Dole-Daschle compromise, and cuts food assistance guarantees to children by cutting almost $35 billion.

I will, therefore, oppose the conference report.

Mr. President, the current welfare system clearly needs to be reformed. I firmly believe that any system in place for 60 years needs updating and rethinking. It remains my strong desire to see a welfare system that celebrates, not mocks, compassion. I continue to support the provisions of the work first proposal put forth by Senator DASCHLE which emphasizes the significance of work for adults and the importance of protecting, not punishing, the children who have not chosen their parents or their circumstances.

Mr. SHELBY. Mr. President, I rise in strong support of the conference report on H.R. 4. This bill is the most significant piece of welfare reform legislation to come before Congress in more than three decades. The current welfare system is destroying the hopes and opportunities of thousands of Americans by trapping them in cycles of dependency. President Roosevelt, the hero of liberal welfare advocates, warned us what would happen if we structured our welfare system in a way that fostered reliance on the Government. Listen to what he said in his 1935 annual message to Congress:

> The lessons of history, confirmed by the evidence immediately before me, show conclusively that continued dependence upon relief induces a spiritual and moral disintegration fundamentally destructive to the national fiber. To dole out relief in this way is to administer a narcotic, a subtle destroyer of the human spirit.

Mr. President, that is exactly what the architects of the modern welfare state have done. They have created a welfare system that encourages people to view welfare as a way of life. The typical welfare family has already spent 6½ years on welfare, and will end up spending a total of 13 years on the rolls. Thirteen years, Mr. President. After 13 years on welfare, the average family has received at least $150,000 of taxpayers' money. No wonder President Roosevelt said this type of welfare was a narcotic that destroyed the human spirit.

The reason welfare has become so addictive is because it completely destroys any incentive to work or become self-sufficient. The current system essentially says to its potential victims, if you do not want to work, have a child you are not able to support. If you do this, the Government will send you a check every month, pay your food bills, give you some free child care, pay all of your health care bills, your heating bills, your college bills, give you some WIC money, pay for your children's breakfast and lunch at school, and possibly provide you with your own apartment.

In other words, Mr. President, the message is the Government will take care of you. You do not need to take

care of yourself. You simply need to sit at home and do nothing. That is a very cruel form of assistance. It destroys the natural inclination in every human being to reach their full potential. No private charity operates in that manner. No private charity simply mails people checks for having children they are not able to support.

The bill before us today will begin to repair the broken welfare State; it will restore healthy incentives in our welfare system. It does not abandon poor Americans or their children. Rather, it requires adult welfare recipients to work in exchange for their benefits. If passed, these work requirements will be the first serious work requirements ever passed by Congress. This is not only healthy for the recipients, but it is good for their children to be raised in an environment where they see their parents getting up and going to work everyday. Work will become the norm among those receiving welfare, not the exception.

While I am very optimistic about the results of the strong work requirements in this bill, I want to express my concerns with the lack of provisions to address the most serious problem facing our country today: the breakdown of the traditional family. Eighty percent of children in many low-income communities are born in fatherless homes and welfare is the dominant feature of these homes.

For many poor people, the current welfare system makes bearing children out of wedlock a very practical alternative to the traditional method of raising a family—getting a job, a work skill, and finding a spouse committed to raising a family before having a child. If a young woman has a child before she has a work skill and a spouse, it will be almost impossible for her to ever escape the welfare trap. Mr. President, I regret that this legislation does not replace cash payments to teenagers with services to care for the child. But, I am glad we were able to at least give States the option to do that. It is my sincere hope that many States will pursue that option and will enact other policies to address the crisis of illegitimacy. I am glad that we were able to include the national prohibition against increasing cash payments to welfare recipients who have additional children while on welfare. Mr. President, if we do not contain the epidemic of illegitimacy, it will destroy the fabric of our society. America simply cannot survive without a strong family unit.

This legislation represents real reform. It is a carefully constructed balance between those who would advocate a complete end to public assistance and those who would seek to expand the current welfare State. It is the boldest reform we could have taken in the current political environment, and I hope for the sake of our Nation's future, that all of my colleagues will support this bill and the President will sign it into law.

Mr. HATCH. Mr. President, we stand here today to debate and vote on a very important piece of legislation, one that could change the lives of America's needy families.

Not since the Economic Opportunity Act was signed into law by President Lyndon Johnson on August 20, 1964, have we had such broad-sweeping and radical change in our welfare system.

Mr. President, we all know that the current war on poverty has not been successful. Since the war began, the number of children on the welfare rolls has grown from 3.3 million to 9.6 million in 1993. This was not the result of negligence, or a lack of trying. The combined Federal, State, and local spending on welfare in constant dollars increased from $38.4 billion in 1965 to $324.3 billion in 1993.

The current system is not working. What was designed with good intent, has become a trap pulling the needy families of America into a cycle of dependency that eats at their self-esteem and their ability to become self-sufficient.

The legislation before us today would change all that. This legislation moves the Federal Government out of the paper-pushing bureaucracy and moves it into a facilitator for families moving into self-sufficiency.

This legislation will help empower our families, not pull them into perpetual dependency. Gone will be the days of welfare checks for nothing. Beneficiaries will now have to engage in work activities in order to receive assistance.

This legislation retains the role of the Federal Government in overseeing the allocation of Federal money, but also gives the authority for designing the systems to the States. The States are in the best position to know the needs and environment of their unique constituencies. This legislation will allow them to design programs that coordinate resources and support families rather than just lead them through the blind maze of bureaucracy.

Mr. President, we all agree that the current system must be changed. This legislation turns the welfare programs of this country into a cohesive system flexible enough to meet the varying demands of individual States and areas while protecting our families and our children. I urge my colleagues and the President to take the chance we have today to make good on President Clinton's campaign promise to ''change welfare as we know it.'' Let us pass this legislation and enable it to become public law.

Mr. McCAIN. Mr. President, I rise in strong support of the Indian provisions contained in the conference report to H.R. 4, the Personal Responsibility and Work Opportunity Act of 1995. I commend the distinguished majority leader, Senator DOLE, and the leaders of the Senate Committee on Finance and the House Committee on Ways and Means, for their efforts to overhaul our Nation's welfare system and for including provisions which responsibly address the unique needs and requirements of Indian country. They have taken great care to draft a welfare plan that effects real change in a system that is greatly in need of repair while ensuring that all citizens, including our Nation's American Indian and Alaska Native population, receive equitable access to necessary welfare assistance. The bill before us today honors in many practical ways the special relationship that the United States has with Native American tribal governments.

There is no doubt in my mind that the so-called Great Society programs of the past have failed American Indians as much or even more than they have failed the rest of America's citizens. These programs have failed Indians because they have largely ignored the existence of Indian tribal governments and the unique needs of the Indian population. Recent attempts to fix this problem have been like placing a bandaid on a gaping wound. Under existing programs, Indians remain the worst-off and yet benefit the least. If we are to truly reform welfare then we cannot ignore Indians, who year-after-year rank the highest in poverty and unemployment.

It is vital that we authorize Indian tribal governments to administer a welfare block grant for two reasons. First, in fiscal year 1994, only a fraction of the eligible American Indians and Alaska Natives received AFDC. But in States such as Alaska, Montana, North Dakota, and South Dakota, Arizona, and New Mexico, Indians and Alaska Natives are disproportionately represented as AFDC recipients. It is my belief, and that of many members of the Senate Indian Affairs and Senate Finance Committee, that Native American tribal governments are best able to address the needs of Indians and to provide accessible service to those who must travel great distances for service. They are, after all, the governmental units closest in proximity, culture, and values, to those they serve. Clearly, the impetus for the Congress to provide block grants to States also applies to Indian tribal governments—Indian tribal governments, not the States, know the most about the real impact of welfare on their communities and how best to design programs to meet their needs.

If this bill is signed into law, for the first time in our Nation's history, tribal governments will be able to receive block grant funds to design and administer Federally-funded welfare programs. Indian tribal governments have sought that authority throughout history. The block grant approach in this bill is a practical way to implement the Federal trust obligation that we owe Indian tribes, a doctrine stated in the earliest United States Supreme Court decisions and grounded in the United States Constitution.

The bill before us today promises greater hope for Indians because it allows their own tribal governments to

serve Indians now living in poverty. It empowers tribes themselves to assist in ending the welfare dependency often created by existing programs by placing resources necessary to fight local welfare problems into the hands of local tribal governments. Mr. President, I believe this bill demonstrates a real commitment to ending welfare as Indians have known it. As I have said on many occasions, our successes as a Nation should be measured by the impact that we have made in the lives of our most vulnerable citizens—American Indians.

Early in the 104th Congress, the Senate Committee on Indian Affairs held several hearings on the potential impact to Indians of various welfare reform proposals such as block grants. During these hearings, tribal leaders spoke out in strong favor of direct Federal funding which would allow tribal governments flexibility in administering local welfare assistance programs and stated their hopes of receiving no less authority than the Congress chooses to give to State governments in this regard. The Committee also received testimony from the Inspector General of the U.S. Department of Health and Human Services who testified to how poorly Indians fare under block grants as currently administered by State governments. In response to the record adduced at these hearings, the Indian Affairs Committee developed provisions for direct, block grant funding to tribal governments which are now contained in H.R. 4. These provisions reflect the efforts of many Members on both the Indian Affairs and Finance Committees, and to them I express my gratitude.

Let me take several minutes to explain the Indian provisions related to temporary assistance for needy families contained in H.R. 4 and the goals and purposes of those provisions. In general terms, the bill authorizes Indian tribal governments, like State governments, to receive direct Federal funding to design and administer local tribal welfare programs. Let me be clear—an Indian tribe retains the complete freedom to choose whether or not it will exercise this authority. If it does not, the State retains the authority and the funds it otherwise has under H.R. 4. The following references are to new sections of law in Part A of title IV, which are set forth in Section 103 of the H.R. 4.

Section 412 is the main Indian provision setting forth the basic authority for tribal direct funding and the express requirements of tribal family assistance plans. It requires the Secretary to make direct funding available to Indian tribes exercising this option in order to strengthen and enhance the control and flexibility of local governments over local programs, consistent with well-settled principles of Indian Self-Determination. Section 412(b) provides that in order to be eligible to receive direct funding, an Indian tribe must submit a 3-year tribal family assistance plan. Each approved plan must outline the tribe's approach to providing welfare-related services consistent with the purposes of this section. Each plan must specify whether the services provided by the tribe will be provided through agreements, contracts, or compacts with intertribal consortia, States, or other entities. This allows small tribes to join with other tribes in order to economize on administrative costs and pool their talents to address their common problems. Each plan must identify with specificity the population and service area or areas which the tribe will serve. This requirement is designed to ensure that there is no overlap in service administration and to provide a clear outline to affected State administrations of the boundaries of their responsibilities under the Act. Each plan must also provide guarantees that tribal administration of the plan will not result in families receiving duplicative assistance from other State or tribal programs funded under this part. Each plan must identify employment opportunities in or near the service area of the tribe and the manner in which the tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan consistent with any applicable State standards. And finally, each plan must apply fiscal accounting principles in accordance with chapter 75 of title 31, United States Code. This last requirement is consistent with other Federal authority governing the administration by tribes and tribal organizations of similar block grant programs under authority of the Indian Self-Determination and Education Assistance Act of 1975, as amended. Section 412(c) requires the establishment of minimum work participation requirements, time limits on receipt of welfare-related services, and individual penalties consistent with the purposes of this section and the economic conditions of a tribe's service area and the availability to a tribe of other employment-related resources. These restrictions must be developed with the full participation of the tribes and tribal organizations, and must be similar to comparable provisions in Section 407(d). The remaining provisions of Section 412 further ensure that funding accountability will be maintained by tribes and tribal organizations in administering funds under an approved tribal family assistance plan.

Section 412(a) establishes the methodology for funding an approved tribal family assistance plan, including the use of data submitted by State and tribal governments. This provision anticipates that the data involved is already collected or the added burden of data collection required will be de minimus. The funds provided to a tribe under Section 412 are deducted from the State allocation. Tribal plans are funded at levels that are based on the amounts attributable to the Federal funds spent by a State in fiscal year 1994 on Indian families residing in the service area of an approved tribal plan. Under Section 405(b), the State is notified of any reduction to its block grant that has been made in order to fund a tribal plan. Having lost the Federal support for temporary assistance to needy Indian families in a tribal plan's service area, the State no longer has any responsibility under the bill for those families.

The Indian Affairs Committee has been informed by various State representatives that it is administratively more difficult and costly for States to provide services to Indians who reside in remote locations of their States. While these States acknowledge a responsibility to provide services, circumstances such as geographic isolation make it more difficult to do so. States are, therefore, well-served by these provisions, because if Indian families in a geographical area are identified in an approved and funded tribal plan, a State government no longer has the responsibility to serve those families unless the tribe and the State agree otherwise.

Some tribal representatives have pointed out that some tribes may choose not to exercise the option to administer a tribal plan, because the bill does not require a State to provide State funding to supplement the Federal funding provided to a tribe. As originally drafted, the Indian provisions expressly permitted States to agree to provide State funding or services to an Indian tribe with an approved plan in order to maintain equitable services. It is my understanding that this language was deleted because other provisions in the bill provide sufficient guarantees that States will ensure the delivery of equitable services. But under the bill's current provisions, a State is not prohibited from entering into an agreement with a tribe for the transfer of State funds or the provision of specific State services to a tribe for the benefit of Indians within that State. Indeed, a State government may choose to enter into an agreement with a tribal government to induce the tribe to take over administration of these programs, and one of the inducements could be a transfer of State funds to the tribe that would otherwise have been used by the State to serve those who would now be served under the tribal plan. If State administrators are sincere about making real progress on welfare reform, and I think they are, I expect they will act responsibly and sensitively with tribes that wish to join the State in administering programs that end welfare dependency.

Mr. President, it is important to point out that these Indian provisions are consistent with the overall purposes of H.R. 4. The Indian provisions do not seek to circumvent these purposes nor give preferable treatment to Indian tribal governments. The tribal plans remain subject to minimum requirements and penalties similar to those applied to State governments.

H.R. 4 also requires a tribe to comply with the fiscal accountability requirements of chapter 75 of title 31, United States Code and the Indian Self-Determination and Education Assistance Act of 1975, as amended. I would also submit that giving tribal governments the authority to administer a tribal welfare program is consistent with our goal of empowering local government control over local programs. It only stands to reason that, like States, Indian tribal governments are most familiar with the problems that plague their local communities.

Section 402(a)(5) of the bill requires a State to certify, as it does with several other important Federal priorities, that it will provide equitable access to Indians not covered by a tribal plan. This provision expressly recognizes the Federal Government's trust responsibility to, and government-to-government relationship with, Indian tribes.

Section 412(a)(2) provides that the Secretary shall continue to provide direct funding, for fiscal years 1996 through 2000, to those 77 Indian tribes or tribal organizations who conducted a job opportunities and basic skills training program in fiscal year 1995, in an amount equal to the amount received by such tribal JOBS programs in fiscal year 1995. These sums are in addition to the sums provided to State and tribal block grants for family assistance.

Section 418 provides standard definitions of the terms ''Indian'', ''Indian tribe'', and ''tribal organization'' in order to clarify the respective limits of State and tribal government responsibilities under the bill.

Many of my colleagues in the Senate know that some Indian tribal governments may not have existing capacity or infrastructure to administer complex welfare programs. Consequently, H.R. 4 includes provisions authorizing tribes to enter into cooperative agreements with States or other tribal governments for the provision of welfare assistance. This will allow small tribes to join with other tribes in order to economize on administrative costs and pool their talents and resources to address their common problems. However, I believe it is very important to permit and encourage those Indian tribal governments that do possess such capacity to participate in these new welfare initiatives by addressing welfare issues at a local level.

It should go without saying that any State may enter into any agreement it chooses with a tribe for the transfer of State funds to that tribe for the purpose of administering a welfare program that benefits Indians within that State. In my view, it is in both a State and a tribe's best interest to work out supplemental agreements for funding and services where necessary because to do otherwise could undermine the goals of the bill.

I know that many Members in this body are aware that Indian Country has historically been plagued by high unemployment and therefore its residents suffer from extremely high poverty rates. H.R. 4 enables Indian tribes that are currently administering tribal JOBS programs to continue to do so. Section 412(a)(2) requires the Secretary to provide direct funding in an amount equal to the amount received by the existing tribal JOBS programs in fiscal year 1995. By keeping the JOBS programs in Indian Country intact, we will acknowledge the positive impact it has made in the lives of thousands of Indians. The Indian JOBS program has had measureable success. For instance, in fiscal year 1994, in just one quarter, over 2,000 American Indians and Alaska Natives participating in the JOBS program obtained job placements. Indians residing in communities where a tribal JOBS program is in operation have experienced a new sense of hope by developing basic job skills that have helped them to secure stable job opportunities both on and off the reservation. H.R. 4 also contains provisions in Titles VI and VIII which provide continuing resources for programs that have proven successful in Indian Country, such as the Child Care and Development Block Program as well as new programs that are critical to ending the high Indian unemployment rates such as the proposed workforce development and training activities. These provisions, along with the JOBS component will greatly assist in helping Indian Country contribute to the goals of welfare reform and the purposes of the Act.

Mr. President, I believe it is important to point out that with passage of these provisions in H.R. 4 the Congress will discharge some of its continuing responsibilities under the United States Constitution—the very foundation of our treaty, trust, and legal relationship with the Nation's Indian tribes, and which vests the Congress with plenary power over Indian affairs. I was deeply troubled to learn that earlier this year, the House passed its version of H.R. 4 without addressing the unique status of Indian tribal governments or the trust responsibility of the Federal Government to the Indian tribes. There was no House debate on the status of the ''welfare state'' on many Indian reservations nor the impact that the proposed changes to welfare programs would have on access to services already in existence in Indian Country. Nor was there any mention made in the House welfare debate of the significant legal and trust responsibility that the Federal Government has to the Indian tribes. I am pleased that the House conferees agreed to adopt much of the Senate approach on Indians.

As the Chairman of the Indian Affairs Committee, I feel it is my responsibility to take a moment to briefly expand my remarks to a discussion of the responsibilities of the Congress toward Indians under the United States Constitution. The Constitution provides that the Congress has plenary power to prescribe Federal Indian policy. These powers are provided for pursuant to the Commerce and the Treaty Power clauses. Sadly, over the last two centuries, the Congress has poorly exercised its power and responsibility—subjecting Indian tribal governments to inconsistent or contradictory policies—policies of termination and assimilation. These policies have served to weaken well established Indian systems of government and, in my view, have greatly contributed to the welfare state that exists today on most Indian reservations.

I know that time and time again, I have stood on this floor to recite grim statistics revealing that Indians are, and consistently remain—even in 1995—the poorest of the poor and always the last to benefit. Today, I will withhold from reciting that data because I believe that this bill begins to turn the tide in this Nation's treatment of Indians and their tribal governments. Similar to the unfunded mandates bill we enacted into law earlier this year, H.R. 4 will treat tribal governments like State governments by allowing them the flexibility and authority to directly administer their own programs free of Federal bureaucratic intrusion and control. Due in large part to the leadership of the late President Nixon, the Congress for more than two decades has responsibly exercised its plenary authority by replacing the distorted and dismal policy of termination of Indian tribal governments with empowering policies of Tribal Self-Determination and Self-Governance—policies that respect and honor the government-to-government relationship between the Federal government and the Indian tribes—policies that are consistent with the Federal trust responsibility and that set a new course of fairness in the Federal Government's dealings with Indian tribal governments.

Given the renewed commitment by Congress to deal fairly with the Indian tribes, I fully understood why many tribal leaders became concerned when the Congress earlier this year began moving toward a system of block grants to States. The concerns were that if the Congress did not revise the block grant model to reflect its responsibility to Indian tribal governments, the government-to-government relationship between the tribes and the United States would be soon eroded and the Federal trust responsibility held sacred in our Constitution and the decisions of our Supreme Court would be relegated to the States.

These tribal concerns are likewise valid in a practical sense. A Federal Inspector General's report issued in August 1994 found that Federal block grants to States, in some instances have not resulted in equitable services being provided to Indians. That report found that in 15 of the 24 States with the largest Indian populations, eligible Indian tribes did not receive funds even though Indian population figures were used to justify the State's receipt of

Federal funding. In addition, findings of the Senate Committee on Indian Affairs revealed that even when States were attempting to serve Indians, the programmatic and administrative costs of providing welfare services to Indians are often greater than providing local services to others. What these findings revealed to me is that when either the Federal or State governments have administered programs for Indians, Indians have not received an equitable share of services.

Mr. President, the whole purpose of welfare reform is to provide the tools to State governments to design and administer local welfare programs. After all, we have come to understand that local governments want and have the ability to create local solutions to address what are, in essence, local problems. I would suggest that this policy is no different that the Federal Indian policies of Tribal Self-Determination and Self-Governance. I also know that elected tribal officials have a great love of country and an incredible desire to contribute to the Nation's goal of elevating members of their communities out of the depths of poverty. Given the tools to do so, I believe that Indian tribes will make a great contribution to the Nation's war on poverty.

Mr. President, I want to acknowledge a group of Senators that I believe have demonstrated a great level of understanding and commitment to the importance of addressing the needs of Indian tribes in the Nation's welfare reform movement. Senators HATCH, DOLE, ROTH, INOUYE, DOMENICI, SIMON, MURKOWSKI, PRESSLER, CAMPBELL, BAUCUS, and KASSEBAUM have contributed to the efforts to ensure that Indian tribes are not overlooked and abandoned in the current welfare reform efforts.

Two members of the Indian Affairs Committee deserve particular recognition: my good friend from Kansas, Senator NANCY LANDON KASSEBAUM and my good friend from Utah, Senator ORRIN HATCH. Senator KASSEBAUM, as chairwoman of the Labor and Human Resources Committee, worked closely with the Indian Affairs Committee and Senator SIMON to ensure that provisions for direct Federal funding would be available to Indian tribes in her Committee's employment consolidation bill and that tribes would continue to receive funding through the Child Care and Development Block Grant program. Senator KASSEBAUM's leadership has greatly contributed to the fairness with which Indian tribes are treated under H.R. 4 and the progress that has been made by the Congress in its treatment of Indian tribes. While there is still some question about the impact of the bill's overall reductions on the current level of child-related funding made to Indian tribal governments, I am pleased by the Conference Committee's action, taken at the urging of Senator KASSEBAUM, to make all child care funds throughout the bill available to Indian tribal governments.

Although there are many Indian tribal provisions that I strongly support in the bill, I was extremely disappointed that it does not include a provision to address the concern of State Child Support Administrators and Indian tribal governments that tribes have been left out of efforts to provide uniform child support enforcement. The amendment offered by myself and several others, including the vice chairman of the Senate Indian Affairs Committee, Senator INOUYE, and the Senate minority leader, Senator DASCHLE, was unanimously agreed to by the Senate but it was not adopted by the Conference Committee. Nonetheless, I am pleased to know that the National Council of State Child Support Administrators has agreed to continue to work with me to address our mutual concern. Unless something is done to include tribes in these efforts, we will deprive Indian children of necessary child support services and funding, and we will perpetuate a uniform child support system that truly does not provide uniformity in Federal funding or services.

In addition, I am concerned that no provisions were made to provide direct funding to Indian tribes for Title IV-E Foster Care and Adoption Assistance funds. The Congress had abundant evidence of the great need in Indian Country for these funds. One stark example is the 1994 Office of the Inspector General's report that documented that Indian children are disproportionately represented in substitute care. However, Indian tribes must rely on State governments to share Federal funding for Title IV-E funds; yet the OIG report found that most Indian tribal governments have received little or no Title IV-E funding. It is my hope that States with Indian tribes within their boundaries will make a good faith effort to share these funds equitably in order to improve the Nation's overall rate of children in substitute-care.

Finally, I want to give particular thanks to my good friend from Utah, Senator ORRIN HATCH. Senator HATCH has worked tirelessly with me over the last several months to shape and enhance tribal welfare provisions that could be acceptable in any welfare reform plan. Senator HATCH is a member of the Senate Finance Committee and he is a new member of the Senate Committee on Indian Affairs. He has demonstrated a great level of understanding and commitment to the betterment of the lives of Indian people, and I commend Senator HATCH for his steadfast leadership in ensuring that Indian tribal governments are fairly treated in the welfare reform debate.

Overall, I support the bill. It contains many important advances in the way our Nation treats tribal governments. Several months ago when the bill passed the Senate with these Indian provisions, many Democrats joined with Republicans in supporting this measure. While we may disagree on many things, I was glad to see that the Indian provisions gained broad, bipartisan support. That reflects a principle I believe should guide the Congress in all matters affecting Indian affairs: Indian issues are neither Republican nor Democratic. They are not even bipartisan issues—they are nonpartisan issues. They are day-to-day human issues which require understanding and support from both sides of the aisle. Whatever new form this Nation's welfare system takes, providing equal access to the Nation's Indian population through tribal block grants is not only the right thing to do, it honorably discharges some of our continuing responsibilities under the United States Constitution. I urge my colleagues, and the officials in the Clinton Administration, to ensure that this approach is maintained as we reform welfare.

Mr. DORGAN. Mr. President, despite some concerns, I voted to support the welfare reform bill which passed the Senate with overwhelmingly bipartisan support on September 19. I did so because I believe our current welfare system needs to be reformed and because substantive improvements were made to the bill on the Senate floor. I also wanted to advance the bill to a conference with the House where I hoped additional improvements would be made. Before the vote, however, I stated that I could not support a final bill unless it guaranteed that innocent children were protected. Regrettably, the bill which has emerged from the Senate-House conference fails to meet that test.

I am disappointed that the conference committee did not build on the bipartisan legislation which passed the Senate. Instead, we have before us a bill which, in my view, abdicates our moral responsibility to ensure that children are not punished for the mistakes of their parents. There ought to be a safety net to protect children. This bill shreds the safety net and instead gambles with the lives of poor children by failing to guarantee their security.

On September 19, I stated that there were several improvements contained in the Senate bill which would have to be retained or improved upon in conference or I would oppose final passage. Unfortunately, many of these provisions were substantially weakened or removed altogether from the bill by the conference committee. I would like to point out just a few of the fatal flaws in the bill before us today.

CHILD CARE

Every expert will tell you that the biggest obstacle in moving people from welfare to work in this country is the lack of adequate child care. Child care is the linchpin for successful welfare reform.

While the bill proposed in the Senate added more money for child care, it fell significantly short of the amount that the Congressional Budget Office estimated would be needed in order for the States to meet the stringent requirements in the bill for moving welfare recipients into the work force quickly.

To address this shortage of child care funding, the Senate added an additional $3 billion just prior to final passage. While that amount was still well below the amount needed for child care, it was a small step in the right direction. Yet the small amount of money added by the Senate for child care was reduced $1.2 billion in conference. The Congressional Budget Office tells us that the shortfall for child care over the next seven years will be almost $12 billion. That just doesn't make sense. If we want to move welfare recipients into the work force, we must provide for their child care needs. The bill before us is woefully inadequate in meeting those needs.

To make matters worse, the conference agreement lets States off the hook. As adopted by the Senate, this extra pot of child care funding was made available only to States which agreed to spend in future years 100 percent of what they spent for child care in 1994. The conference committee slashed that State requirement to 75 percent, thereby further reducing the amount of money available for child care. Again, this just doesn't make sense.

MOTHERS OF SMALL CHILDREN

The Senate bill, wisely in my view, allowed States to reduce the work requirements for mothers with children under age six to 20 hour per week instead of the 35 hours per week required of other recipients. Unfortunately, the conference agreement deletes this crucial Senate provision. Giving mothers the ability to spend more time at home to nurture their children during their most formative years of development is the right thing to do. It also meets the test of common sense. The Senate-passed bill required these mothers to work, but allowed them to balance work responsibilities with family obligations. The bill before us does not, and families will suffer because of this.

FISCAL ACCOUNTABILITY

Welfare has always been a Federal-State partnership. Under current law, States contribute about 45 percent of total welfare expenditures. Without States continuing to contribute their share, the pot of money currently available for welfare could be reduced by almost half overnight. To make sure that this did not happen, the Senate bill required States to contribute at least 80 percent of the money they spent on welfare in 1994 in order to be eligible for their block grant money. That requirement was reduced to 75 percent by the conference committee. What this means is that States will be able to cut their funding by approximately $17 billion over the next 5 years. The end result is that cash assistance could be denied to as many as 1 million needy children. I am simply not willing to gamble with the life of one child. We can and should do better than what is being proposed here.

CHILD PROTECTION

The conference committee also rejected the Senate bill's protections for extremely vulnerable children. While the conference agreement maintains the entitlement status of room and board costs for foster care and adoption, it establishes block grants for all other funding critical to ensuring that children are safe, including removing abused and neglected children from unsafe homes and placing them in licensed facilities and permanent homes, and training for foster parents.

The conference bill also ends the Federal entitlement responsibility for all other child protection programs, which the Senate had maintained in its bill. Instead, they are combined into two block grants—which will undoubtedly pit preventative services against crisis and treatment programs in a battle for limited funding. I find these two provisions unconscionable. I have no doubt in my mind that they will result in more children living in abusive homes and in danger.

The current welfare system serves no one well—not recipients, not their children, not American taxpayers. The current system has trapped too many people in a cycle of lifetime dependency. Any meaningful welfare reform must be grounded on the basic premise that government assistance is a way ''up and out''—not a ''way of life.'' It must be viewed as a temporary assistance program for people who are down and out on their luck and need a helping hand to get them back on their feet and back to work.

In crafting meaningful welfare reform, however, protecting the children of poor mothers must be a priority. Let's not forget that 9 million children will be affected by this legislation. Let's not forget that more than 20 percent of America's children live in poverty. And let's not forget that the Office of Management and Budget estimates that an additional 1.5 million children will fall into poverty if this conference agreement is enacted. Protecting innocent children is and ought remain a Federal responsibility and a national priority. Unfortunately, the conference committee has failed to meet this responsibility. There is simply no safety net for poor, innocent children in this bill. For this reason, it is with great disappointment that I simply cannot support this conference agreement. Having said that, I remain optimistic that a responsible welfare bill which puts people to work but protects innocent children can be crafted during this session of Congress. I remain committed to that goal.

THE MILKING OF OUR CHILDREN'S FUTURE

Mr. LEAHY. Mr. President, America is waking up to what the Contract With America is really about. But that has not stopped the Republican Congress from forging ahead with their ideological war, that in the end will hurt not just low-income children and families, but our country as a whole.

The bill before us is rhetorically called ''welfare reform''. Its supporters claim they want to get people off welfare and into a job, but this is undermined by the fact that the bill does not give States the resources to follow through on this claim.

What this bill does do is provide billions less than what is necessary for States to provide child care and meet work requirements. This bill cuts assistance for the poor, disabled children and the elderly, and cuts funds that are needed to rescue children from abusive homes. It cuts over $30 billion from the food stamp program and provides for optional block grants that will not allow States to respond to increased need during periods of higher unemployment—over 80 percent of food stamp benefits go to families with children.

Vermont initiated its own welfare reform plan a year ago, aimed at getting people off welfare and into the work force. Vermont's program is working—because the State lowered the rhetoric, left off the sound bites, and got the job done. The cuts included in this bill will be a step backward and could dismantle the programs that have been working in Vermont. It will also be a step backward for the work accomplished by Vermont Campaign to End Childhood Hunger and other Vermont children's advocacy groups.

To highlight what this bill is really all about I want to talk about just one—perhaps seemingly minor—aspect of the agreement reached on the school lunch program. A few years ago, the Reagan administration tried to block-grant the school lunch program. They also tried to say that ketchup was a vegetable. Americans resented people in Washington playing politics with school lunches.

Now the Republicans in the House of Representatives, and a few here in the Senate, are playing the same kinds of political games. Their block grants would end the 50-year-old requirement that schools provide a carton of milk with every school lunch.

Milk has been required in the National School Lunch Program ever since the program began in 1946. The law could not be clearer on this subject: ''Lunches served by schools participating in the school lunch program under this act shall offer students fluid milk.''

Milk is essential to a child's healthy development. It builds strong bones and healthy bodies. Serving every child a carton of milk every day teaches children a crucial lesson about eating healthy meals.

Schools now serve about 40 million half-pints of milk per day in the school lunch and school breakfast program. Children in the school lunch program drink 454 million gallons of milk per year. By comparison, all the dairy farmers in the State of Vermont produce 279 million gallons of milk per year. The milk provided through school lunches accounts for over 7 percent of all fluid milk consumed in the United States.

In my 8 years as chairman of the Agriculture Committee, during two full

rewrites of the child nutrition law, I never once heard anyone complain that the school lunch program was serving too much milk.

Yet this bill sets up block grants, and then provides them with insufficient funds to provide a healthy meal, including milk, to every child who needs one.

When the financial crunch hits, States are likely to stop serving milk to children—they will replace it with cheaper and less healthy substitutes like soda.

By the way, under this Republican welfare bill, any State—not just a block-grant State—can obtain a waiver to serve junk food and soda in school cafeterias. I fought for 8 years to keep junk food out of the school lunch program.

I want to read from a letter that the Senator from Kentucky, Senator MCCONNELL, and myself sent to the chairman of the Agriculture Committee, Senator LUGAR, on December 6 supporting his stance against school lunch block grants. The letter was also signed by 9 other Republicans and 11 other Democrats.

> We oppose mandatory or optional block grants for the child nutrition programs. The school lunch program provides healthy meals every day for 25 million American children. Block grants could undermine the nutritional value of those meals, threaten the guarantee of free meals for needy children, and provide inadequate funding for the program during recessions and other times of need.

The National School Lunch Program is a program that works. Americans—both Democrats and Republicans—support it. It answers a vital need. So why do we need to end the Federal commitment to feeding children and replace it with a block grant? The American School Food Service Association believes that school block grants are a step in the wrong direction and has urged members to vote against this bill.

Underfunded block grants, whether for school lunch, food stamps, child protection, Medicaid or aid to families with children do not give States the tools they need to respond to increased needs during periods of higher unemployment. State taxpayers will be the ones to pick up the tab.

This bill needs to be vetoed so we can start working on a real welfare reform bill in a bipartisan fashion. We must come together and we must agree on the basic principles that can guide our efforts. In my view, the only way to begin this discussion is for President Clinton to veto this bill.

I trust that the President will do so in the interest of American's children and America's future.

Mr. COHEN. Mr. President, 3 months ago, the Senate voted overwhelmingly to bring about fundamental change to welfare in this country.

The entitlement status of cash welfare is ended in this bill. This is the most important step we can take if we want to successfully end the cycle of dependency. As Marvin Olasky noted in his recent book, ''The Tragedy of American Compassion,'' effective welfare requires the ability to distinguish those who have fallen on hard times and need a helping hand from those who simply refuse to act in a disciplined and responsible manner. When welfare is a Federal entitlement, it is very difficult to make these distinctions.

However, ending the entitlement must be accompanied by the support necessary to get welfare recipients into jobs. In considering our welfare system, I think it is useful to distinguish beneficiaries by three major groups.

First, there are those in need of temporary assistance. People who, while they are generally able to support themselves and their families, they have fallen on hard times. Food stamps and other assistance must be there to provide temporary help when unforeseen economic crises occur.

The second group includes those whom most of us would agree cannot work. These individuals—through no fault of their own, are simply not able to economically provide for themselves. They have disabilities that warrant our compassion not our scorn. The welfare system should be there for them.

The third group consists of people who fall somewhere in between the first and second groups. They have been on and off the welfare rolls for years, yet they don't seem to fit the profile of someone whom most would agree cannot work.

It is this third group that should be the focus of the current welfare debate. The debate has often been extremely polarized. Many on the left are reluctant to vest any sense of personal responsibility in welfare recipients. They view them as unwitting victims of societal injustices, refusing to acknowledge the role that personal behavior may play.

On the other hand, many on the right are reluctant to acknowledge that no person is an island—that each of us thrives or fails to thrive, to some extent, as a result of our environment. Some on the right naively believe that we all have the same opportunities and that a failure to succeed is simply evidence of laziness.

For many beneficiaries in this third group, one of the most essential ingredients for self-sufficiency is the availability of child care. I am of the opinion that we cannot mandate strict work requirements without providing States with a reasonable amount of child care funding.

During Senate debate on welfare, I worked on a bipartisan basis with other Members to increase funding for child care. Even under the current system of entitlement, there are more than 3,000 children of working parents already waiting to receive child care assistance in Maine. While the conference agreement decreases the Senate funding level by about $200 million, that decrease in funds is balanced by a reduction in the work requirements in the early years of implementation. Rather than the 25 percent level called for in the Senate bill, States will be required to place 15 percent of their caseload in work activities.

In addition, the conference agreement will add $1.6 billion in funding for the social services block grant. This block grant has been used in many States to fund additional child care services for low-income families and this funding will allow States to furnish additional services for child care and to promote economic self-sufficiency.

The provision for child care services in the agreement continues to provide protections for children who are not yet in school by prohibiting States from penalizing mothers who cannot work because there simply is no child care available.

We have been criticized on all sides for providing too much and providing too little in this legislation. We do not know how States will react to this new flexibility and independence in setting policy. This legislation reflects the philosophy that Washington does not have all the answers. We should no longer assume that one-size-fits-all Federal solutions offer better hope than granting more freedom to States to design approaches that address a State's unique set of circumstances.

Having said that, I believe we have a common and national interest in assuring an effective social safety net for all Americans, regardless of where citizens may reside. So I would not support any effort to completely remove the Federal Government from the welfare system.

Through Government, we have an obligation to try to counter the negative influences which impact some of the poorest members of our society. Many Americans are born into environments of drugs, crime and severe poverty. And regrettably, too many of our young people are growing up without two parents involved in their lives. The correlation between single parenthood and welfare dependency is overwhelming. Ninety-two percent of AFDC families have no father in the home.

Society must also acknowledge the correlation between crime and fatherlessness. Three-quarters of all long-term prisoners grew up without fathers in their homes or active in their lives. When 24 percent of children born today are born to unwed mothers, we cannot avoid this issue if we hope to break the cycle of poverty and crime that permeate some of our communities.

Unfortunately, no one really knows how to stop that cycle. For this reason, I do not support efforts to attach a lot of strings to the welfare block grants, including provisions ostensibly designed to curb illegitimacy. It is clear that welfare reform cannot disregard the growing incidence of out-of-wedlock births, teen pregnancy, and absent

fathers, but it is also clear that we don't know what will counter this trend. Accordingly, we ought not prescribe a Federal solution that would hamstring the ability of States to try different approaches.

This legislation does bring a new national presence to the collection of child support and establishing paternity for children born out-of-wedlock. By taking a tougher stand to establish and then enforce child support orders, some of the families currently tied to the welfare system may be able to get loose. Financial support cannot replace the presence of a good father in a household but it will relieve some of the burdens placed on single mothers.

I support the general thrust of the pending welfare legislation to turn more decisionmaking authority over to the States. Consistency would suggest that we not at the same time put a lot of requirements on States on how and who to spend Federal welfare dollars. I do think that it is important to ensure that States share responsibility with the Federal Government by investing dollars at the State level in welfare programs. For this reason, I supported a strong maintenance of effort requirement which remains largely intact in the conference report.

Block-granting AFDC to the States is not a panacea. A welfare system that has clearer lines of responsibility and accountability will be more effective. But this is not the end of the welfare debate. Hopefully, we will enact legislation this year that will make meaningful improvements in the current system. But turning these programs over to the States will not itself fix the problems. Congress and the President must continue to work with States to improve the welfare system to make sure that a safety net is there for those who need it but is denied to those who abuse it.

I intend to support the conference agreement, but I do have reservations regarding some of the changes that were included in the final agreement. We have been put on notice that this legislation will be vetoed by President Clinton. If the President follows through on his promise, it is my hope that we can revisit those important issues when the legislation returns to Congress.

Mrs. FEINSTEIN. Mr. President, the welfare reform conference report before us today should be defeated. It should be defeated because it does not adequately address our Nation's needs and particularly the needs of my State; it endangers the Nation's children; it does not help people move from welfare to work.

INADEQUATE ATTENTION TO UNEMPLOYMENT, GROWTH

Compared to the bill we previously passed, this bill gives short shrift to my State's needs.

First, the Senate bill created a contingency fund of $1 billion to help States with high unemployment. This conference agreement reduces this fund to $800 million. California had an unemployment rate stood of 8.8 percent in November, while the national rate was 5.6 percent. In the last 5 years, my State's unemployment rate has never dropped below 7 percent, reaching 10 percent in 1994.

Second, the bill's underlying funding formula fails to recognize high growth rates in poverty. I offered an amendment to redistribute funds by the change in poverty population each year. The conference agreement does not rectify this problem. California's population is expected to grow from 30 million in 1990 to 42 million in 2010 and 49 million by 2020.

Third, under this bill, States will contribute less. The Senate bill required States to maintain 80 percent of their 1994 funding of cash assistance [AFDC]. Under this bill, States can drop their funding to 75 percent. Thus, they can reduce their funding by 25 percent. This would allow States to reduce State spending by $5 billion.

PROTECTING NEGLECTED AND ABUSED CHILDREN

Programs providing services to neglected and abused children are an important part of this bill. These are services that have removed children from unsafe homes, placed them in protective settings, provided periodic reviews of their status, and trained child protection staff.

Child protection services are included in a block grant and cut by $1.3 billion over 7 years. These are services like training for foster parents, child abuse emergency response, and other services that try to keep families together and protect children in foster homes.

There are at least half a million of these children in California.

From 1988 to 1993, nationally, the rate of reported child abuse and neglect rose 25 percent. The foster care caseload grew 50 percent. From 1983 to 1993, the number of children in child protection grew by two-thirds. Los Angeles last year responded to more than 165,000 reports of abused and neglected children.

This bill will weaken support for these, our most vulnerable children.

NOT HELPING MOTHERS BE MOTHERS

The Senate bill allowed States to limit the work requirement to 20 hours a week for mother with children under age 6. This bill requires mothers of small children to work at least 35 hours a week.

While work requirements are appropriate for many people, mothers are the most important influence in a young child's life. Work requirements should be compatible with raising a family and guiding young children. I believe a 20-hour work week requirement for mothers with young children, rejected by this bill, is reasonable.

NO HEALTH COVERAGE

The conference version, unlike the previous Senate bill, ends the guarantee of health insurance or Medicaid for women on AFDC and their children over age 13.

In California, 290,000 children and 750,000 parents would lose coverage, according to the Children's Defense Fund. This represents 18 percent of all children in the United States losing coverage.

By ending this health insurance, we will add to our State's uninsured population which is already the third highest in the Nation at 22 percent. Without health insurance or the ability to purchase it, sick people end up in hospital emergency rooms and we all pay through tax dollars or our private policies.

WORK REQUIREMENTS, RESOURCES WEAK

The bill's goal, a goal I endorse, is to move welfare recipients from dependency to work. The bill requires States to have 50 percent of recipients participating in work by 2002. But the bill falls short in several ways.

First, the conference agreement, unlike the Senate bill, does not require personal responsibility contracts, agreements that obligate the recipient and move him or her toward self-sufficiency.

Second, the conference agreement deletes the Senate provision giving bonuses to States for job placements.

And third, and most importantly, the bill does not provide adequate funds for child care programs to support the requirements that States put welfare recipients into work.

CHILD CARE

Child care is the linchpin to self-sufficiency for mothers on welfare. The fact is that mothers cannot go to work without child care programs for their children. There are two serious problems in this bill, the first is funding and the second is standards.

Currently in California, 80 percent of eligible AFDC children are unserved. The bill before us exacerbates this already dire situation. To support the work requirements of the bill, the bill falls short from $6 billion to $13 billion.

Child care experts in California tell me that this means our State would be $1.3 billion short of what is needed to meet the increased demand caused by the work requirements of the bill.

Under current law, to qualify for Federal child care funds, States must set quality standards that address things like caregiver to child ratios, sprinkler systems, plumbing standards, hygiene.

The Senate bill retained this requirement, but the conference agreement before us eliminates it. This means that there is no guarantee that young children will be in safe and healthy environments.

INNOVATIVE PROGRAMS

California has some of the most innovative welfare programs in the country.

We have the GAIN program—Greater Avenues for Independence—in Riverside, that has returned $2.84 to the taxpayers for every $1 spent.

In Los Angeles, the GAIN program has a job placement rate of 34 percent.

San Mateo and San Diego Counties have successful job-search programs.

San Mateo, last year, put 85 percent of the people in the program to work.

The Senate adopted my amendment to allow HHS to negotiate directly with large counties to establish innovative programs. Unfortunately, the conferees deleted this provision.

CONCLUSION

No one has a right to welfare. Welfare was never intended to be a permanent way of life. It was intended to be a lifeboat for people in temporary emergency situations. In my State, there are almost 2.6 million people receiving welfare or 18 percent of the U.S. caseload in a State that has 12 percent of the population. I want to reform welfare. I want families to be secure and self-sufficient. But this bill does not do it. I cannot support it.

Mrs. BOXER. Mr. President, I rise today in strong opposition to the conference report for the Personal Responsibility Act of 1995.

I gave my qualified support to the Senate welfare reform bill, the Work Opportunity Act of 1995, because I believed it contained important improvements from the draconian House welfare reform measure.

Without the Senate-passed protections, I can no longer support the welfare reform efforts of this Republican Congress. This bill simply goes too far toward what I believe will be a dark development for poor families as spending for needy families with children will be reduced by approximately 18 percent.

I would like to take this opportunity to further explain why this conference agreement is unacceptable to me and should not be passed by the Senate.

CHILD WELFARE

Mr. President, abused and neglected children have no place in efforts to reform welfare. To try to squeeze out savings from programs which protect the most vulnerable in our society is not only wrongheaded, but mean-spirited as well.

The House bill would create two child protection block grants to States—ending the total Federal guarantee of foster care and adoption assistance to the children who are the most desperately need of our help. The Senate-passed bill left current law on these programs unchanged.

It has been demonstrated that in times of economic downturns, the need for child protective services rises commensurately. When there was a 6 percent decrease in AFDC California in 1992, there was a 10 percent increase of children into the welfare system and a 20 percent increase in child abuse reports in Los Angeles County. However, this conference agreement takes a short-sighted approach by capping spending on child welfare programs at a time when the need for them could increase dramatically.

The conferees wisely retained the Federal guarantee for title IV-E foster care and adoption assistance maintenance payments for abused and neglected children who qualify. But the conference agreement caps the costs to administer the foster care and adoption assistance program, regardless of additional burdens which may be placed on the system. This will mean $1.3 billion over 7 years will be slashed from serving abused and neglected children. That is a disgrace.

Mr. President, I want to explain what constitutes ''administrative costs'' under the foster care and adoption assistance program. I think we can all agree that where needless paperwork and red tape can be eliminated, we should encourage it. But in the case of the title IV–E foster care and adoption assistance program, administrative costs are used for activities such as the training of foster care and adoptive parents, investigations, referrals, and appropriate child placements.

Title IV–E administrative costs would be folded into a Child Protection Block Grant, and capped, together with the Family Preservation and Independent Living Programs.

Mr. President, the Family Preservation Program is having a positive effect in the State of California. In Los Angeles County, the Family Preservation Program has served 10,000 children in 3 years. Through more extensive supervision by law enforcement and social workers and violence prevention, the Los Angeles County Preservation Program can claim an approximate 50 percent decrease in child abuse deaths in 3 years and serves more at-risk families with less money than the traditional foster care program.

This welfare bill will hurt innovative programs such as Los Angeles County Family Preservation Program by capping it arbitrarily.

The story of 6 year-old Elisa Izquierdo in New York is the kind most of us hope to never have to read. Young Elisa fell through the cracks of the New York City child welfare system—one of the largest in the country. Her story is a tragic example of what can happen in an overburdened child welfare program.

Mr. President, we have an obligation to ensure that every child is protected from an unsafe household. The conference agreement will seriously undermine the ability of child welfare agencies to meet this obligation. To endanger the lives of vulnerable children is not worth the few savings these provisions will bring.

WORK

This bill is weak on work. The conference agreement strips out provisions added to the Senate bill which would get serious about putting welfare recipients into the workforce. This legislation gives a person 2 years before they have to work—not 3 months, as in the Senate bill.

The conference agreement also does not contain the bonus to States for exceeding the targeted work participation rates as provided under the Senate bill.

The debate on welfare has centered around ''personal responsibility.'' Yet the conference agreement fails to require welfare recipients to sign a personal responsibility contract in order to receive their benefits.

On the other hand, the conference agreement removes some of the most important protections for welfare families transitioning to work. I supported the provisions in the Senate bill which would have recipients to go to work after 3 months of receiving benefits. However, where a woman's safety could be threatened, the Senate bill would permit an exemption for battered women from the overall work requirement.

The Violence Against Women Act, which I introduced and passed last Congress, went a long way toward assisting battered women who were in unsafe households. Removal of this important exemption demonstrates the failure to understand the dangers many battered women face and the circumstances which keep them from leaving their abusers.

In addition, the final bill forces 35 hours of work per week for parents with young children without sufficiently funding child care.

And where a family is subjected to circumstances of extreme hardship, I support a more generous exemption for such families from the time limit on benefits. While the Senate bill would have permitted States to exempt up to 20 percent of their welfare caseload under a hardship exemption, the conference agreement only permits the exemption of 15 percent of the caseload. Based on HHS estimates, this could mean up to 500,000 more children than the Senate bill will be denied benefits due to the expiration of time limits under the lower 15 percent exemption.

CHILD CARE

Mr. President, the conference agreement is inadequate in meeting the child care needs of welfare families. CBO estimates that this bill contains $6 billion less than what is needed by families to meet the bill's own work requirements. HHS estimates that the funding level is $13.6 billion less than what will be needed to meet the work requirements.

The agreement does not contain the important provision in the Senate bill which would allow States to require mothers with children under the age of 6 to participate in work programs for 20 hours per week instead of 35 hours per week. Removal of this exception will mean significantly greater demands will be placed on the child care funds contained in the bill, hindering the efforts of parents trying to get off of welfare.

In addition, child care health and safety protections contained in current law and retained in the Senate bill would be eliminated.

The quality set-aside, used by States to promote and assure the availability of safe and affordable child care, is less than half the amount passed in the

Senate bill. Without safe and affordable child care, parents are faced with terrible alternatives: leaving their young children with siblings too young for the responsibility, or worse yet, allowing their young children to stay at home unsupervised. No responsible parent wants to be faced with that decision. In some cases, such decisions could meet with dire consequences.

Mr. President, simply put, child care is the absolute linchpin to any successful welfare reform effort. Without adequate child care, there is little reason to believe that welfare families have any real hope of working their way off of welfare and staying off. Working families with children today understand this need better than anyone else.

California already has a serious shortage of safe and affordable child care. Today, 30,454 children in California are served under Federal child care programs. But thousands more sit on waiting lists. In fact, only about 14 percent of eligible children are currently being served by child care programs in California.

Combined with the title XX Social Services Block Grant funding cut of 10 percent in the budget reconciliation measure—which many states use to fund child care activities—the severe underfunding of child care in the conference bill will further exacerbate the problem of underserved families in California.

LEGAL IMMIGRANTS

California is home to the approximately 38 percent of the total number of all immigrants in the United States. Legal immigrants comprise more than 12 percent of the total population of California for an estimated 4 million total number of legal immigrants. Legal immigrants make up approximately one-sixth of the total Los Angeles County population.

The conference agreement will cut off a variety of benefits to legal immigrants. The California legislative analyst's office estimated that the legal immigrant provisions of the House and Senate-passed welfare bills would reduce Federal funds to the State of California by $6.6 to $8.3 billion over 5 years. The restrictions on benefits to legal immigrants would comprise more than half of the total loss of Federal welfare funds to the State ($3.6 to $5.3 billion).

The loss of these funds will result in a tremendous cost shift to the State of California and its local governments. Under California State law, counties are mandated to provide cash and medical assistance to low-income persons who are otherwise ineligible for Federal assistance.

In sum, the conference agreement goes too far in restricting benefit eligibility for legal immigrants, many of whom have been in the country for years and paid taxes. It will also transfer billions of dollars in costs to the already overburdened local governments of California.

MEDICAID ELIGIBILITY

The conference agreement quietly severs the link between AFDC and Medicaid eligibility. Under this bill, women and children over age 13 receiving cash assistance would no longer be guaranteed Medicaid coverage. Neither the Senate nor the House-passed welfare bills would have gone so far as to eliminate the longstanding guarantee of Medicaid coverage for needy citizens.

Elimination of this link, combined with ending the entitlement to cash assistance and shrinking spending for other services for our needy, will render the safety net for the most vulnerable in our country virtually nonexistent.

CHILD NUTRITION

House Republican efforts to end Federal School Lunch and School Breakfast Programs and replace them with capped funding to States are both ill-advised and unpopular. Again, the Senate approach wisely maintained the Federal child nutrition programs.

For nearly 50 years, the School Lunch Program has fed hungry children. School-based feeding programs are sound investments in childrens' health and their education. Studies show that children who go to school hungry tire easily. They have trouble concentrating, do worse on standardized tests and are more likely to miss class due to illness. Every day, 25 million school children in America get a well-balanced, nutritious meal through the Federal school lunch program—2 million of these children are in California.

Despite widespread public support for the National School Lunch and School Breakfast Programs, the conference agreement would permit 7 States to receive funding for their programs in the form of a block grant. Children in those 7 States would no longer receive a Federal guarantee to a nutritious meal which may be the only one they eat all day.

The Los Angeles Times published a series of articles on hunger in southern California late last year. One of the most moving pieces told the stories of the many hungry children at Edgewood Middle School in the city of West Covina. The piece recounted the problems of serious hunger and malnutrition among students in what is considered to be a middle-class bedroom community.

After the story was printed, there was a huge outpouring of public support for feeding the hungry students at Edgewood. Citizens donated boxes of food, and money, and the West Covina Unified School District voted for the first time to sign up for the School Breakfast Program. Shortly thereafter, 60 California school districts followed suit and applied for the Federal School Breakfast Program.

The conferees' decision to open the door to ending National School Lunch and School Breakfast Programs flies in the face of widespread public support for child nutrition programs, as evidenced by the Edgewood Middle School example.

SSI FOR CHILDREN

The conference agreement goes beyond the Senate-passed bill to reduce Supplemental Security Income (SSI) benefits by 25 percent for 65 percent of the children who are on SSI. The agreement would create a two-tier benefit structure, cutting the SSI program for disabled children by $3 billion over 7 years more than under the Senate bill. This cut will have a dramatic impact on low-income families who use SSI to help pay for their disabled childrens' needs.

MAINTENANCE OF EFFORT

The Senate passed a requirement that States must spend at least 80 percent of their previous fiscal year's spending in order to receive their full block grant allocation. The conference agreement lowers the requirement to 75 percent. In effect, this will permit States to reduce their welfare spending by $5 billion over the next 7 years more than under the Senate-passed bill.

FAMILY CAP

Real welfare reform makes work pay and provides incentives for families to transition out of the system. This bill takes the reverse tack of punishing welfare families for being poor. Take for instance, provisions to impose mandatory family caps. Family caps prohibit States from providing additional cash assistance to families who have more children while on welfare.

The Senate spoke on this issue by voting to remove a mandatory family cap provision. The conference agreement subverts the Senate vote by requiring States to impose family caps unless the State legislature explicitly votes otherwise—making it extremely difficult to provide additional assistance to affected children.

The family cap has not sufficiently proven itself to be a successful way to drive down the number of births to women already on welfare. A preliminary study done by Rutgers University of the New Jersey State family cap revealed that the policy did not reduce births to women on AFDC, but did drive children in such families even further below the poverty line.

CHILD SUPPORT

The conference agreement does not contain the amendment which passed unanimously in the Senate which would eliminate benefits to deadbeat parents. The amendment, which I offered, would make noncustodial parents who are more than 2 months behind in their child support ineligible for federally means-tested benefits unless they enter into a schedule of repayment for arrears owed. This provision would have sent a message to get tough with parents who do not take their child support obligations seriously.

CONCLUSION

Combined with proposals to severely cut back the Earned Income Tax Credit, Medicaid, and Head Start, this welfare reform bill will not reform the flawed welfare system, but create more serious barriers for families trying to work their way out of welfare.

This conference agreement extracts approximately $60 billion from programs serving the poorest among us at a time where the Republicans want to give tax breaks to the wealthiest among us. I do not agree with these priorities. Moreover, the bill's dramatic underfunding is unfair to both States and poor families.

And while I support welfare reform that gets tough on work, this one fails even that test.

In summary, I cannot support legislation which will throw countless children into poverty. No one expects us to solve the welfare problem by punishing children for being poor.

The President has pledged to veto this welfare bill. And for the reasons I have stated, I must vote against the final welfare reform bill as well. I urge my colleagues to do the same.

Mr. STEVENS. Mr. President, I am proud to be an original cosponsor of the Dole Work Opportunities Act and am proud to have worked with the current occupant of the chair, the Senator from Pennsylvania. I do believe that this welfare reform act will, as the President said months ago, ''end welfare as we know it.''

As early as 1935, President Roosevelt recognized that the welfare system was not working. At that time he said:

> The lessons of history, confirmed by the evidence immediately before me, show conclusively that continued dependence upon relief induces a spiritual and moral disintegration fundamentally destructive to the national fiber. To dole out relief in this way is to administer a narcotic, a subtle destroyer of the human spirit. It is inimical to the dictates of sound policy. It is a violation of the traditions of America.

Unfortunately we find ourselves, today, some 60 years later, with millions of Americans on welfare. In my State, 39,000 Alaskans are on welfare sometime during the year. That includes many foreign citizens, who are residents of our State.

What is worse, once people go on welfare they seem to stay on it. The average person is on welfare for a mind-boggling 13 years, once he or she gets on welfare.

Teenage girls get welfare checks, but only if they become pregnant. Instead of discouraging teen pregnancy, our Government actually rewards it with a cash bonus.

Today, the out-of-wedlock birth rate is a startling 33 percent. Half of the teenagers who have babies end up on welfare before their babies are a year old.

The current welfare system rewards idleness instead of work, rewards teenagers who have babies out of wedlock instead of those who practice abstinence, and rewards foreigners who illegally enter the country.

The war on poverty's chief casualty has been the American taxpayer. Over $5 trillion, in constant 1993 dollars, has been spent on welfare programs in the 30 years since its inception.

I supported some of those activities under that program, but I am convinced now that the American people are fed up with this Federal welfare system that contradicts values: It discourages marriages, penalizes work, and encourages illegitimacy. Its results speak for themselves.

In Detroit, in 1993, 50 percent of all children in that city received AFDC benefits at some time during the year. And an astounding 67 percent of all the people of that city received AFDC payments during the year. Mr. President, 50 percent of all children in the city were receiving benefits at a given point of time, and 67 percent received them at some point during that year. I am quoting from the statistics from the Department of Health and Human Services.

The current welfare system is not a temporary way station for many. Instead, it has become a multigenerational way of life. According to a 1986 study by David Ellwood, currently an Assistant Secretary at the Department of Health and Human Services, 82 percent of AFDC recipients on the rolls at a given time had been there for more than 5 years, and 65 percent for 8 years or more.

The breakdown of the family, the glue that has traditionally held our American society together, is another casualty of this welfare system. Teenagers, too young to have a driver's license, are having babies and moving into apartments of their own, financed by the taxpayers, and having more babies. And children born out of wedlock are three times more likely to be on welfare when they grow up.

The existing system breeds discontent and idleness. It is a fertile ground for abandoning personal responsibility for one's life, one's children, our society, or our way of life.

Mr. President, I grew up in the Depression when everyone had to work to survive. We had to work hard. From the time, literally, we were 6 or 7, my brothers and sister and I worked at odd jobs to keep our family going. Things were tough, but my grandmother taught us that the way for us to get ahead and stay ahead was through hard work.

I think it is time to put my Grandma Stevens' horse sense back into our public policy.

The bill BOB DOLE and I, and the occupant of the Chair, cosponsored charts a bold new course designed to reverse decades of perverse incentives and failed policies. Our bill will restore a sense of ethics to our social fabric, especially the ethics of work, responsibility, and family integrity.

This bill will end welfare as an entitlement. The bill will return to the concept of a helping hand to those truly in need, temporarily, until that person has a chance to get back on his or her own two feet.

It will impose a 5-year lifetime limit on receiving welfare benefits, require welfare recipients to work as soon as they are trained, provides $18 billion for child care to enable welfare mothers to work, terminates benefits to those who refuse to work, requires teenagers who have babies to stay in school and live under adult supervision to qualify for benefits, denies welfare payments to drug addicts and alcoholics, reduces the Federal bureaucracy by transferring the programs to the States to run.

This measure provides the flexibility to allow States to address the needs of those truly in need. We will all agree, I hope, that the disabled veteran, the elderly widow, or the learning-disabled child should continue to receive our help, and will under this bill.

Nothing in this bill prevents States from exempting recipients from the work requirement if they are physically or mentally unable to do the work. This bill also gives the States the option to cut off benefits to mothers who have more children while on welfare to discourage illegitimate births. As harsh as that sounds, it was the recommendation that came to me personally from school nurses in my State.

This is the family cap concept. Some folks in the media, I think, have misconstrued this section of our bill. Our bill does not say the States cannot institute a family cap—it says let the States decide whether to institute it or not. That is what this debate is all about.

For too long, Washington has dictated welfare policy to individual States. My State is a good example of the flexibility that is needed in administering laws such as this.

States have the right to experiment and decide the best way to discourage welfare abuse and yet meet the needs of their citizens. By mandating caps, we would go down the failed road of ''Congress knows best.''

This bill is not a Congress knows best bill. It is a ''States know best'' bill. And that is what the 10th amendment is all about. It is simple. It says:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The 10th amendment is fulfilled by this bill that we have before us, the Work Opportunities Act. It leaves to the States the powers reserved to them, and I am proud to support it.

I thank the Chair. I yield the floor.

Mr. ROCKEFELLER. Mr. President, this year, I have consistently argued for reform of the welfare system. Today, I voted against legislation that misuses the label ''welfare reform'' and deserves to be soundly rejected.

I am extremely disappointed that an extremist faction of Congress managed to turn a historic chance for enacting welfare reform into another way to

pursue an agenda that will hurt children, weaken families, and cripple State budgets. To pursue this mean-spirited program so close to Christmas makes it all the sadder and more shameful.

I am determined to press on for real welfare reform that promotes work, reduces dependency, and protects innocent children. I have personally worked to promote welfare reform for many years as Governor of West Virginia and in the U.S. Senate, and I will not give up.

In 1982, as Governor, I helped establish one of the first workfare programs in the country, which continues in West Virginia today. In 1988, I was a conferee who helped forge a bipartisan agreement to promote work in the Family Support Act. This year, I have been eager to work in a bipartisan manner to promote even bolder initiatives for welfare reform that could build on the innovations started by the Family Support Act, and state-led experimentation.

My fundamental principles for reform are that parents should accept personal responsibility and work, but that children must be protected, not punished. We should never forget that two-thirds of the people on welfare are children, and 70,000 of them live in my State of West Virginia. They are the innocent ones, and they should not be punished because of their birth.

I was an original cosponsor of the Work First plan, sponsored by Senators DASCHLE, MIKULSKI, and BREAUX, because I strongly felt that this program was the best initiative to promote work and still protect the millions of children who depend on welfare for basic needs of food, clothing, and shelter. When our Democratic alternative was not adopted, I was willing to work in a bipartisan manner in the Senate to try and forge an agreement. I voted for the Dole-Daschle leadership amendment and the bipartisan Senate welfare bill. It was not perfect, and no comprehensive bill can be. It was a sincere effort to reform our welfare system and retain some fundamental safety net programs for children, especially child welfare and foster care.

Unfortunately, the bipartisan approach taken in the Senate was not adopted by the conference committee. As Senator MOYNIHAN, the ranking member of the Finance Committee said in his statement, the conferees were not consulted. In fact, one of the Senate Republican conferees did not even sign the conference report. Several Republican Senators have expressed serious concerns about disturbing policy changes tucked into the conference report that do not belong in a welfare reform bill.

Having served on the conference committee in 1988 for the Family Support Act, which passed the Senate with a strong bipartisan vote of 96 to 1, I am disappointed that this was not the model for negotiations on this legislation. The conference committee for the Family Support Act included hard work and tough decisions, but it was a sincere, bipartisan effort and it produced modest success, and the framework for innovation that led to this debate.

There are many issues involved in this debate and the conference report. Many of the cuts are in programs beyond our current general welfare program, called Aid to Families with Dependent Children, [AFDC]. Personally, it is the cuts and drastic changes to the other programs that trouble me greatly.

For example, this conference report eliminates assured Medicaid eligibility for poor children over 13 years old, and poor mothers. As someone who has fought to expand health care coverage for families, this is too much of a step backwards. This report cuts child nutrition in general and allows for block grants of the successful school lunch program in seven States as a demonstration. What happens in those seven States when a recession hits and more children qualify and need school lunches, but Federal funding doesn't increase? The harsher cuts in Supplemental Security Income [SSI] for disabled children and the two-tier benefit structure that reduces benefits by 25 percent for the majority of disabled children are disappointing, given the bipartisan Senate position on SSI for disabled children.

Throughout this year and the general debate on welfare reform, I have focused much on my time and energy on the Federal programs for abused and neglected children—child welfare services, foster care, and adoption assistance for children with special needs. Children served by these programs are among the most vulnerable in our society. They are children at risk of abuse and neglect, often in their own homes by their parents, and I deeply believe that we have a moral obligation to protect these children.

But this conference report does not adequately protect such vulnerable children, and I do not believe that it reflects the bipartisan approach to child welfare programs strongly endorsed in the Finance Committee and on the Senate floor. In this Chamber, a strong, bipartisan coalition supported retaining current law for child welfare and foster care in recognition of the special needs of these children.

The conference report on child welfare and foster care falls woefully short of the needs of abused and neglected children. A broad range of child advocates and bipartisan groups oppose the block grants suggested in the conference report. Mr. President, I will ask unanimous consent that a list of these advocates be printed in the RECORD.

Having served as chairman of the National Commission on Children, my goal is to improve services to abused and neglected children as suggested our unanimous, bipartisan report, not work to dismantle, effective programs. For example, the conference report would eliminate the Independent Living program, a small but effective program offering an alternative to foster care of teens. The conference report would eliminate the promising Family Preservation and Family Support Program which I helped to create in 1993, and this program has received good initial reviews from the Government Accounting Office [GAO]. Additionally, the conference report would block grant and cap vital Federal funding for foster care placement services, including recruiting foster care parents and other essential services. This is the wrong direction for child welfare, and it is the wrong time to undercut these program if we are to move ahead on bold reform of general welfare, known as AFDC.

For West Virginia, the stakes in this debate are high. My State is eager to promote work and has already been approved by the Clinton administration for a waiver to create the Joint Opportunities for Independence [JOIN] to encourage private employers to hire welfare recipients. Having personally met with the top officials in the Department of Human Resources, I know of their interest to reform welfare. West Virginia also has regions of high unemployment and difficult transportation issues. My State is struggling to cope for a Medicaid funding crunch and can ill afford to lose hundreds of millions of dollars in social service programs and at the same time be slapped with higher work requirements for welfare families. West Virginia wants to, and is already, moving families from welfare to work, but my State needs continuing Federal investments in child care and support services to run effective programs. Even the Congressional Budget Office [CBO], acknowledges that this conference report is $6 billion short on the funding needed to child care to move parents into work.

Let me reiterate. I want to enact meaningful welfare reform that moves parents from welfare to work. Since the President has already said he will veto this bill, it is time to make a New Year's resolution for 1996 that Congress will revive the bipartisan cooperation and effort needed to accomplish the kind of welfare reform that Americans have every right to expect.

Mr. President, I now ask that the aforementioned list be printed in the RECORD.

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

LIST OF ORGANIZATIONS WHO HAVE WRITTEN LETTERS IN OPPOSITION TO THE CONFERENCE REPORT PROVISIONS ON CHILD WELFARE SERVICES AND FOSTER CARE:

American Bar Association.
National Conference of State Legislatures.
American Public Welfare Association.
Adoption Exchange Association.
Adoptive Families of America.
Alabama Council on Child Abuse (Montgomery, AL).
American Academy of Child and Adolescent Psychiatry.
American Academy of Pediatrics.
American Association of Psychiatric Services for Children.

American Civil Liberties Union.
American Ethical Union, Washington Ethical Action Office.
American Humane Association, Children's Division.
American Jewish Congress.
American Jewish Congress Commission for Women's Equality.
American Jewish Committee.
American Professional Society on the Abuse of Children.
American Psychiatric Association.
American Psychological Association.
American Red Cross.
The Arc.
Arkansas Advocates for Children (Little Rock, AR).
Asistencia para Latinos (Glenwood Springs, CO).
Association of Children's Services Agencies.
Bazelon Center for Mental Health Law.
Beech Brook (Cleveland, OH).
Behavior Sciences Institute/Home Builders (Federal Way, WA).
Bienvenidos Children's Center, Inc. (Altadena, CA).
Boarder Baby Project (Washington, D.C.).
Bridgeport Child Advocacy Coalition (Bridgeport, CT).
California Association of Children's Homes (Sacramento, CA).
California Association of Services for Children (Sacramento, CA).
California Consortium to Prevent Child Abuse (Sacramento, CA).
Catholic Charities, USA.
Center for the Study of Social Policy.
Center on Juvenile and Criminal Justice.
Child Abuse Council (Moline, IL).
Child Care Association of Illinois (Springfield, IL).
Child Welfare League of America.
Children Awaiting Parents.
Children First, Florida Legal Services.
Children's Action Alliance.
Children's Defense Fund.
Children's Research Center/National Council on Crime and Delinquency.
Children's Rights, Inc.
Citizenship Education Fund.
Coalition for Family and Children's Services in Iowa (Des Moines, IA).
Coalition for Juvenile Justice.
Coalition on Human Needs.
Colorado Association of Family and Children's Agencies, Inc. (Denver, CO).
Colorado Coalition for the Protection of Children (Denver, CO).
Colorado Foundation for Families and Children (Denver, CO).
Communities for Children (Boston, MA).
Connecticut Center for Prevention of Child Abuse.
Council for Exceptional Children
Council of Family and Child Caring Agencies (New York City, NY)
Council on Child Abuse and Neglect
Council on Social Work Education
Damar Homes, Inc. (Camby, IN)
David and Margaret Home, Inc. (La Verne, CA)
DAWN for Children (Providence, RI)
DC Action for Children
Delawareans United to Prevent Child Abuse
Demicco Youth Services (Chicago, IL)
The Episcopal Church
Families' and Children's AIDS Network
Family Preservation Institute, Department of Social Work, New Mexico State University
Family Resource Coalition
Family Service America
Florida Committee for Prevention of Child Abuse (Gainesville, FL)
Florida Foster Care Review Project, Inc. (Miami, FL)
Foster Family Ministries (Kansas City, MO)
Four Oaks, Inc. (Cedar Rapids, IA)
Friends Committee on National Legislation
Gary Community Mental Health Center (Gary, IN)
General Board of Church and Society, United Methodist Church
General Federation of Women's Clubs
Generations United
Georgia Council on Child Abuse
Georgians for Children
Gibault School for Boys (Terre Haute, IN)
Girl Scouts USA
Hamilton Centers Youth Service Bureau, Inc. (Noblesville, IN)
The H.E.L.P. Group (Sherman Oaks, CA)
Hillsides Home for Children (Pasadena, CA)
Hollygrove Children's Home, Los Angeles Orphans Home Society
Home-SAFE Child Care, Inc. (Los Angeles, CA)
Hoosier Boys' Town (Schereville, IN)
Illinois Action for Children
Indiana Association of Residential Child Care Agencies (Indianapolis, IN)
Institute for Black Parenting
Intensive Family Preservation Services National Network
Julia Ann Singer Center (Los Angeles, CA)
Juvenile Law Center (Philadelphia, PA)
Kansas Children's Service League
Kentucky Council on Child Abuse
KidsPeace National Centers for Kids in Crisis (Indianapolis, IN).
The Law Center (TLC) for Children of Legal Services of North Virginia, Inc.
Legal Assistance Foundation of Chicago.
LeRoy Haynes Center (La Verne, CA).
Louisiana Council and Child Abuse.
Lutheran Child and Family Services, Indiana/Kentucky (Indianapolis, IN).
Lutheran Office for Governmental Affairs.
Luzerne County Children & Youth Services (Wilkes-Barre, PA).
McKinley Children's Center (San Dimas, CA).
Maryland Association of Resources for Families and Youth.
Maryland Foster Care Review Board.
Maryvale (Rosemead, CA).
Masada Homes (Torrance, CA).
Metropolitan Council on Jewish Poverty (New York City, NY).
Michigan Federation of Private Child & Family Agencies (Lansing, MI).
Minnesota Committee for Prevention of Child Abuse.
Minnesota Council of Child Caring Agencies (St. Paul, MN).
Missouri Chapter, National Committee to Prevent Child Abuse.
Missouri Child Care Association (Jefferson City, MI).
Moss Beach Homes, Inc. (San Carlos, CA).
National Adoption Center.
National Association of Child Advocates.
National Association for Family Based Services.
National Association for Foster Care Reviewers.
National Association for Homes and Services for Children.
National Association of School Psychologists.
National Association of Service and Conservation Corps.
National Association of Social Workers.tional Baptist Convention, USA.
National Black Child Development Institute.
National Center for Children in Poverty.
National Center for Youth Law.
National Collaboration for Youth.
National Committee to Prevent Child Abuse.
National Committee to Prevent Child Abuse, New York State.
National Committee for Rights of the Child.
National Council of Churches.
National Council of Jewish Women.
National Court Appointed Special Advocates Association.
National Crime Prevention Council.
National Education Association.
National Family Planning and Reproductive Health Association.
National Foster Parent Association.
National Independent Living Association.
National Jewish Community Relations Advisory Council.
National Network of Children's Advocacy Centers.
National Network for Youth.
National One Church One Child.
National Parents and Teachers Association.
National Resource Center on Special Needs Adoption.
National Respite Coalition.
NETWORK: A National Catholic Social Justice Lobby.
New Jersey Association of Children's Residential Facilities.
New Jersey Foster Parents Association.
New Mexico Advocates for Children and Families (Albuquerque, NM)
New York State Citizens' Coalition for Children, Inc.
North American Council on Adoptable Children.
North Dakota Committee to Prevent Child Abuse.
NOW Legal Defense and Education Fund
The Ohio Association of Child Caring Agencies, Inc. (Columbus, OH).
Oklahoma Committee to Prevent Child Abuse.
Oklahoma Institute for Child Advocacy.
Ounce of Prevention Fund (Chicago, IL)
Parents Anonymous, Inc.
Parents and Children Together (Honolulu, HI).
People Against Child Abuse, Inc.
Pleasent Run Children's Homes (Indianapolis, IN).
Polk County Decategorization Advisory Committee (Des Moines, IA).
Presbyterian Church.
Prevent Child Abuse, Hawaii.
Prevent Child Abuse, Illinois.
Prevent Child Abuse, Indiana.
Prevent Child Abuse, North Carolina.
Prevent Child Abuse, Vermont.
Prevent Child Abuse, Virginia.
Project Family of Kitcap County (Bremerton, WA).
Project Vote.
Puerto Rican Legal Defense and Education Fund (New York, NY).
Reiss-Davis Child Study Center (Los Angeles, CA).
Rosemary Children's Services (Pasadena, CA).
Society for Behavioral Pediatrics.
South Carolina Association of Children's Homes and Family Services (Lexington, SC).
Southwest Indiana Regional Youth Village (Vicennes, IN).
Spaulding for Children.
State Communities Aid Association (Albany, NY)
Texans Care for Children
Texas Association of Licensed Children's Services (Austin, TX)
Texas Committee to Prevent Child Abuse (Austin, TX)
Tompkins County Department of Social Services (Ithaca, NY)
Union of American Hebrew Congregations
Union Industrial Home for Children (Trenton, NJ)
Unitarian Universalist Association
Unitarian Universalist Service Committee

United Synagogue of Conservative Judaism
Villages of Indiana, Inc. (Indianapolis, IN)
Vista Del Mar Child and Family Services (Los Angeles, CA)
Voices for Illinois Children (Chicago, IL)
Wake County Department of Social Services (Raleigh, NC)
West Virginia Child Care Association
Wheeler Clinic (Plainville, CT)
Whitington Homes and Services for Children & Families (Fort Wayne, IN)
Women's Legal Defense Fund
Working to Eliminate Child Abuse and Neglect (WE CAN, Inc.), (Las Vegas, NV)
Youth Law Center
Youth Services, Center of Allen County (Fort Wayne, IN)
YWCA of the USA
Zero to Three, National Center for Clinical Infant Programs
Zero to Three Hawaii Project, Imua Rehab (Wailuku, HI)

Mr. GRAHAM. Mr. President, today, on the Friday before Christmas, the Senate will vote on dramatic, sweeping changes in our welfare system.

Unfortunately, in a pre-holiday perversion of the legislative process, the U. S. Senate will vote on this major conference report without the opportunity for thoughtful review. As of last evening, Members of the Senate did not even have printed copies of the legislation.

So, for starters, we yearn for more information about exactly what is contained in this major piece of legislation, touted as a centerpiece of the majority's legislative package for 1995.

But, as we prepare to vote under these challenging circumstances, I want to state clearly my objections, based on what I do know about this ill-advised so-called reform.

Some have made the curious claim that this welfare reform conference report is a marked improvement from that which came before the Senate before the Thanksgiving recess.

However, it is clear to me that the product that has come from the conference committee is a step backwards, and therefore, I will oppose the legislation as reported from conference.

Much of what I will say today, I relayed earlier in my statement on the reconciliation conference report. Further, I make this statement knowing that the President has made clear his opposition to this legislation, and has issued a statement announcing his intention to veto the measure in its present form.

I support welfare reform. I want to see Congress pass a welfare reform measure, and I want the President to sign welfare reform legislation into law.

My support for sweeping change in our Nation's welfare system is a matter of record. As recently as September 19, 1995, I joined 86 of my colleagues in supporting the Work Opportunity Act of 1995. I voted in support of this bill, even though I had reservations, to keep the welfare reform effort alive in this Congress. Unfortunately, the conference agreement is worse than the Senate version of the bill we considered 3 months ago.

My consideration of the conference report focuses on three concerns. First, will it work? Welfare reform, when it is executed well, works. Florida is proud of two successful welfare pilot projects, the largest in America in instituting a ''time limited benefit.'' Florida, in fact, has been one of the pioneers in the ''two-years-and-you-are-out'' approach.

I visited Pensacola to observe one of Florida's pilot programs. Earlier this year, President Clinton met with some of the participants, and he touted the program.

These pilots are succeeding because there is a front-end investment in the lives of those affected by the program change. Whether it is day care, job training, temporary transportation assistance, or health care, the welfare recipient is given a hand up instead of a hand out. One of the lessons learned from these pilot projects is that transitional support is needed to move people from welfare to work. My concern is that the legislation before us would jeopardize these successful experimental efforts, and would fail to provide adequate transitional support to meet the goals of the legislation.

Second, is this conference report fair to States? The formula to allocate funds to the States continues welfare as we knew it. It treats poor children differently, depending upon which State they reside in. The conference formula says that if your State spent a lot in the old days, and thus built incentives to keep people on welfare, you will be given a leg up on every other State under welfare block grants in the future.

The formula, titled against growth States, is flawed if not rigged. High-growth States like Florida would be set up to fail.

Third, how would the reform proposal treat legal immigrants and what effect would the immigrant provisions have on States with large immigrant populations? The city of Miami had more legal immigrants admitted last year than 20 States combined. Thus, the prohibitions and timetable on certain benefits would shift to Miami costs that once were shared by the Federal Government.

The State of Florida does not set America's foreign policy, nor its immigration policy. The State of Florida did not negotiate with Cuba to accept 20,000 legal immigrants per year. But the State is now being told the following: we are going to stick you with hundreds of millions of dollars in costs for legal and illegal immigration, even though you have no control over these foreign policy decisions that affect immigration.

Today, I join the President in his commitment to pass welfare legislation. We should be honest with the American people and not call something reform which is in reality is an abdication of our responsibility for providing a sensible framework for moving people from welfare to work.

It is my hope that when the President vetoes the welfare conference report and the question of welfare reform is reopened, that the concerns I have outlined today will be addressed.

Mr. HARKIN. Mr. President, our welfare system is broken. It is failing the taxpayers and those who are on welfare. It must be reformed. And I have been working hard to bring about bipartisan reforms that will work. I worked to enable innovative reforms in my State of Iowa. I introduced, along with Senator KIT BOND of Missouri, the first bipartisan welfare reform bill 2 years ago based on successes in our states. And I worked to support and improve the comprehensive reform bill that we passed in the Senate earlier this year by an overwhelming bipartisan vote of 87 to 12.

Unfortunately, all of the hard work done by the Senate to design bipartisan common sense reforms has been lost in the conference agreement before us. Not only will this bill fail to move people from welfare to work and self-sufficiency, it is filled with provisions that have nothing to do with welfare reform.

How does raising the retirement age for individuals to receive SSI from 65 to 67 get welfare recipients off the dole and into jobs? Or is it a foot in the door for NEWT GINGRICH and his followers to raise the Social Security retirement age?

How does cutting school lunch assistance to children reform the welfare system?

How does gutting protections for abused and neglected children and major revisions to programs to assist in the adoption of abandoned children fix welfare?

Well, the answer is clear. Those provisions do not do anything to reform welfare. Nor do many of the other provisions of the pending legislation.

And I said, this bill will not move people from welfare to self-sufficiency and it will not require responsibility from day one. Central to this is the failure to include the Senate bill provision added by an amendment I offered to condition the receipt of welfare benefits on the signing of a strong personal responsibility contract. As we require in Iowa, welfare recipients would have been required to accept responsibility from the first day on welfare by signing a binding contract stating what they must do to get off of welfare and a date by which welfare benefits will end. Responsibility would begin on day one, not year two. Failure to abide by the terms of the contract would mean termination from the welfare rolls—immediately.

Each individual starting a new job is given a job description which outlines precisely what is expected to receive a paycheck. At the present time, an individual on welfare is simply sent a check without requiring anything in return.

We need to fundamentally change welfare as we know it. Welfare is not

about getting something for nothing. It is about responsibility and accountability.

But not this bill. There is no contract. There is no accountability. My amendment corrected that situation, but my provision requiring a personal responsibility contract is gone.

For the past several weeks we have been told by NEWT GINGRICH that we need to listen to the Congressional Budget Office [CBO] because they are the experts. There analysis is accurate and should be trusted.

Well, the CBO tells us that this new Republican welfare bill will not work. Their analysis indicates that most welfare recipients won't be put to work. They say that states would be forced to cough up a whole lot more of their money to meet the mandates in the legislation and that this won't happen.

CBO says that the bill falls $7 billion short of what would be required to put welfare recipients to work. Further, work programs will also cost more money than is provided by the legislation.

So in spite of a lot of nice sounding rhetoric by NEWT GINGRICH and his supporters, if we pass this bill, welfare will not be reformed in most states. Taxpayers and welfare recipients will not see the promised changes in the system and local communities will be left paying the bills.

Iowans pay taxes that go to support those on welfare in New York, Texas, California, and other states. This bill shirks our responsibility to insist that those tax dollars aren't just wasted away. That is not acceptable.

This conference report makes deep cuts in essential safety-net programs for children. It provides deeper cuts in food stamps and child nutrition programs than were proposed by the Senate bill. It also unfairly cuts assistance to fully 65 percent of children with disabilities. In addition, changes to the foster care and adoption programs will place abused and neglected children at greater risk of harm. Ronald Reagan advocated the maintenance of a safety net for children. This bill shreds that safety net.

I have always thought that things worked best when we all worked together. For months, in fact for several years, I urged my colleagues to work together in a bipartisan manner to reform welfare. That's the way we did it in Iowa, and it is working. We had bipartisan cooperation for a brief time in September. And working together outside of partisan politics we put together a good, commonsense plan.

But that sentiment quickly deteriorated and the pending legislation was negotiated behind closed doors without any significant bipartisan cooperation. We we are left with a phony, partisan bill.

The President has said he will veto this legislation and has called for bipartisan cooperation on welfare reform. Again, I implore my colleagues to heed his words.

Let us make a New Year's resolution to stop the partisan sniping and work together in a bipartisan manner on this issue as well as the many other items on our agenda in the second session of the 104th Congress.

Mr. HATFIELD. Mr. President, the House and Senate conferees have reported from conference a welfare reform proposal which ends the welfare program as we know it. I agree with the Republican agenda which takes on the difficult issues in welfare reform, but I differ on some of the finer points included in this agreement. Welfare has become a terrible cycle which engulfs impoverished parents who raise children in poverty. Those children who do not have adequate access to quality education, which would break the cycle of dependency, continue to be chained in poverty, languishing there, thus continuing this vicious cycle.

Mr. President, my generation grew up in era where there was no government safety net, instead there was family and community. We relied upon each other for help and we took any job we could find. We may have gone hungry for a short period of time until the next paycheck arrived, however, nobody starved. Today, that sense of community has changed, largely because of our Federal welfare efforts. All people have a smidgen of pride implanted in their being and it burns as a fire within. We are fueled by this fire to become better people. We educate ourselves, we move forward above and beyond what we are today and strive to become even better tomorrow. Unfortunately, through our welfare program, we have only succeeded in taking away incentive for people to work by dousing that fire-in-the-belly that drives us all.

We must first address the root problems of poverty before we can discuss the cure for poverty; lack of education, lack of affordable and adequate child care, and access to upward social and economic mobility and stability. A successful society allows its citizens the opportunity to educate themselves, to increase their opportunities and knowledge. It is of no benefit to society to remove welfare recipients and place them into jobs with no upward mobility. Without the prospects of advancement they can only maintain the status quo at best and as history has taught us the cycle possesses a powerful habituation to welfare.

This bill takes a step in the right direction by requiring those who can work to work. This is a policy goal I have long supported and advanced. I believe this will make a difference in our welfare system and that States should be rewarded for their efforts at matching individuals with jobs. My own State of Oregon has chosen to link public assistance functions with welfare-to-work services, providing a seamless link amongst the differing human resource agencies. The measurement of their success is declining welfare rolls and increasing placement of former welfare recipients into unsubsidized employment.

I also support limiting welfare as an entitlement program. As chairman of the Senate Appropriations Committee I know all too well the dire consequences of continuing our spending levels on entitlement programs that we do not and cannot control. We can no longer keep spending until all needs are met. Yet, in our effort to reform programs from entitlement spending to other forms of financing, we cannot cut indiscriminately. I am concerned that some aspects of this conference report are inconsistent with our policy goals.

The Congressional Budget Office has analyzed this report and found that, over the next 7 years, funding levels would fall far short of what would be needed to cover the child care costs associated with the work requirements of the bill. In my view, adequate funding for child care is a necessity, in order for parents to work.

In addition, I am concerned that the conference agreement does not reflect the Senate's position of requiring States to continue Medicaid coverage for families who would have received AFDC if it still existed on March of this year. The agreement before us repeals current law and does not require States to provide Medicaid coverage for those in AFDC families who do not otherwise qualify—those children over the age of 12 and women who are not pregnant. While I understand the conferees' attempt to delink Medicaid from welfare, to be dealt with later, I am not confident that this basic safety net will be preserved.

Finally, I have received a letter from the Oregon Department of Adult and Family Services raising several concerns with this conference agreement. I ask unanimous consent that this letter be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. HATFIELD. Mr. President, I am told the President intends to veto this bill, which will bring it back before us. I expect we will have an opportunity to work further on some of the finer points of this agreement. I am committed to do so. Our obligation to bettering the standard of living for those in poverty must not waiver. The Federal Government should encourage, not impede innovation and creativity in the States and private sector.

EXHIBIT 1

OREGON, DEPARTMENT OF HUMAN RESOURCES,
Salem, OR, December 21, 1995.

Hon. MARK O. HATFIELD,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: I am writing to you out of concern over the most recent language in the Welfare Reform Bill, HR 4. As you may know, Oregon is a leader in Welfare Reform, and this State's Legislature, with my support, recently passed a sweeping Welfare Reform Bill that is very much in keeping with the thrust of HR 4. However, there are several technical areas of the Bill in which language should be clarified to allow

States full latitude in implementation, including:

MAINTENANCE OF EFFORT

While I am supportive of a Maintenance of Effort provision, any State expenditure which directly supports the achievement of self-sufficiency or temporary assistance to low-income families should be counted in the calculation of that maintenance of effort. To do otherwise directly imposes a special Welfare Reform design on States that significantly impedes their flexibility.

FEDERAL RESTRICTIONS ON STATE SPENDING

States must be free to spend State dollars on their self-sufficiency programs as they deem appropriate. There are many provisions of HR 4 which appear to restrict not only the State expenditure of federal funds but the expenditure of State funds as well. Surely this is not the intent of Congress.

WORK PARTICIPATION CREDIT FOR UNSUBSIDIZED EMPLOYMENT

One of the hallmarks of the Oregon program is the number of placements into unsubsidized employment that not only move families off of welfare but also move them out of poverty. What was six months of participation credit for such families in earlier versions of HR 4 appear to be deleted in the Conference version. Since employment is the best way to accomplish Welfare Reform, states should be given proper credit for helping low-income families accomplish that goal.

CHILD CARE NECESSARY FOR PARTICIPATION IN WORK PROGRAMS

We work very hard with our low-income families to obtain safe child care. If such care is not available, we do not require their participation in our JOBS program. However, the current wording of HR 4 suggests that if *any* particular type of care is not available or convenient then no participation can be required. In fact, even if the type of care that is not available is not one that the participant ordinarily uses, it remains grounds to refuse to participate in employment and training programs. Wording should indicate the participation is required if any safe (under State law) child care can be arranged.

Again, while these are technical areas, they remain important to States that will be charged with implementing the most sweeping changes in welfare since the advent of the Social Security Act. With your continued help, we can produce Welfare Reform that works, allowing states to assist low-income families to escape poverty through self-sufficiency. If you or your staff members have any questions regarding our concerns in these areas, please feel free to contact Jean Thorne of the Governor's Office or Jim Neely, Assistant Administrator of Adult and Family Services Division. Thank You.

Sincerely,

STEPHEN D. MINNICH,
Administrator, Adult and Family Services Division, Assistant Director, Department of Human Resources.

Mr. CHAFEE. Mr. President, we spent many months negotiating the contents of the Senate welfare bill, which was approved 87–12, with overwhelming bipartisan support. I believe that measure, which the President indicated he would sign, was a tremendous victory for all parties.

Regrettably, the final conference agreement strays in several respects from the Senate-passed welfare reform bill. As a consequence, President Clinton has indicated he will veto this legislation.

Today I voted to send the conference report to the President because, while far from perfect, this legislation is still better than current law, which only encourages and perpetuates dependency. For example, this bill provide for time-limited benefits, so that individuals know they must make every effort to become self-sufficient by a date certain. It also includes much stronger child support enforcement mechanisms to require parents to assume financial responsibility for the children they bring into this world. Importantly, it also gives the States needed flexibility to develop innovative programs to help their citizens break the cycle of dependency associated with the present welfare system.

However, I am still not satisfied with this legislation, and continue to believe it can be improved, and intend to work toward that end following the President's veto. The areas in which I will seek improvement are as follows:

AFDC ELIGIBILITY FOR MEDICAID

The conference agreement severs the link between AFDC eligibility and Medicaid. Under this provision, which was not included in either the House or Senate version of the legislation, States would no longer be required to provide Medicaid coverage to millions of AFDC eligible women and their children over the age of 13. Only those women who are pregnant and on AFDC, and children under the age of 13, would be guaranteed Medicaid coverage.

While I am pleased that the conference report retains Medicaid eligibility for foster care and adoption assistance children, eliminating mandatory Medicaid coverage for other AFDC beneficiaries is counterproductive. This provision is troubling and should be dropped.

CHILDREN'S SUPPLEMENTAL SECURITY INCOME (SSI)

This program took a big bite in the Senate bill. A more restrictive definition of disability was adopted to ensure that only those children who are truly disabled qualify for cash assistance. On top of this, the conference agreement adds a new two-tiered system of eligibility which will result in a 25-percent reduction in SSI benefits for 65 percent of the children on the program. The distinctions in this two-tiered program are arbitrary and make no practical difference to a family where one parent must give up his or her job to remain at home with a severely disabled child. This provision should be modified.

FOSTER CARE

While I am pleased that the conference agreement maintains the Federal entitlement for foster children and adoption assistance—a position which I strongly supported—this bill would block grant and cut funding for the administrative and preplacement costs associated with these programs. These costs, which represent nearly half the cost of the overall program, are far from purely administrative. They cover such critical services as licensing and recruitment of foster homes and foster parents, services needed to remove children from abusive and unsafe homes, monitoring children in out-of-home placements, and court expenses to qualify special-needs children for adoption. These provisions need to be improved.

CHILD CARE

The final conference agreement provides reduced funding for child care and drops Federal health and safety standards in the Child Care and Development Block Grant [CCDBG]—two significant and troubling changes from the Senate-passed bill. Given the enormous importance of child care to the success of welfare reform, these provisions should be reexamined.

LEGAL IMMIGRANTS

While I was able to secure some improvements on the treatment of legal immigrants in the conference report, the final bill still goes well beyond the Senate-passed bill. The tough new eligibility restrictions for Federal programs that this legislation would impose upon legal immigrants are excessive and should be further modified.

Mr. LEVIN. Mr. President, just a few months ago I stood with a bipartisan group of my colleagues in the Senate in passing, 87 to 12, a compromise welfare reform bill which I believed represented a constructive effort at achieving meaningful change in the current welfare system. I voted for the bill because I believe the current system is broken and needs to be fixed. It needs to be fixed in a way that does at least two things: requires able-bodied persons to work and protects children in the process.

Mr. President, the Senate compromise bill met this challenge. It would fundamentally change the current system by replacing a system of unconditional, unlimited aid with a system providing conditional benefits for a limited time. It would do so without abandoning the national goal of preserving the important safety net for poor children. It moves able-bodied people into work, tightens child support enforcement laws, and provides adequate child care resources for children of parents making the transition into work and to low-wage working families that seek to remain off of welfare.

I was particularly pleased that the compromise bill contained an important work provision I've been promoting, cosponsored by the majority leader, requiring that unless an able-bodied person is in a private sector job, school or job training, the State must offer, and the recipient must accept, community service employment within 3 months of receipt of benefits, not the 2 years contained in the original legislation proposed by majority leader.

Mr. President, I had great hopes that the bipartisan achievements in the Senate compromise proposal could be sustained through the conference with the House. Regrettably, this conference report is weak on work and it does not

adequately protect children. I cannot support it.

The American taxpayers want people who are on welfare and are able-bodied to work. So it is quite perplexing to me that despite House Republicans continuing claims of being ''tough on work,'' the conference dropped the Levin-Dole work requirement from the bill. If we are serious about work, Mr. President, we must have the kind of provision that requires it: not 2 years down the road, not 1 year down the road, but 3 months from receipt of benefits for those persons who are not in school or job training or in an exempt category.

And, Mr. President, the punitive proposal before us cuts $14 billion more our of programs for poor children and their families than the bipartisan compromise Senate bill, causing millions of children to lose their eligibility for important safety-net programs.

The changes in eligibility rules would reduce benefits for most disabled children by 25 percent, sets lower levels of funding for child-care programs than the Senate proposal, and eliminates important health and safety standards. Many of the more than 300,000 children covered by Medicaid, because they receive foster care or adoption assistance, also would be placed in jeopardy.

It also significantly reduces the benefits to children and families who receive support from the food stamp and child nutrition programs, which could have serious consequences for the health and well-being of millions of children, working families, and elderly.

The optional block grants undermine the basic framework of the lunch and breakfast programs by eliminating low-income children's guarantee of access to free meals, weakening nutrition standards, and removing the programs' ability to respond to changing economic circumstances.

For some reason, totally unrelated to welfare reform, House Republicans are jeopardizing programs that for decades have fed millions of children in schools and child care centers in America. Do we want to erode the safety net for the 5 million poor children who are served nutritious breakfasts at school? What about the 24 million children who receive nutritious school lunches? Nearly half of theses lunches are provided to poor children free of charge, and nearly 2 million lunches to low-income children at reduced prices.

Mr. President, the answer is ''No.''

Mr. CONRAD. Mr. President, I strongly believe that we must reform our welfare system. I have devoted a great deal of time and energy to examining the broken welfare system and developing meaningful solutions to address the deficiencies. I presented a welfare reform proposal, the Work and Gainful Employment Act, and worked with my Senate colleagues to improve and strengthen the Senate version of H.R. 4.

Central to each of the welfare reform proposals I've supported were the basic principles of work, responsibility, and family. The proposals were built in a framework of increased State flexibility while not placing the health and safety of our Nation's children at risk. They had tough work requirements, and promoted personal responsibility while protecting children and the disabled.

Because of my sincere interest in reforming the welfare system, I look upon the welfare reform conference agreement with great disappointment. The conference agreement on H.R. 4 falls far short of upholding these core principles and meeting these goals. It is weak on work and places abused and neglected children in danger. Additionally, the conference agreement on H.R. 4 cuts too deeply into the programs that provide the lifeline for the most vulnerable in our society. Yesterday, I joined a bipartisan group of colleagues to develop a plan to reach a balanced budget by the year 2002. The conference agreement, however, proposes far greater cuts than the bipartisan group of Senators deemed reasonable. It is for these reasons that I oppose this severely flawed approach to reforming the welfare system.

I firmly believe that among the most critical issues facing our Nation is the future of our children. It is of crucial importance that families and communities equip children with the skills necessary to face the increasing challenges of the 21st century. Children must be taught the value of work.

The conference agreement on welfare reform is weak on work. The supporters of this legislation claim it will move welfare recipients into work without providing resources sufficient to make it happen. In fact, instead of strengthening the work and child care provisions of the Senate-passed welfare bill, the conference agreement reduces funding in these areas.

Additionally, both my WAGE Act and the Senate-passed welfare reform proposal included a personal responsibility contract that welfare recipients had to sign as a condition of receiving welfare benefits. The personal responsibility contract was a binding agreement that the recipient would make meaningful steps to move off of welfare and take responsibility for his or her actions and well-being. I ask you, why would the conferees remove the contract between the welfare recipient and the Government to move the recipient off of welfare? The conference agreement is weak on work and does nothing to develop personal responsibility.

Perhaps the most disturbing and mean-spirited provisions of this proposal are the ones that place the most vulnerable and helpless children in our society at risk. On top of providing inadequate resources for child care services, this legislation eliminates Federal health and safety standards for child care facilities. It slashes funding by $1.3 billion for child protection services for abused, neglected, and abandoned children and children in foster and adoptive services. Additionally, it proposes draconian reductions in the SSI program for low-income children with disabilities. HHS has estimated that by the year 2002, 750,000 low-income disabled children who are eligible for SSI benefits will have their benefits cut by 25 percent. Finally, the conference agreement eliminates the requirement for States to provide Medicaid benefits to children whose families are eligible for cash assistance. This extreme provision was not in either the Senate- or House-passed bills and threatens the health and future productivity of our poorest children. These program changes are cruel and rip the safety net from under the most vulnerable children in our society.

Mr. President, I want to reemphasize my commitment to balanced and reasonable welfare reform. The welfare system should be tough on work and personal responsibility, should promote families and family values, and should maintain basic health and safety protections for our Nation's children. I say to my colleagues in the House and the Senate: Let us reform the welfare system; however, let us target the programs and not the children.

Mr. MOYNIHAN. Mr. President, I yield 1 minute to my colleague on the Finance Committee, and good friend, the Senator from Louisiana.

The PRESIDING OFFICER. (Mr. INHOFE). The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, I thank the chairman for yielding. In 1 minute I will try to say eloquent things about why this bill should not be adopted.

Mr. President, put me down as being conservative when it comes to welfare reform. The current system, in my opinion, has not worked very well for the people who are on it, nor has it worked well for the people who are paying for it. It has to be changed.

But the goal of welfare reform has to be to put able-bodied people to work and at the same time protect innocent children. This bill does not do that. It fails in a couple of fundamental manners.

No. 1, the bill cuts benefits for disabled children on SSI by 25 percent. That is not reform. It is a step backwards.

Second, the bill, in changing the rules for abused and neglected children, is contrary to every bipartisan recommendation that this Congress received from the Governors and from the State legislative bodies. This is a step in the wrong direction.

Finally, this is the wrong bill at the wrong time. It should be in the context of the budget negotiations. There is more money going to be available in that context. We know what we are doing with the EITC, the tax cuts, and other changes that are being made to fundamental policy. This welfare bill today should be turned down and come back, and we should do it in the context of the budget negotiations.

Mr. MOYNIHAN. Mr. President, may I simply respectfully suggest that the budget negotiations are much too narrowly based with five or six persons in one room for the kind of bipartisan effort on welfare which President Clinton called for when he said he would veto this bill. We achieved consensus through such effort when we passed the Family Support Act of 1988 by a vote of 96 to 1.

I am happy to yield 1 minute to my good friend, the distinguished Senator from Washington.

Mrs. MURRAY. Mr. President, thank you.

First, let me commend the Senator from New York for his tremendous leadership on behalf of the children in the welfare reform bill.

WELFARE: REFORM; DON'T RENEGE

Mr. President, it is with sadness today I must tell the American people their Congress has failed them in its attempts to reform public assistance in this country. Welfare reform is important, but the bill before us today was written with so little compassion it must be stopped.

The American people know we must change welfare. They know welfare must give a hand-up, not a hand-out. But no one I have talked to, not the most conservative welfare-basher, would stand where I am standing and vote to hurt children like this bill will.

You have heard the estimates: this bill will throw an additional 1.5 million children into poverty in this country. It will eliminate the guarantee to basic services to children at a time when we should be improving the safety net. Children need the guarantee to assistance. Children need the safety net.

I supported a welfare bill out of this Senate, a bill I had fundamental disagreement with, because we were able to make some improvements before it left the floor. I fought hard for child care funding, for money for job training, for domestic violence language. When these improvements had been made, I held my nose and voted for the bill, knowing some people would think I had done something horrible, because I naively thought the majority might be listening.

I thought after all our fighting, the majority party might get a hint about what kinds of things we thought were important in a bill to actually reform welfare. I said at the time—if this bill got worse in negotiations with the House, if the majority did not improve this bill dramatically, then it would not have my support. And it will not. This bill is a slap in the face of every person in this country trying to get off public assistance, and I will vote ''no.''

The conference report is so lacking, if I pick out just one thing to focus on, there won't be time to tell you about any others. But let us look at what the conference report proposes to do about child care:

First, remember that child care faces major problems today, before this welfare bill sends many new people into the work force. Child care is not always easy to find, you cannot always depend on the quality, you cannot always afford quality when you find it, and sometimes you cannot afford to pay at all, so a relative or friend takes care of your kids. But that's all today. Here's what the conference report will do tomorrow:

Over the next 7 years, the work requirements in this conference report will create the need for an additional $14.9 billion worth of child care. But, the report only funds $1.9 billion of new money, leaving a $13 billion shortfall, according to HHS. The result is many people will have no place to leave their child when they go to work.

If you are lucky enough to get your child into child care, the conference report cuts funding for child care quality standards more than 50 percent from the Senate bill. This money pays for improvements in quality and access to child care: training providers, inspecting and monitoring facilities, helping parents to find child care, providing grants to buy cribs and other equipment to start child care businesses, and beginning school-age programs.

The result is, you as a parent will have to worry about whether your child care worker is well-trained, and whether your child is healthy and safe when you return from work.

This conference report also allows welfare recipients to count providing unpaid child care toward meeting the work requirements, essentially, to babysit other people's children without meeting any of the standards of a child care facility or home day care business. There is no money for training or certification for people setting up home child care under this provision.

What is worse, the conference report repeals a state's ability to regulate health and safety in child care, including these small in-home child care situations, which is where most of the abuse problems in my state occur.

If you are unlucky enough to be a child in a child care situation where there is a problem, this conference report cuts the abuse enforcement that might protect you. It block grants child protection and foster care, and cuts the very functions that allow States to help children who need foster care, to recruit and train parents, to place children, and to monitor quality. The $3.7 billion reduction over seven years will cut Child Protective Services, family preservation money for preventing problems, and money for older youth.

Finally, the conference report significantly cuts the child and adult care food program, by as much as $3 billion over seven years. Providers in my state tell me these cuts will effectively close the doors of many small day care businesses, and lead to cost cutting that will affect child nutrition. We will have more people competing for less child care, and nutrition declining in the centers which stay in business.

Who here on the floor of the Senate can honestly say they speak for children? We have lobbyists for every issue, but infants and children do not get to vote. If you cut child protection, what constituency will rise up in protest? Not the children themselves; I will guarantee it.

This conference report has many problems. One of them is the assault on child care. I will be voting against this report.

Mr. President, I speak against the welfare conference report, and I do so as someone who voted for the Senate welfare reform bill, but I did so because I thought the majority would understand that our yes vote meant that we strongly supported child care funding language for domestic violence and job training funds. Those are not in the final bill. It is $13 billion short in child care money. That is not just money; that is children who will be out there on the streets with no one to take care of them.

Mr. President, this Congress will not be remembered for passing welfare reform. They will be remembered for endangering the lives of thousands of American children.

I urge my colleagues to vote ''no'' on this conference report.

Mr. ROTH. Mr. President, I yield 5 minutes to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Thank you, Mr. President.

Mr. President, I do not know where to begin. Last night I spoke at length about the difference between the Senate bill that passed and the bill that is now before us. I think I laid out the points, but I will try to be consistent and lay them out today.

The bill that is before us actually moves more toward the Democratic side than the bill that we passed here. I am somewhat at a loss as to why we see all these objections raised here when if you go down the changes that were made in the conference, we actually move toward the Democratic side of the aisle than the bill that passed the Senate. I will go through them.

If you look at child care, so much is being talked about in child care. The child care funding in this bill is more than the child care funding that passed under the original Senate bill. In fact, over the first 5 years in the Senate bill that passed child care funding was $15.8 billion. Under this bill, it is $16.3 billion. Over 7 years we spend $1 billion more in child care under the conference report than we did in the Senate bill.

I do not understand the concerns that somehow we are now shortchanging child care when before we had adequate child care dollars. We have more money in child care.

Second, maintenance of effort. We heard so much concern and consternation about the maintenance-of-effort provision. There was a 75 percent maintenance-of-effort provision in here, which is exactly what both sides agreed

was an adequate level for State support in the Senate bill. Again, I do not understand the concerns. We kept the Senate proposal.

Third, funding. We talked about this welfare program being slashed. I refer you to this chart. Here is welfare funding today. Under current law, it will go up by 58 percent. Under our bill, it goes up 34 percent. That is 4 percent a year. That is almost twice the rate of inflation.

Welfare spending will go up under this bill. If anyone is concerned, yes, welfare spending will go up, but we have more people in the system. No. In fact, the Congressional Budget Office has said that under our bill, the number of people in the system will be maintained at a constant level. There will not be an increase. Therefore, spending per person in welfare will go up over the next 7 years. We will have more child care. We will have a maintenance of effort. Spending will go up under this bill. You would think that I am describing the Democratic proposal. But, no, we are describing the conference report.

The work requirements that so many people on both sides of the aisle wanted are the same in the Senate bill. We kept the entitlement to school lunches. We kept the entitlement to family-based nutrition programs, something desperately wanted by the other side of the aisle that was not in the House bill. The House conceded to us on that.

We kept title requirements. In fact, we put in title requirements for food stamp block grant eligibility. In the Senate bill we passed a block grant option for food stamps given to all States. Under the conference report, we make it much tougher to get a block grant of food stamps, and we put very tough error rate standards in there, so many States will not, in fact, be able to qualify, something many Members on the Democratic side of the aisle wanted to see.

We kept the population growth fund intact, which many Members on the other side wanted.

Contingency funds for employment—the same as in the Senate bill.

We kept ''no transferring out'' of the child care block grant, something that was very important to Members on the other side of the aisle. Every dollar in child care must be spent in child care. And, in fact, there can be a transfer of money but only into child care, not out of child care.

I heard a concern about SSI and about throwing children off SSI. I would remind Senators on the Democratic side of the aisle that the same provisions that are in this bill were in the Democratic substitute on this floor and voted for by every Member on the other side of the aisle. Those same children not being cut off was something that every Member on the other side of the aisle voted for in their substitute and the 87 Members of this body voted for in the Senate bill—the same provision. The only difference in the children portion of the SSI bill is that for children who do not need round-the-clock care to be able to stay at home, we reduce the amount of benefit by 25 percent.

I would remind Members that the adult benefit for SSI, which is supposed to be an income supplement to maintain someone who is an adult so they can live independently, is the same amount that a child gets when living at home. So what we said is that, if you are a child living at home which does not need 24-hour care but is still considered disabled, we are going to reduce your benefit somewhat versus a child that needs 24-hour child care. We think that is a reasonable thing to do, and certainly it is not going to be hurting children.

A lot has been made about the child protection portion of this bill. We do some tremendous things. First of all, we spend more money on child protection in this bill than in the Senate bill. The Senate bill that passed that got 87 votes cut $1.3 billion out of this program. The conference report cuts $0.4 billion.

We spend more money on child protection services. We allow in this agreement so much that has been talked about.

I ask for an additional 2 minutes.

Mr. ROTH. I yield 2 more minutes.

Mr. SANTORUM. Mr. President, I thank the chairman.

As I said before, we spend more money on child protection services, No. 1. No. 2, we allow so much. So much has been made about the Elisa case in New York, a tragic case. But one of the reasons that case happened is because police agencies and social agencies cannot share information about abuse. In this bill you can. And it was not even in the Senate bill, an improvement over the Senate provisions.

We gave a concession from the conference report that appeared in the reconciliation bill to current law standards for child protection and citizen review panels, again another concession to the other side.

We gave again greater flexibility to use administrative funds on services, something that cannot be done today. Fifty percent of all the money spent in child protection is spent on administrative and overhead costs—50 percent. No wonder a lot of people do not want to change it because a lot of people make a lot of money off child protection services in this country. Fifty percent is spent on staffing. What we do is we give a block grant and allow that money to be used for services, allow that money to be used to help direct payments to people who need assistance, again a dramatic departure, something I know many people on the other side of the aisle want to see done.

We think this bill not only is a better bill than passed the House—much better—a better bill than passed the Senate but moves more in the direction of Members on the other side of the aisle. I am absolutely astounded to hear Members get up and talk about how this bill is worse than what passed the Senate. It is not. It moves much more toward the Democratic side of the aisle, and I urge their support.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. ROTH. Mr. President, I yield 2 minutes to the distinguished junior Senator from Kansas.

Mrs. KASSEBAUM. I thank the chairman of the Finance Committee.

Mr. President, the Personal Responsibility and Work Opportunity Act of 1995 represents a turning point in how this country will respond to the needs of poor children and their families. For far too long, welfare has failed—failed the families dependent upon Government assistance to give them a new start in life and failed the American taxpayers who have been asked to help those in need. Welfare reform does not need to be mean spirited, and the welfare reform provisions of this bill are not. Change is always difficult and this legislation will produce tremendous changes in how government helps those in need.

This legislation shifts primary responsibility for welfare to the States, a move I wholeheartedly endorse. The need for welfare assistance and the solutions to moving people off welfare and into work are closely tied to the economic conditions, opportunities, and resources in a community. That has been one of the biggest problems with the one-size-fits-all approach to welfare necessitated by a heavily mandated Federal program. I believe that States are in the best position to make decisions about how best to help families in poverty gain economic self sufficiency. We do not know what works—what types of programs are the most effective in moving people off of welfare. I believe over the next few years we will see many diverse solutions to the problems of welfare and poverty. Some of these solutions will work, some will not—but much will be gained through the experience. Since the current welfare system has failed so miserably, it is worth the risks involved.

The Personal Responsibility and Work Opportunity Act is a comprehensive bill which changes not only welfare cash assistance, but many other Federal programs as well. As is the case with any major bill, no member is completely satisfied with every single provision. Ultimately, a decision is based on one's judgment that the positives outweigh the negatives. Clearly, in my mind, the fundamental reform offered by this legislation makes it worthy of support.

It is my understanding that President Clinton has made a different calculation regarding the merits and demerits of this legislation and has indicated he will veto it. In that event, we will be back at the drawing board. Given a second opportunity to put together a bill, I would hope that several concerns could be addressed.

My first concern lies in the area of child protection. The legislation significantly reduces the funds available for recruiting and licensing foster homes, monitoring children in foster care and other alternative placements, completing the court processes needed to free children for adoption, training and recruiting child protection caseworkers, and other activities necessary to maintain an adequate program for abused and neglected children. The cap on child protection funds will put further strain on our already overburdened child protection system and could seriously inhibit states' ability to respond when a child is abused or neglected.

I am also concerned about whether the funds available for child care assistance are adequate to meet the needs of families as they move off welfare and into work. The availability of safe, affordable child care is essential to successful welfare reform. At the same time, we need to ensure that low income working families have access to child care assistance.

My third concern is about the extent of the changes in the Supplemental Security Income [SSI] program. The legislation will eliminate SSI eligibility for an estimated 21 percent of the children currently receiving benefits and reduce benefits for about 75 percent of the remaining children. While the creation of a two-tiered benefit system distinguishes between the most disabled children who require a higher level of services and those who are moderately and mildly disabled, the legislation places an overwhelming emphasis on physical disabilities. I believe the criteria used to differentiate between those receiving full benefits and those receiving reduced benefits should be reexamined.

I am relieved that the effective date for the cash assistance provisions in the bill has been changed to the 1996 fiscal year. This should give States adequate time to make the legislative and administrative changes needed to adjust to the block grant. Successful welfare reform will require careful consideration and planning, and States must be provided the opportunity for a thoughtful, deliberative process regarding how they want to proceed.

I believe that these concerns can be effectively addressed. The Personal Responsibility and Work Opportunity Act is a bold move to change the way in which government responds to people in need of assistance—a move that needs to be taken.

LONGEST TERM RECORD

Mrs. KASSEBAUM. Mr. President, I would just like to acknowledge that today breaks the record for the longest term ever held by a Republican leader of the Senate. Senator DOLE, as the majority leader, has broken the record that is more than just showing up every day. Perhaps Senator DOLE is the Cal Ripken of the Senate. But I would just like to express the appreciation of all of us for the dedicated leadership he has brought, the thoughtfulness and patience that it takes, and as a matter of fact his sheer grit.

I yield the floor.

Mr. MOYNIHAN. Mr. President, two records in 2 days. What do you say we give him a hand.

[Applause, Senators rising.]

PERSONAL RESPONSIBILITY AND WORK ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN. Mr. President, I yield to my gallant friend from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I thank the Chair.

Mr. President, this is a profound and important debate about welfare reform that tests our resolve to change a system that is in need of change, but it is a debate which also tests our commitment to community to the sick and the hurting—to the elderly and the thousands of people who are looking for a helping hand from a government that will help them help themselves

Every Senator here today knows the importance of helping families get back to work—get on the job and off the dole; but they also know the devastation of poverty—the lack of hope and the despair and frustrations that all of use see in our States.

Unfortunately the bill which we passed to reform welfare has turned for the worse in conference and threatens to injure children and people with disabilities.

Mr. President, this conference bill will increase poverty—not decrease it. It will increase despair and destroy hope among some of the poorest, sickest, and weakest Americans.

I cannot in good conscience—and I will not—vote for such an ill advised retreat from real reform—no matter how well intended it may be—no matter how deeply some or the other side of the aisle might feel about it.

This bill eats away at the strength of America because the strength of America is not found in its willingness to separate the rich from the poor.

No, the strength of America, as Hubert Humphrey said:

> Lies with its people. Not people on the dole but on the job. Not people in despair but people filled with hope. Not people without education but people with skill and knowledge. Not people turned away but people welcomed by their neighbors as full and equal partners in our American adventure.

This is our strength, but this bill we are asked to vote on today does not play to that strength.

Mr. President, we all want to move people from welfare to work. But the conference report reduces the ability to put people back to work.

This conference bill is wrong because it's too harsh and it will injure children and families in significant ways.

It reduces SSI benefits for a large majority of disabled children by 25 percent. These are kids, Mr. President, with cerebral palsy, kids with Down's syndrome, muscular dystrophy, cystic fibrosis and AIDS.

I'm told that by the year 2002, some 650,000 low income children would be affected by this cut. In real numbers that means that the benefits to seriously disabled children would be cut from 74 percent of the poverty line to 55 percent of the poverty line; and with all due respect to my colleagues on the other side of the aisle that cut was not in the Senate bill.

The current law ensures that AFDC families receive Medicare coverage. Under this bill that provision of the law would be repealed, leaving 1.5 million children at risk—and at least 4 million mothers would lose health coverage.

This conference bill undermines the school lunch program. It denies school lunches to certain categories of immigrant school children, including legal immigrants, and it would create an entire bureaucracy to determine the status of the children.

It would deny SSI and food stamps to immigrants who are legal permanent residents of the United States.

The bill includes $32 billion in food stamp benefit cuts to the elderly and working poor—which means about a 20-percent cut to those families who are already working, who are struggling to make ends meet on a minimum wage job or with a Social Security check struggling to pay for basics to keep them from losing their apartments and ending up homeless and on the street.

When fully in effect the food stamp cuts will lower the average benefit level from 78 cents per person per meal to 62 cents—62 cents a meal.

Mr. President, what are we doing? Is this the kind of nation we have become?

The whole point of welfare reform was to identify the people who are on welfare but who are capable of working, and getting them off welfare and into jobs.

This conference bill does not accomplish that goal in the way we did in the Senate passed bill.

This bill hurts children, the sick and the elderly.

It hurts dependent children, more than half of whom live below the poverty line. It hurts disabled children, sick children, hungry children, children without a chance and often without a prayer for survival.

It hurts disabled elderly people, who deserve more in their old age, who seek only a little dignity and a little respect.

This bill raises the age at which impoverished elderly people could qualify for SSI, from 65 to 67 or even higher—and who does this affect? It is aimed

primarily at poor elderly women—widows with limited work experience outside the home. These poor women, already on the edge, would have the principal component of their small safety net ripped away. They could lose their Medicaid. And many of them will be forced into severe poverty and bouts of homelessness.

Does this sound like welfare reform? Is this what the American people had in mind when they think of welfare reform?

In other words, Mr. President, this bill goes for the easy targets. It hurts the people who can't fight back. In the end it hurts America.

There is not enough in this bill about helping people find work, but there are plenty of sweeping cuts to impress constituents with hollow, vicious attacks on people that anyone can attack.

This bill raises the suffering level and lowers the promise of hope and of jobs.

The bill simply does not provide adequate resources for work programs.

According to CBO estimates, funding will fall $5.5 billion short of what is needed to fund the work program in 2002 alone, and that's assuming that the States maintain their safety net for poor children.

Over a 7-year period, funding for the work program will fall about $14 billion short of what is needed.

Is this a job program?

The original Contract With America recognized this problem and provided $10 billion for work programs—but that money is not in this bill.

Mr. President, I am voting against this legislation because it steps back from important safeguards that were contained in the Senate bill—safeguards for children, for elderly, for work—that are the true heart of welfare reform.

Mr. President, I voted for the bill that left the Senate. I will not vote for this conference report today. And I will not vote for it because there are some dramatic differences between this conference report and what we voted for. Most importantly, this conference report takes away a fundamental guarantee in this country that children will have health care.

It takes away a fundamental guarantee about standards in this country with respect to health and safety for child care.

In addition to that, it reduces the most important lifeline that we guaranteed in the Senate bill, that those who are required to go to work who have children will be able to find the proper care for their children. And that has been reduced in this bill. In addition to that, it takes away the personal responsibility contract and it reduces the child nutrition program.

This bill will hurt children, and for that reason, Mr. President, as a conference bill I cannot vote for it. I hope we will return to the Senate with a more appropriate conference at some point in the future.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. MOYNIHAN. I thank my friend from Massachusetts. It is truly hard to conceive that we might be for such business 3 days before Christmas.

Mr. President, if the majority leader does not wish to speak at this moment, the Senator from Connecticut will do. I yield 1 minute to my able friend from Connecticut.

The PRESIDING OFFICER. The Chair advises the Senator he has 45 seconds remaining.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Senator from Connecticut may have 1 minute.

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

Mr. DODD. I thank my colleague from New York.

Mr. President, let me just address the Senate on the children's issues and the child care issues and try to put this in perspective. As most of my colleagues know, I have spent a lot of time, along with many others, on the issue of child care, and I just want to put it straight. When we passed out the Senate version of this bill on child care, we had provided $8 billion for child care over 5 years. This conference report has $7 billion for child care over 5 years. It is a $1 billion reduction over that 5-year period. And so it is a cut in the child care funds.

But almost as egregious as the cut in the child care funds is the elimination of the health and safety standards, something that we fought very hard on over these years. Now, to eliminate health and safety standards where young children are being cared for, whatever other views you have, you do not do it. You do not take away the basic health and safety standards for child care in this country. So the money is one thing. That is a cut of $1 billion. But to put these children all day long in a situation where they are not safe and they are not healthy, getting the proper kind of care is just wrong-headed and for that reason alone this bill ought to be rejected.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MOYNIHAN. Mr. President, I yield back the remainder of my time, which does not exist, with a plea that this legislation not be approved.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I think this is a good bill and pretty much like the bill that passed the Senate by a vote of 87 to 12 with 1 absentee.

We have heard many times that the President is going to end welfare as we know it. This is an opportunity the President has. Everybody ought to ask the question—and I know it has been addressed on the other side—does this conference report have the core principles and needed reforms that were in the Senate-passed welfare bill? The answer in my view is yes. We supported that bill in September, the Work Opportunity Act, as I said, by a vote of 87 to 12. We stood behind it in a bipartisan way.

During this time before our vote, I also ask that we once again remember two overriding facts. First, our current welfare system has failed; and, second, it is our duty to fix it.

COMMON SENSE, CORE PRINCIPLES FOR DRAMATIC REFORM

The Senate bill and the conference report both take a commonsense approach. Both bills establish core principles: strong work requirements; strengthening families and requiring personal responsibility; providing protection for children; giving States the flexibility they need to design programs that best meet the needs of the people, and that can best reduce our alarming illegitimacy rate; and assuring States receive necessary Federal support.

Let me take a moment to review the similarities in the commonsense policies in the Senate bill and the conference report.

They both require able-bodied welfare recipients to work for their assistance as soon as the State determines they are ''work ready'' or within 2 years, whichever is earlier.

They both put a 5-year lifetime limit on welfare benefits, so that welfare does not become a way of life.

They both require single teenage parents who have children out of wedlock to stay in school and live under adult supervision in order to receive benefits.

They both provide $75 million to States for abstinence education programs.

They both grant our States the ability to try and reduce America's alarming illegitimacy rate.

They both give States the option of exempting families with a child under age 1 from the work-participation rates.

They both prevent States from sanctioning a single custodial parent for failure to work if the parent shows a demonstrated need for child care.

They both include important provisions on locating and tracking absent parents, establishing paternity and enforcing support orders.

They both give our States the flexibility to devise programs that meet the specific needs of their citizens.

They both provide a $1.7 billion supplemental loan fund. States may borrow from it up to 10 percent of their welfare block grant amount.

They both provide a $1 billion contingency grant fund for States over 7 years.

They both put a cap on spending, because no program with an unlimited budget will ever be made to work effectively and efficiently.

CHILD CARE AND STATE MAINTENANCE OF EFFORT

During the Senate debate and establishment of these policies, two major issues emerged as central to the bipartisan support that emerged: first, access to child care and second, requiring

States to maintain some level of their spending effort.

The child care provisions in the conference report provide $1.8 billion more than current law and $1 billion more than the Senate-passed bill. Specifically, a child care block grant is established that includes $11 billion in mandatory spending for welfare recipients and $7 billion in discretionary spending for low income families. Spending on child care increases from $1.3 billion in fiscal year 1997 to over $2 billion in fiscal year 2002.

In the conference report, States are required to maintain their spending effort for the life of the new cash block grant at 75 percent of what they spent in fiscal year 1994 for the programs that are in this block grant. This seems to represent the objective of the majority of Members in the Senate.

CONFERENCE REPORT MODIFICATIONS

Now let me touch on some of the areas that have been modified since the Senate first passed welfare reform. No doubt about it, there has been much speculation over the savings that will come out of this reform. I can tell you this: The savings realized from the conference report are about the same as those realized from the Senate bill.

The conference report does require States to deny more cash to mothers who have more children while receiving welfare. However States have the flexibility to opt-out. As Senator SANTORUM said last night, this provision asks State legislatures to make a decision.

Let us make no mistake about it, the conference report does establish a child protection block grant that combines mandatory funding for existing child welfare programs while maintaining current law protections. However foster care and adoption maintenance payments remain open entitlement and the enactment of the block grant is delayed to fiscal year 1997. Funding for these programs are $1 billion more than the Senate passed Balanced Budget Act.

NEW PROVISIONS

Let me list a few additions to the Senate-passed bill now in the conference report before us.

The effective date of the new cash welfare block grant is delayed to fiscal year 1997 yet allows States to opt-in during fiscal year 1996.

We have also included a 10-percent reduction in the social services block grant which was proposed by President Clinton. This will provide $1.6 billion in savings over 7 years.

The eligibility for States to receive food stamp block grants is tightened up. States which have implemented electronic benefit transfer statewide will be eligible. States with an error rate of less than 6 percent are also eligible.

The controversy surrounding block grants for child nutrition programs is settled by allowing a pilot project for seven States to participate in an optional block grant program. Authority expires in 2000. Block grants could then be revisited.

GOP GOVERNORS BACK CONFERENCE AGREEMENT

Thirty Republican Governors sent a letter to President Clinton on December 20 urging him to support this conference agreement. They write:

> While each State will have its own reform strategy, this legislation helps to accomplish those goals by setting forth these guidelines:
>
> Families must work for benefits and States that get families working are rewarded.
>
> No family can stay on welfare after 2 years without working.
>
> The total time a family can collect cash benefits is limited to 5 years unless States, because of their own unique circumstances, opt out of this limit.
>
> And States will have the option to pay cash benefits to teen parents, but they must live at home and stay in school to receive those benefits.

I urge my colleagues to support the conference report to H.R. 4. The core principles and policies necessary for dramatic reform contained in it are consistent with the Senate-passed bill and consistent with the needs of Americans.

So, Mr. President, it seems to me we have been able to retain nearly every provision that was in the Senate-passed bill. I know for some of my colleagues, because the President says he is going to veto it, maybe for that reason they feel compelled to support the President. But my view is we have a good bill. We ought to vote for it. We ought to send it to the President, and then try to persuade the President that this is a bill he should sign.

I yield back the balance of my time.

SECURITIES LITIGATION REFORM ACT—VETO

The Senate continued with the reconsideration of the bill.

The PRESIDING OFFICER. The question is, Shall the bill (H.R. 1058) pass, the objections of the President of the United States to the contrary notwithstanding? The yeas and nays are required under the Constitution. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The yeas and nays resulted—yeas 68, nays 30, as follows:

[Rollcall Vote No. 612 Leg.]

YEAS—68

Abraham	Dole	Inhofe
Ashcroft	Domenici	Jeffords
Baucus	Exon	Johnston
Bennett	Faircloth	Kassebaum
Bingaman	Feinstein	Kempthorne
Bradley	Ford	Kennedy
Brown	Frist	Kerry
Burns	Gorton	Kohl
Campbell	Gramm	Kyl
Chafee	Grams	Lieberman
Coats	Grassley	Lott
Cochran	Gregg	Lugar
Coverdell	Harkin	Mack
Craig	Hatch	McConnell
D'Amato	Hatfield	Mikulski
DeWine	Helms	Moseley-Braun
Dodd	Hutchison	Murkowski
Murray	Rockefeller	Stevens
Nickles	Roth	Thomas
Pell	Santorum	Thompson
Pressler	Simpson	Thurmond
Reid	Smith	Warner
Robb	Snowe	

NAYS—30

Akaka	Dorgan	Levin
Biden	Feingold	McCain
Boxer	Glenn	Moynihan
Breaux	Graham	Nunn
Bryan	Heflin	Pryor
Bumpers	Hollings	Sarbanes
Byrd	Inouye	Shelby
Cohen	Kerrey	Simon
Conrad	Lautenberg	Specter
Daschle	Leahy	Wellstone

ANSWERED ''PRESENT''—1

Bond

The PRESIDING OFFICER. On this vote, the yeas are 68, the nays are 30. One Senator responding present. Two-thirds of the Senators voting, a quorum being present, having voted in the affirmative, the bill on reconsideration is passed, the objections of the President of the United States to the contrary notwithstanding.

Mr. BYRD. Mr. President, I ask unanimous consent to address the Senate for 3 minutes.

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

CONGRATULATIONS TO THE MAJORITY L

ted in the affirmative, the bill on reconsideration is passed, the

Mr. BYRD. Mr. President, if I may have the attention of the Senators, Dizzy Dean said, ''It is all right to brag if you have done it.''

BOB DOLE has done it! He began his service as leader of the Republican Party in the Senate on January 3, 1985, and the record, up until today, for having held the position of leadership on the Republican side of the aisle was held by the late Charles McNary of Oregon, who was leader 10 years, 11 months, 18 days. Now, BOB DOLE has not been leader as long as Robinson Crusoe was marooned on that island. Crusoe was marooned 28 years, 2 months, and 19 days. But BOB DOLE has been the leader of the Republican Party, as of today, 10 years, 11 months, and 19 days!

Mr. President, I served with BOB DOLE when he was minority leader and I was majority leader. I served with him when he was majority leader and I was minority leader. I always found him to be a man of his word. We had some exchanges from time to time, as leaders will have, but I found him to be an honorable man. I shall always look back upon my service with him, when we were leaders together, with a great deal of pleasure.

I have a fondness for BOB DOLE, and I am glad today to salute him as a great leader of his party. I commend him on his service not only to his party but also to his country, and for his service to the Senate.

May God's richest blessings follow him and his loved ones always.

[Applause, Senators rising.]

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina [Mr. THURMOND] is recognized.

A SALUTE TO BOB DOLE

Mr. THURMOND. Mr. President, I rise to say that the Senate is well served with BOB DOLE as majority leader. He has broken the record now for the all-time service. He is a man of integrity, ability, and dedication, and we are fortunate to have had him serve here.

Back in his home State, he was a member of the legislature and a prosecuting attorney. He went into World War II, was seriously injured, almost killed, and one arm is still deficient.

I say to you, I hope he will serve continuously until he becomes the next President of the United States.

[Applause, Senators rising.]

PERSONAL RESPONSIBILITY AND WORK ACT OF 1995—CONFERENCE REPORT

The Senate continued with consideration of the conference report.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The legislative clerk called the roll.

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

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 613 Leg.]

YEAS—52

Abraham	Frist	McConnell
Ashcroft	Gorton	Murkowski
Baucus	Gramm	Nickles
Bennett	Grams	Pressler
Bond	Grassley	Roth
Brown	Gregg	Santorum
Burns	Hatch	Shelby
Chafee	Helms	Simpson
Coats	Hutchison	Smith
Cochran	Inhofe	Snowe
Cohen	Jeffords	Specter
Coverdell	Kassebaum	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Dole	Lugar	Warner
Domenici	Mack	
Faircloth	McCain	

NAYS—47

Akaka	Feinstein	Levin
Biden	Ford	Lieberman
Bingaman	Glenn	Mikulski
Boxer	Graham	Moseley-Braun
Bradley	Harkin	Moynihan
Breaux	Hatfield	Murray
Bryan	Heflin	Nunn
Bumpers	Hollings	Pell
Byrd	Inouye	Pryor
Campbell	Johnston	Reid
Conrad	Kennedy	Robb
Daschle	Kerrey	Rockefeller
Dodd	Kerry	Sarbanes
Dorgan	Kohl	Simon
Exon	Lautenberg	Wellstone
Feingold	Leahy	

So the conference report was agreed to.

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

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

BIPARTISAN WELFARE REFORM

Mr. MOYNIHAN. Mr. President, I simply want to make the announcement, now that we have had a near unanimous vote on the Democratic side against this measure which would affect 39 percent of the children in our country, we would like to turn to the President's proposal. In his statement yesterday he said he will veto this bill. But, he said, ''I am determined to work with Congress to achieve real bipartisan welfare reform.'' I just this moment was speaking with my friend from New Mexico, who made very serious proposals in that regard. Let us do it.

But, sir, it has to be done here in the Congress—in cooperation with the Executive. An hour from now, the 11 Democratic Senators who voted against this measure in September —Mr. AKAKA, Mr. BRADLEY, Mr. KENNEDY, Mr. KERREY of Nebraska, Mr. LAUTENBERG, Mr. LEAHY, Ms. MOSELEY-BRAUN, Mr. SARBANES, Mr. SIMON, Mr. WELLSTONE, and I—will send a letter to the President encouraging the proposal for a bipartisan welfare reform, but saying it cannot be done in a 4-day or 3-day summit budget conference. This must not come back to us in a proposal put together in 3 days in a room with four people. This is a task for the Congress. We look forward to it. We welcome it. But we put the President respectfully on notice that we must be involved.

Mr. President, I thank the majority leader for allowing me to use this time in morning business, and I yield the floor.

MEASURE PLACED ON THE CALENDAR—HOUSE JOINT RESOLUTION 134

The PRESIDING OFFICER. The clerk will read a joint resolution for the second time.

The assistant legislative clerk read as follows:

A joint resolution, (H.J. Res. 134) making continuing appropriations for the fiscal year 1996, and for other purposes.

Mr. DOLE. I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. Objection is heard. The measure will be placed on the calendar.

THANKING SENATORS

Mr. DOLE. Mr. President, first, I thank my colleague, Senator BYRD, for his kind comments and my colleague, Senator THURMOND, from South Carolina. It has been an honor to serve as the Republican leader and an honor to serve with my colleagues on both sides of the aisle over the years.

I certainly enjoyed my service in the Senate, and I think most every day I have enjoyed being leader. Some days it is in doubt. But it is a great honor and a great responsibility that I am proud to try to carry.

I thank my colleagues on both sides for their continued cooperation.

MEASURE PLACED ON THE CALENDAR—S. 1500

The PRESIDING OFFICER (Mr. KYL). The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (S. 1500) to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado, and for other purposes.

Mr. DOLE. Mr. President, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. Objection is heard.

The bill will be placed on the calendar.

UNANIMOUS-CONSENT REQUEST—S. 1407

Mr. DOLE. Mr. President, on another matter, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 282, S. 1407, which would amend the Social Security Act to provide for increases in the amount of allowable earnings under the Social Security earnings limit for individuals who have reached retirement age.

I further ask unanimous consent that the bill be considered read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to this matter appear in the RECORD at the appropriate place.

Mr. DASCHLE. Mr. President, there are a large number of colleagues on our side of the aisle who would like the opportunity to have a good debate about the issue and perhaps offer amendments. So, on their behalf, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCAIN. Mr. President, I, of course, understand the objection on the part of the distinguished Democratic leader.

I point out that we have been on this issue now for many years. It has been through the Finance Committee.

It is an outrage and an insult to the seniors of this country when we know—and they know—that their Medicare premiums, among other expenses, are going up, and we will not give them this simple relief.

I say to my friends on the other side of the aisle that I have not quit on this issue in 9 years. I am not quitting on it. From now on, every single bill that is before this body is going to have it as an amendment, unless we take it up as freestanding.

This is a terrible disservice to the seniors of this Nation not to lift this

earnings test. It is an anachronism left over from the Depression era.

Mr. President, I want to thank Senator ROTH, and I want to thank Senator MOYNIHAN for his efforts. I thank the distinguished majority leader for his efforts.

This issue is not going away. We owe it to the seniors of this country. It is a terrible disservice not to pass this legislation at this time, although I certainly understand why the other side might object.

We could have passed this long ago. I hope that we can do it as soon as possible beginning next year.

THE LINE-ITEM VETO

Mr. MCCAIN. Mr. President, before I yield the floor, I want to mention one other issue.

Many of us, including the Senator from Indiana, who is here, have worked long and hard on the line-item veto. We worked on the line-item veto irrespective of who the President of the United States was.

I would like to express my deep disappointment that the conference has not acted since February when we passed the line-item veto and we have come to a great impasse on the line-item veto and have not given it to the President of the United States.

Again, I am going to sound obstructionist, but this issue will have to be brought up also as an amendment and for debate if we are not willing to have a conference meet and the conference decide to pass this. It was passed by over 70 votes when we passed it through the Senate, with a far higher majority in the House of Representatives.

When we ran on this side of the aisle in 1994, we made a commitment to pass a line-item veto and to give it to the President of the United States irrespective of the party affiliation of that President.

Mr. President, I yield the floor.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to begin consideration of the START II treaty.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I think the Democratic leader and I want to be in a position to announce that there probably will be no more votes today.

I think on the START II Treaty, which is now pending under an agreement, I promised the Senator from New Mexico a couple of weeks ago that we would try to do this before we left.

It is my understanding—in fact, the Presiding Officer is one of the principal players—the bill will be managed on this side by the distinguished Senator from Indiana, Senator LUGAR, and he advises me that it may not be necessary to have a rollcall. There may be one amendment in the process of being resolved.

Senator THURMOND has suggested that we go only as far as presentation of the resolution of ratification—that would be satisfactory with me if it is satisfactory with the Democratic leader—because he would like to have the President sign the Defense authorization bill and not finally dispose of the START II until the President has made a determination.

But I think, based on what I have been able to find out in the last few minutes, if it is satisfactory with the Democratic leader, I think we could announce that there will no more votes today.

Mr. DASCHLE. Mr. President, I appreciate the majority leader's cooperation on this issue.

It appears that there is one outstanding issue that may or may not be resolved with a rollcall vote. If we could make it in order that the amendment and presentation of the resolution of ratification be the only matters pending relating to START and the return, I think we can accommodate the schedule and it will please all of those involved in the negotiations.

Mr. DOLE. Mr. President, I believe we can also dispose of nearly all of the nominations on the Executive Calendar. Of course, anything that we can do by unanimous consent—I think the Senator from Delaware and the Senator from Utah have a bill that will take 1 hour, and it will not require a rollcall vote, on victims' restitution.

Mr. BIDEN. That is correct.

Mr. DOLE. Perhaps that can be disposed of today, and any other matters that we can dispose of on a consent basis—obviously, we will be here later today.

So, based on that comment from the Democratic leader, I think we will announce there will be no more votes today, no votes tomorrow, no votes on Sunday, no votes on Monday, and no votes on Tuesday.

Mr. BYRD. Mr. President, will the distinguished leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. I hope we will have a rollcall vote on the treaty. So, we can be assured of that at some point.

Mr. DOLE. Yes.

Mr. BYRD. I thank the leader.

Mr. DOLE. I think it is a very important treaty. We should have a rollcall vote.

Mr. THURMOND. May I make inquiry? As I understand, there will be no votes before Christmas, final vote on this treaty? Is that correct?

Mr. DOLE. That is correct, according by the wishes of the distinguished Senator from South Carolina.

Mr. THURMOND. Does that give the President a chance to sign the defense bill?

Mr. DOLE. I think once he recognizes the merit of it, certainly he will be disposed to sign it.

Mr. THURMOND. It is to his advantage and to the advantage of the troops and to the advantage of the defense for him to sign it.

Mr. DOLE. I thank the Senator.

Mrs. HUTCHISON. Will the majority leader yield?

Mr. DOLE. Yes.

Mrs. HUTCHISON. Mr. President, if the Senator will yield for a question, I just wanted to ask about the House resolution that will cover veterans.

Mr. DOLE. We are working on that. The two leaders have discussed not only that provision, but the District of Columbia, foster care, and AFDC. It is our hope that before we leave here today, we can reach some accommodation.

I have also discussed that with the distinguished Senator from New Hampshire, Senator SMITH, who is very interested particularly in the veterans part having had a phone call this morning from a veteran friend of his.

So, hopefully, we can resolve that. The Senator from Massachusetts has an interest in that, too.

TREATY WITH THE RUSSIAN FEDERATION ON FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE START II TREATY)

The PRESIDING OFFICER. The Chair will announce that the clerk will report the treaty, which is the pending business, and then recognize Senators.

The legislative clerk read as follows:

Treaty document No. 103–1, Treaty with the Russian Federation on further reductions and limitation of strategic offensive arms, the START II treaty.

The Senate proceeded to consider the treaty.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

VETERANS

Mr. WARNER. Mr. President, I wish to associate myself with the remarks of the distinguished Senator from Texas. I am reassured that the leader will try to work out this matter with respect to the veterans. The Senator from Texas has taken a lead on this. Senator SIMPSON, the chairman of the Veterans Committee, and myself and the Senator from Texas will be monitoring this through the day.

Thank you very much.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I know we have before us an extremely important measure which Senator LUGAR and Senator PELL are going to lead and manage on the floor.

I had an opportunity to talk to both Senator PELL and Senator LUGAR. It is with their acquiescence that they are going to permit me to speak very, very briefly on another matter and that those comments would be at an appropriate place in the RECORD.

So I do not intend to be more than 5 or 6 minutes. But it is on a matter which I think needs addressing.

CAMPAIGN DISINFORMATION

Mr. KENNEDY. Mr. President, the Republican campaign of disinformation on their unfair Medicare cuts continues in full swing. Now it has reached a new low with a gross distortion of the views on Medicare of President Clinton and the First Lady Hillary Rodham Clinton. A television advertisement, sponsored by the Republican National Committee, purports to show Mrs. Clinton endorsing the deep Medicare cuts in the Republican budget plan.

The advertisement is a good example of the depths to which the Republican Party is willing to sink in order to defend its unfair and destructive plan to slash Medicare. The ad transposes a statement from 1993 about the Clinton plan and tries to make it appear that it is an endorsement of the Republican program. It ignores three central facts. The Republican plan slashes Medicare to pay for tax breaks for the wealthy, but every dollar of Medicare savings in the Clinton plan was put back into expanded health benefits for the elderly. The Republican plan is rigged to force senior citizens to give up their family doctor and join private insurance plans, but the Clinton plan strengthened Medicare and preserved the right to choose ones own doctor. The Republican plan actually raises costs for working families and will increase the number of the uninsured, but the Clinton plan controlled costs throughout the health system and guaranteed coverage for all.

The first grave distortion is that the advertisement seems to show Mrs. Clinton endorsing the Republican plan. But, in fact, the clip came from 1993 and showed Mrs. Clinton discussing the administration's own health care program.

Equating the Medicare cuts in the Clinton 1993 health reform plan with the cuts in the current Republican budget plan ignores several fundamental facts.

Every dollar cut from Medicare under the Clinton plan was reinvested in expanded health services for the elderly. The Clinton plan provided long overdue new coverage in key areas of Medicare where the greatest gaps now exist—prescription drugs and long-term care.

Under the Clinton plan, senior citizens would have been vastly better off. Under the current Republican plan, they will be vastly worse off. Every senior citizen will pay an additional $1,200 in premiums over the next 7 years. Every elderly couple will pay $2,400 more. Senior citizens already pay 21 percent of their limited incomes for health care. Their median income is only $17,000 a year. They are already facing increases in their private Medigap insurance that will average 30 percent next year. The Medicare cuts and Medicare premium increase under the Republican plan will only make their plight worse.

The Republican plan slashes $117 billion out of Medicaid as well, even though two-thirds of all Medicaid spending is for senior citizens and the disabled, including essential nursing home care.

The Republican plan is also rigged to force senior citizens to give up their family doctor, leave Medicare, and join private insurance plans. The Clinton health reform plan preserved Medicare. It preserved senior citizens' right to keep their family doctors. It did not slash Medicare to pay for tax breaks for the wealthy.

Equally important, the Clinton health care reform was not limited to Medicare or Medicaid. It assured health care for every American. By contrast, the Republican budget plan ignores the need for overall reform. In fact, it endangers the quality of care for all those on Medicare and Medicaid, and many others as well.

It is estimated that one-quarter of all hospitals will have to substantially curtail services or will even have to close. The total number of the uninsured could soar to 60 million by 2002.

The respected consulting firm of Lewin-VHI has estimated that the Republican Medicare and Medicaid cuts could add $70 billion to the health care costs of businesses and workers. Every worker could pay $1,000 more over the next 7 years as a result of this Republican proposal. This is a program for higher costs and greater health insecurity for every working family—not lower costs and greater health care security.

A final important point is that the Clinton plan would have reduced health care costs throughout the entire health care system. The Republican plan would cut costs only in Medicare and Medicaid. It would therefore perpetuate the current trend toward two health care systems, separate and unequal—a first class system for the affluent who can afford it, and an unfair system for everyone else—especially senior citizens and the needy.

What the Republican plan has in mind for Medicare and Medicaid today is vastly different from what the President and Mrs. Clinton had in mind in their 1993 plan. Republican tactics of obstruction prevented Congress from acting on that plan. The current Republican plan would go further in the wrong direction.

No one has fought harder for health care for all Americans than President Clinton and the First Lady. The Republican TV ad is a cynical attempt to manipulate the public. It deserves to be repudiated for what it is—a devious and descriptive distortion. If this is a harbinger of things to come, the country is in for a long winter's night of Republican dirty tricks.

Mr. President, over the past few days, there have been television advertisements which have inaccurately portrayed Mrs. Clinton in her testimony, I believe it was before the Ways and Means Committee. From these advertisements, one could gather that the President of the United States and Mrs. Clinton were basically at odds in terms of amounts of cuts on Medicare spending.

What has been left out of the ad is that Mrs. Clinton's testimony, about 2 years ago, was given in support of the President's health care reform program. During the time of the President's program, there were going to be reductions in the escalation of overall spending, but all of the savings that were going to be achieved under the Medicare Program were going to be plowed back into the Medicare system with relief for our senior citizens on prescription drugs and also on long-term care.

So the characterization that Mrs. Clinton is for cutting back Medicare and therefore is in basic agreement with the Republican position is a complete distortion and serious misrepresentation. It is particularly harsh when you look at the totality of the spending cuts not only in the Medicare provision under the Republican plan but also in the Medicaid Program which affects so many of our seniors, particularly those in nursing homes.

Then if you look at the increase in Medicare premiums and also the policy implications of the Republican Medicare proposal, I think these would dampen the opportunities for our seniors to choose their own family physician or remain in the kind of Medicare system that we currently know in this country. No one who followed the health care reform debate and discussion over the last 2 years and listened to Mrs. Clinton could come to any other conclusion than that these Republican ads are a clear distortion and misrepresentation.

I find it particularly troublesome when the final representations are made on that ad that suggest there is a duplicitousness between the President's position and Mrs. Clinton. There is nothing further from the truth. And to portray that ad out there as being the real truth in conflict with the representations that Mrs. Clinton has stood for in terms of Medicare reform and our own health care reform initiatives, I think is a real gross distortion.

I finally say, Mr. President, as anyone who followed that debate understood, Mrs. Clinton was talking about the totality of savings that were to be achieved under a comprehensive reform program which is really the only way we are going to be able to proceed if we are going to have effective kinds of cost containment and control.

So I just wanted to take a moment of the Senate's time to give, certainly, my impression of that ad and to make my colleagues keenly aware of exactly what Mrs. Clinton was testifying to and what her position was in 1993. It has been distorted. It has been misrepresented. I think it is a serious disservice.

I see in the Chamber my friend and colleague from West Virginia, Senator ROCKEFELLER, who is a real leader in the battle for comprehensive reform, and I inquire of him whether his view

about that ad is similar to the one that I have just represented?

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. In responding to the Senator from Massachusetts, it is really a matter, I think, of fundamental shock as well as distortion of truth that these ads are portraying. What we have been doing in the course of this particular year 1995 is looking at Medicare and Medicaid all by themselves without any sort of thought about comprehensive health care reform at all, which means it is like you are trying to take a gigantic system and just reorganize one part of it.

What Mrs. Clinton was talking about a year or more ago in this television ad, she was in the process of leading an effort, along with the President and the rest of us, which did not succeed, to try to reform health care as a whole and to really give a chance for Medicare and Medicaid to take their proper role within a reformed total health care system in the private sector.

So to the Senator from Massachusetts, I would say he is absolutely right. All of those cuts she was talking about were being plowed right back into Medicare, into senior citizens in the form of prescription drugs and long-term care. Because there were tremendous efforts being made to control costs in the private sector, there was not any of the cost-shifting involved that we are seeing in the debate this year because it was comprehensive health care, cost control within the private sector, plus the fact that you were not going to have, back then, the situation of doctors refusing to see patients, Medicare patients because perhaps the fee would not be adequate, or you certainly would not have seniors being forced into HMO's and other things. So the choosing of the doctor, the fact that the money was all being put back into Medicare really makes the perpetrators of this ad a rather shameful lot, and it is a tremendous disservice to Mrs. Clinton, who did everything that a human could possibly do to try to make health care better for all Americans.

Mr. KENNEDY. Mr. President, I thank the Senator, and I particularly wish to thank my friends and colleagues, the floor managers, Senator LUGAR and Senator PELL. This matter which is before the Senate now is extremely important, and I am grateful to them for their courtesy in letting us address the Senate briefly on this matter.

I thank the Chair.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. I ask unanimous consent that I be allowed to speak as if in morning business for up to 6 minutes.

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

WORKABLE GOVERNMENT

Mr. BINGAMAN. Mr. President, we are now in the seventh day of the second Government shutdown of the year. This is the longest partial shutdown of our Government in the almost 207 years of our Nation's history.

The commonly held view is that the shutdown results from differences in policy between the Republican-controlled Congress and the President. The Republicans want their economic projections used to calculate the deficit reduction needed to get to a balanced budget. The President wants to ensure that reasonable funding levels are maintained for Medicare, Medicaid, education, environmental enforcement, and so on.

This commonly held view is wrong.

In fact, this crisis in government is not caused by differences between the President and Congress on policy matters. It is caused by the new and radical view that Republican congressional leaders have taken about Congress' constitutional duties and prerogatives.

For the first time in our Nation's history, the congressional the government and keep it closed in order to extort concessions from the President on policy issues. House Majority Leader RICHARD K. ARMEY, this week, announced that the House will not send President Clinton a bill reopening the full Government—even temporarily—until there is ''a bill for him to sign'' that balances the budget in 7 years.

This decision by Congress to shut down the Government until it gets its way is new. No previous Congress has interpreted the Constitution as granting it that right. In a recent interview with the Wall Street Journal, Mr. GINGRICH referred to this newfound right as ''the key strategic decision made on election night a year ago.'' Mr. GINGRICH stated;

> If you are going to operate with his [the President's] veto being the ultimate trump, you have to operate within a very narrow range of change. * * * You had to find a trump to match his trump. And the right not to pass money bills is the only trump that is equally strong.

So, for the first time in our national life we have congressional leadership that believes it has the constitutional right to close the Government and keep it closed until Congress prevails. The immediate disagreement is about a whole tangle of budgetary issues, but if Congress has the right to close the Government in this disagreement, presumably it has that right whenever the President has the temerity to stand his ground on any issue. If the closing of Government is an inherent right of the Congress, then all powers of the President are necessarily subordinated.

Those who wrote our Constitution never intended that the Congress have any such right as is now claimed. They set out a system of checks and balances among the branches of government and provided a method of resolving differences including a right of the President to veto legislation and the right of Congress to override that veto.

But underlying all these checks and balances between the branches of government, those who wrote the Constitution assumed an obligation and desire on the part of all to maintain what Justice Jackson referred to as a ''workable government.'' (343 U.S. 579, 635 (1952)).

When our Founders embarked upon the task of bringing to life the constitutional system devised in Philadelphia in 1787 and approved by the State ratifying conventions, it was the legislative branch of our new Government which they called on to commence proceedings under the Constitution.

Pursuant to that call, the Congress met in New York in 1789, organized itself, and provided for the counting of the Presidential electoral votes and the inauguration of the President. The Congress then passed legislation to establish the great departments of the executive branch, to provide for the organization of the judicial branch, and to furnish appropriations to enable all the branches of our new National Government to perform their constitutional functions.

It would be, Mr. President, frankly unimaginable to our Nation's Founders that our branch, the first branch of government, whose duty it was to bring to life the Framer's plan, would ever think that it was within its purview to disable that plan by refusing to perform the Congress' primary constitutional responsibilities.

But the Republican leaders of Congress today are doing just that—refusing to perform the Congress' primary constitutional responsibilities. They believe they have ''the right not to pass money bills'' and can use that so-called right as the ''ultimate trump,'' as Mr. GINGRICH puts it, in their disagreements with the President.

Mere policy differences, no matter how important, are not at the core of the present Government crisis. There have been many times in our history when policy differences between Congress and the President were great and were strongly held. The real cause of this crisis is the inflated and radical view taken by Republican congressional leaders concerning the rights of the Congress under the Constitution. What they claim as a right is instead an unprecedented abuse of power. Until a majority of each House of Congress recognizes this, the ''workable government'' which the Founding Fathers contemplated will remain at risk.

Thank you Mr. President, and I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. President.

FUNDING FOR MEDICAID

Mrs. MURRAY. Mr. President, I hold in my hand today a letter to President Clinton that is signed by all 46 members of the Democratic Caucus. This

letter urges him to hold firm to our commitment to basic health care for children, pregnant women, the elderly, and the disabled in this country. This letter supports a per capita cap approach to finding savings in the Medicaid Program.

Mr. President, I ask unanimous consent to have that letter printed in the RECORD at the end of my statement.

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

(See exhibit 1)

Mrs. MURRAY. Mr. President, this letter shows unity and it demonstrates support for President Clinton in his negotiations on this vital matter. As you heard the eloquent Senator from West Virginia describe yesterday, sometimes we have to look beyond partisanship and do what needs doing as Americans. As you heard our respected colleague say, we need to look beyond partisanship, toward compromise if we want to succeed in creating a balanced budget.

This letter is partisan in that it is signed by all Democrats. But it is my feeling that as Americans every Member of the Senate should have an opportunity to endorse the position described in this document. As Americans we all must do our very best for our children in this Nation, and that is what this letter is about.

As the Senators from Nebraska and North Dakota discussed yesterday with the release of the Senate Democratic budget, we can balance the budget in 7 years using the most conservative CBO estimates without hurting our children.

This letter I hold in my hand reflects just one part of that commitment. I do not think my colleagues across the aisle are advocating the block grants so that we will intentionally hurt children in this country. I will simply tell you the reaction of people at the State and local level who actually provide Medicaid services to children is overwhelmingly negative.

They can see from the grassroots level what it will mean to design a Medicaid program, and they do not want drastic funding cuts, and they do not want a block grant, because it fundamentally will not work.

Groups representing almost every decisionmaker and provider in this country have come out against the Medicaid block grant proposal. The Conference of Mayors, the National Association of County Officials, the National Conference of State Legislatures, the Democratic Governors Association, the American Hospital Association, and most other medical provider organizations, and all child advocacy groups, all have rallied in opposition to this bad idea.

I heard yesterday from Mayor Norm Rice of Seattle and the Mayors Association, who are sending a letter of their own to the President. The block grant has been condemned by anyone who has thought about how it will affect this country's children and other vulnerable populations. Tonight there will be a child within a few blocks from this building who will need the help of a caring health care professional, and Medicaid will pay for the care.

Marion Wright Edelman uses a phrase that sums up what we are talking about when it comes to Medicaid and children, ''protection of last resort.'' We have to guarantee that protection. It is a moral commitment, and it is within our grasp. We can balance the budget but we can do it without giving in to mindless partisanship and we can do it without sacrificing our basic commitments.

EXHIBIT 1

U.S. SENATE,
Washington DC, December 13, 1995.

President WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our strong support for the Medicaid per-capita cap structure in your seven-year budget. We have fought against Medicaid block grants and cuts in the Senate, and we are glad you acknowledge the importance of our position.

We support a balanced budget. We are glad you agree with us that we can balance the budget without undermining the health of children, pregnant women, the disabled, and the elderly.

The savings level of $54 billion over seven years included in your budget will require rigorous efficiencies and economies in the program. However, after consulting with many Medicaid Directors and service providers across the country, we believe a reduction of this level is possible to achieve without dramatic limits on eligibility or cuts to essential services. States will need flexibility to achieve these savings, and you have taken steps toward granting it in your bill.

We were encouraged that your Medicaid proposal does not pit Medicaid populations against one another in a fight over a limited pot of federal resources.

We were further encouraged to hear Chief of Staff Panetta relay your commitment to veto any budget not containing a fundamental guarantee to Medicaid for eligible Americans.

We commend you on the courage you have exercised in making these commitments to Americans eligible for Medicaid. There is a bottom line when it comes to people's health; do not allow the current Congressional leadership to further reduce our commitment to Medicaid beneficiaries.

Your current proposal is fair and reasonable, and is consistent with what we have advocated on the Senate floor. We urge you in the strongest possible terms to hold fast to these commitments in further negotiations. We are prepared to offer any assistance you may need in this regard.

Sincerely,

Bob Graham; John Breaux; Jay Rockefeller; Herb Kohl; Patrick Leahy; Frank R. Lautenberg; Ted Kennedy; Tom Daschle; Patty Murray; Barbara Boxer; David Pryor; Barbara A. Mikulski; Max Baucus; Paul Simon; Kent Conrad; Wendell Ford; Harry Reid; Paul Wellstone; Richard H. Bryan; Ernest Hollings; Dianne Feinstein; Tom Harkin; Byron L. Dorgan; Chris Dodd; J. Bennett Johnston; Joe Lieberman; Paul Sarbanes; Carol Mosely-Braun; John Glenn; Jeff Bingaman; Carl Levin; Bill Bradley; John F. Kerry; Bob Kerrey; Joe Biden; Daniel K. Akaka; Dale Bumpers; Daniel Inouye; Chuck Robb; J. James Exon; Howell Heflin; Claiborne Pell; Russ Feingold; Daniel P. Moynihan; Sam Nunn; Robert C. Byrd.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Thank you, Mr. President.

HEALTH CARE

Mr. FEINGOLD. Let me first of all express my appreciation to the Senator from Massachusetts and the Senator from West Virginia who just spoke about the advertisement that I also saw this morning with regard to Mrs. Clinton and her health care financing proposals as opposed to those of the leadership in the Congress of this session.

To suggest that the President's proposal last year was in any way the same in terms of cuts to Medicare and Medicaid is truly absurd. In fact, I want to emphasize that one of the very significant things that the President's plan would have done is provide for the first time a national home- and community-based long-term care program, to help people stay in the community, and I think save the country a lot of money in both the Medicare and Medicaid budget.

To suggest that somehow Mrs. Clinton's proposal was in any way, shape or form like what we are seeing today with the slash-and-burn approach to Medicaid and Medicare is, to me, very unfortunate and very distorting and, again, suggests that there is no limit in reference to the actual facts in these situations.

I don't know how the American people are supposed to know who to believe. That is the comment I get most often now at home. ''Who do you believe?'' And when you are willing to put an ad on the television that suggests that a program that was proposed by the President last year is essentially the same as the Medicare and Medicaid cuts proposed today, I just get the feeling that people will not have any idea who is telling the truth in Washington. I think we all suffer because of that.

CONFEREES HAVE FAILED TO PROTECT FREE SPEECH RIGHTS OF INTERNET USERS

Mr. FEINGOLD. Mr. President, on another matter, 2 weeks ago I came to the Senate floor to urge my colleagues who are telecommunications conferees not to adopt potentially unconstitutional legislation in our efforts to protect children on the Internet. I was concerned about the substantial chilling effect this legislation would have on constitutionally protected speech. The media had just reported recently an online service provider's censorship of the word ''breast'' because it was vulgar, supposedly, despite the fact that that term merely refers to a part of the anatomy.

I was and remain concerned that this is the first word of many that will ultimately be censored if legislation criminalizing indecent speech is passed as part of the telecommunications legislation. It seems the conferees have agreed upon a variation of the Communications Decency Act for inclusion in the conference report for the telecommunications legislation.

Mr. President, the language very simply would criminalize indecent speech via the Internet that is already today protected in other forms of the media. Vagueness associated with the definition of indecency undoubtedly, Mr. President, will lead to far more censorship than simply the word ''breast.''

Mr. President, these measures, although perhaps well-intended, are poorly targeted to the stated problem. And they will do very little to protect children. If signed into law however, it is very clear that this legislation will be very effective at censoring constitutionally protected speech on the Internet.

As I pointed out before, I am extremely concerned about recent congressional focus on ''indecent speech.'' The promoters of this legislation contend they are trying to protect children from obscenity—not indecency but obscenity. The transmission of obscenity is already a violation of criminal law. Use of the word or definition for ''indecency'' makes this legislation overly broad, capturing speech that I do not think many Senators intend or wish to prohibit.

Let me give my colleagues an example. The World Wide Web Page for HotWired, the online version of Wired magazine contains a strongly worded editorial about congressional action on the pending indecency legislation. The opinion piece contained at least three ''indecent'' words, based on FCC's current definition, and potentially more depending on the definition used by others.

I am not going to say these words on the floor of the U.S. Senate, Mr. President, but this editorial is a political speech, with Members of Congress and Senators as its target.

Are the words of this piece harsh? Yes, they are. Will some adults consider the words offensive? Yes, they will. Does the text contain words many of us would not want our children to read? Yes, it does.

But does the text contain words that most children have not heard before in the school yard? No, it does not. It does not contain anything unusual in that regard.

Is the language in this piece, this alleged profanity in this piece, protected by the first amendment? Yes, it is. You bet it is. But would the writers or transmitters of these words on the Internet be subject to criminal sanctions if the pending legislation passes?

I am afraid, Mr. President, the answer is probably yes.

Because even though the words do not fall under the definition of ''obscenity,'' and even though you may express these words in any other media and probably be safe from criminal prosecution, under this proposal in the telecommunications bill, these words would probably be defined as indecent and the person who communicates them may be subject to severe criminal penalties.

I give this example to point out that the legislation considered by the telecommunications conference committee in its most recent incarnation is overly broad. It will result in censorship, either self-censorship driven out of the fear of criminal prosecution, or censorship by online providers themselves who must protect themselves from criminal liability.

America Online's censorship of the word ''breast'', an anatomical reference, was only the beginning. Mr. President, either type of censorship is completely unacceptable and totally unnecessary.

The Internet indecency legislation currently under consideration is overly broad, not just in the material covered by the proposed language, but also in the way that such materials are covered. The language would subject anyone who ''displays in a manner available'' to minors so-called indecent materials to criminal penalties.

While the proponents of the language are intending to target those who directly provide such materials to minors, it captures a much larger group of people, Mr. President. The term ''available'' has an entirely different meaning in cyberspace than it does in other forms of media. That is because online communications are entirely different than communications over other media.

The words ''displays in a manner available'' captures speech over public bulletin boards, USENET groups or World Wide Web Pages that are accessible to anyone with a modem, an Internet connection and the right software. There is no way to know, Mr. President, who will read the message you have posted on these forums or how old that person is, just like there is no way for HotWired to know who on my staff accessed the editorial on their Home Page or the age of that staff person.

Simply posting a message which contains profanity on free public access Internet forums expose Internet users to criminal liability if a minor accesses those forums—even if the sender had no intention at all of providing these materials to minors.

Let me provide my colleagues with some other examples of some of the socially valuable public forums that one can access on the Internet that may contain indecent speech under the definition in the telecommunications bill.

One news group called ''news.newusers.questions'' had the following message posted by an individual:

> I need urgent information on the prevention of teenage pregnancy. Could someone please help me?

There was no indication the sender of this message was a minor. The sender could be an educator, a parent or a social service provider. One reader responded electronically and suggested this individual access a news group called ''alt.parenting.solutions'' and ''alt.parents.teens,'' both of which address the issue in responsible ways. Another reader responded simply with the advice that teens should abstain from sex.

Presumably, there will ultimately be a response from a reader that gives explicit rather than general advice. That advice could contain indecent language or explicit words describing preventive measures. Under this proposal in the telecommunications bill, that advice could land the giver of the advice in jail if a minor happens to read the message.

Another news group called ''misc.kids.pregnancy'' contained a discussion about breastfeeding, pregnancy, and other adult topics relating to childbirth. Again, some of the language in these discussions was explicit but in no way irresponsible.

There is a World Wide Web Page called ''Go Ask Alice'' which is a forum wherein participants ask questions about sexuality, including pregnancy, sexually transmitted diseases, AIDS, birth control, breast implants, rape, menopause and reproductive health. Many of these topics and questions are sexually explicit and contain graphic, but constitutionally protected, language.

Another Web page is called ''Truth or Dare: Sex in the 90's.'' This Web page was a forum devoted almost entirely to the topic of ''safe sex.'' One topic discussed was the relationship between some sexually transmitted diseases and cervical cancer in women. Some of the information on this Web page, while it may be distasteful and offensive to some, it is important to many users of this forum.

There is also a Web page devoted to prostate cancer—its symptoms, detection, and treatment. There is language on this page, Mr. President, that could be considered indecent. Recall that America Online censored the word ''breast'' because it was on a list of vulgar words, even though the word was used in the scientific context of breast cancer survivors forum.

There are Web pages devoted to the detection and prevention of child abuse, including sexual assault. For example, the Sexual Assault Information Page includes a variety of information about abuse as well as access to other Web pages and Internet services dealing with child abuse and assault recovery, such as the Survivors and Victims Empowered Web Page. The SAVE Page is an online support service for victims of abuse, or the Rape, Abuse, and Incest National Network. There is also a USENET group, accessible to anyone, called ''alt.sexual.abuse'' which is a recovery support forum for those who were abused as children or adults.

There may be so-called indecent speech in all of these forums which minors can access. Make no mistake about it, many of these forums contain adult topics of a mature nature. Some of the language is offensive. However, these forums do serve a valuable social function from the standpoint of public health and safety.

Mr. President, the material on these forums is not what the congressional proponents of the indecency legislation are targeting, or at least I assume they are not. Proponents are targeting obscenity and pornography. Unfortunately, the legislation will capture speech on all the forums I have mentioned and thousands more like them. If the pending legislation passes, these forums may cease to exist because the users will fear criminal prosecution.

LESS RESTRICTIVE MEANS ARE AVAILABLE TO PROTECT CHILDREN

There is a better way to protect children, Mr. President, that will not criminalize constitutionally protected speech. Currently there are many software programs available to parents, sometimes for no charge, which allow them to screen out or block their children's access to forums where explicit language is used, including profanity. ''Net Nanny'' prevents children from accessing areas on the Internet that the parents deem inappropriate, and also prevents kids from giving out their names, addresses, phone numbers, credit card numbers or other information that could put them in harms way.

Parents can screen out not only indecency but also Websites that include rap music, violent topics, hate speech, political topics, or other types of information that they don't want their children to see. Parents have the option of screening as much or as little as they want.

''Cybersitter'' allows parents to monitor what their children are accessing on the Internet and prevents children from downloading pictures or other graphic images. Mr. President, there are many other types of software available to parents that allow them to decide what is appropriate for their children, based on the characteristics of their family and the maturity of their children. That is the role of the parent, not of the Federal Government.

Mr. President, I have spoken in opposition to unconstitutional restrictions on speech via the Internet. I have argued that the pending legislation is likely unconstitutional. I have argued that the legislation is impractical. I have argued that the legislation will not achieve its objective. And I have argued that the legislation will stifle the growth of online communications technology.

But, Mr. President, I have received a lot of electronic mail on the legislation being considered by the conference committee in recent weeks from Wisconsinites, who do use the Internet daily. Rather than restate my arguments, I want to let my constituents speak for themselves on this issue. Here is what some of them have said:

A photographer, historian and writer in Madison, WI, says:

. . . I am deeply concerned that this legislation will overreach its intended purpose. Instead of simply protecting children, this legislation will be so restrictive of communication via e-mail, list service, the World Wide Web, etc, that it will prevent adults from conducting perfectly legitimate exchanges of information. . . . I conduct a great deal of business communication via the Internet and I am fearful about what this latest ill-conceived legislation will do.

A father from Madison, WI writes:

It concerns me that certain politicians may take advantage of fears held by the public to enact laws that limit our freedom of speech. I myself am a parent and am concerned about some of the trashier content that can be found on the internet. However, I feel that each of us has the right and the responsibility to discern good from bad in our own minds. I raise my son to make good choices in his life . . . I desire to protect him for harm but I would not insulate him from the world and lock him in ignorance . . . the government should never limit his access to the truth.

An e-mail from a Milwaukee constituent stated:

I strongly urge you to consider other less restrictive means for regulating access to objectionable material by minors such as placing the responsibility in the hands of the parents, where it belongs, not by forcing unconstitutional censorship on the medium.

From Shorewood, WI, a parent writes:

I am a voting, tax-paying adult U.S. citizen. I am also a church going parent. I feel that it is unacceptable that I could be convicted of a felony for sending a love-letter to my wife. I feel it equally unacceptable that an unenforceable legal regulation of morality infringes upon my right to govern what my daughter may or may not see based on some narrow-minded and likely unconstitutional definition of indecency, especially when technological means of controlling her access are available to me now.

From Appleton, WI, an Internet-using constituent says:

We all know that the best parental censor to TV is the on-off button. Well, I and many others have installed our own button on the computer. My choice is a program called KidSafe. This program identifies and shows how to lock out adult sites. Indeed a parent can lock out almost anything. . . . I want to tell you that this program is free. And there are all kinds of links to it all over the Web. The cost? A few minutes to download and install it. I count myself among the more conservative citizens. However, I believe some of my co-believers have gone too far.

The attempt by any governmental or quasi-governmental body to come into the newsroom and rule on what shall and what shall not be printed in the paper would be shouted down by the populace as naked aggressive censorship. In this case, the computer replaces newsprint, ink and delivery system. Fundamentally though, it's no different.

From Reedsburg, WI, an employee of an Internet access provider writes:

To enact a law such as the one that just passed the House is paramount to going after manufacturers of baseball bats because someone decided to beat his next door neighbor . . . with one.

The farmers in our community use the Internet to access the University of Wisconsin Ag Department . . . Many of our small businesses use it to communicate with customers around the world. Grocery stores and vendors are using the Web to e-mail product orders to vendors. The uses are growing. Please don't stifle growth.

An Appleton resident suggested that:

The pending legislation is akin to asking telephone companies to monitor all of their phone traffic in order to prevent obscene calls.

From Fox Point WI, a constituent writes that:

We are all familiar with government intervention and unintended consequences. In this instance, the consequences are clear and devastating to a free and open exchange.

A university professor in Wausau, WI, e-mailed:

Although the intent [of the computer indecency legislation] is a noble one, the consequences of the bill, if passed, could have a disastrous effect on the Internet as a viable medium for expression, education and commerce. Libraries will not be able to put their entire collections on line and people like me will risk massive fines and prison sentences for public discussions someone might consider indecent.

A Hudson, WI, parent shared this advice for Congress and other parents:

I've always believed that people should take responsibility for what their children view. This is why my children cannot access the Internet without my consent. They don't have the password. It's that simple.

From Plymouth, WI, a pastor in a United Church of Christ Congregation writes:

I am concerned about pornography and ''cybersex'' but this [legislation] isn't the direction we should be heading. Personal responsibility needs to be taken and how can that be legislated?

Mr. President, there is a lot of wisdom coming from our constituents on this matter. These are people who are using the technology to contact their Senators and Representatives instead of pencil and paper. Unlike many of us here, they rely on cybercommunications in their daily lives. I think my colleagues would do well to listen to their advice.

While, I recognize it is unlikely in these late stages of the telecommunications conference that conferees will change their direction on regulating cyberspace, I urge my colleagues to think carefully about this legislation.

Including this language in a bill that purports to deregulate telecommunications markets is exactly the wrong direction to take.

Mr. President, constituents in my State, parents and others are very concerned about the overbreadth of these provisions, the fact that it may inhibit their ability to communicate in their work or in their own private lives.

I yield the floor.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Indiana.

TREATY WITH THE RUSSIAN FEDERATION ON FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE START II TREATY)

The Senate continued with the consideration of the treaty.

Mr. LUGAR. Mr. President, will the Chair please state the pending business?

The PRESIDING OFFICER. The pending business is the START II treaty.

PRIVILEGE OF THE FLOOR

Mr. LUGAR. Mr. President, I ask unanimous consent that the following staff members be accorded the privilege of the floor during consideration by the Senate of the START II treaty: Kenneth A. Myers III, Linton Brooks, a CNA fellow in my office and K. A. Myers, Jr., a professional staff member of the Select Committee on Intelligence, and Ronald Marks, legislative fellow on the majority leader's staff.

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

Mr. LUGAR. Mr. President, I am pleased to join once again with my colleague, Senator CLAIBORNE PELL, in bringing before the Senate a strategic arms reduction agreement negotiated between the Russian Federation and the United States—the START II Treaty. Senator PELL and I collaborated on the ratification process attendant to the START I Treaty, and it is only fitting that Senator PELL will be handling the manager's task for the Democratic side on the START II Treaty.

The chairman of the Foreign Relations Committee, Senator HELMS, has asked me to manage these treaty deliberations on the Republican side, and I am pleased to do so.

For the benefit of our colleagues who may be curious as to the schedule on a Friday afternoon before Christmas, let me outline how we will proceed in these deliberations on the START II Treaty.

Following opening statements by the two managers, we will entertain similar statements by other Members.

We will then move to consideration of any amendments to the text of the treaty itself. Senator PELL and I are aware of no proposed amendments to alter the treaty text.

Then the Senate will move to consideration of the resolution of ratification that will reflect the terms by which the Senate is providing its advice and its decision to the President regarding ratification of the START II Treaty. In reporting the START II Treaty to the full Senate by a unanimous vote of 18–0, the Senate Foreign Relations Committee approved a resolution of ratification that contained a number of conditions and declarations.

Subsequent to the filing of the Committee's report on the START II Treaty, interested Senators from other committees came together in a bipartisan spirit to try to develop some consensus on other conditions and declarations that would either modify or be added to the resolution of ratification approved by the Foreign Relations Committee. That effort at consensus-building has been successful, and I want to thank Senator STEVENS, Senator KYL, Senator COCHRAN, Senator PELL, Senator LEVIN, and Senator NUNN for the constructive manner in which they approached the resolution of ratification. As a result of their efforts, we have arrived at a package of amendments that enjoys the support of Members participating in those negotiations. That package will be offered in the form of manager's amendments as modifications or additions to the original resolution reported by the Senate Foreign Relations Committee.

That resolution of ratification, as amended, will then be open to further debate and amendment.

Mr. President, I have elaborated somewhat on the process we will employ in considering this treaty so that Members might plan their schedules accordingly. Unfortunately, we have not been able to arrive at a time agreement for considering the treaty, but I hope these remarks will give Members some sense as to how the Senate will proceed in carrying out its duties in the treaty-making process.

Mr. President, the START II Treaty has been awaiting action by the Senate for over 2 years. The opportunity has now arrived for the Senate to play its role in the treaty-making process, and I am grateful to those of my colleagues who have worked so diligently to provide the conditions under which the Senate can consent to the ratification of this treaty.

The START I Treaty was the first arms control agreement that actually reduced the number of strategic offensive weapons. It mandated an overall strategic nuclear force reduction of about one-third, and a reduction of up to 50 percent in one of the most dangerous and destabilizing categories of nuclear weapons—heavy ICBM's. START I also broke new ground in establishing effective verification regimes by providing levels of visibility and confidence that exceeded any previous nuclear arms control effort. Thus, the START I Treaty was a vigorous step toward a more stable nuclear balance because it resulted in a reduction in the numbers of destabilizing first strike systems; it fostered greater reliance on more survivable nuclear systems; and it provided increased certainty about the other side's strategic posture. In December 1994, these gains were formalized with the entry into force of the START I Treaty.

The disintegration of the Soviet Union offered the opportunity to build on the gains of START I and to go even further in reducing the nuclear dangers to our Nation. The START II Treaty accomplishes just this purpose. When enacted, this treaty will dramatically reduce the numbers of weapons in the two most destabilizing and dangerous categories of nuclear arsenals—ICBM's with multiple independently targeted reentry vehicles [MIRV's] and the last of the heavy ICBM's, the SS–18's; and it will enable each party to reduce its strategic arsenal on the basis of an effective verification regime built upon both confidence building measures and intrusive inspections. Both parties will be left at rough equivalence in strategic forces, but the result will be smaller, more stable strategic nuclear forces for both the United States and Russia.

The START I Treaty was signed as a bilateral agreement between the United States and the Soviet Union on July 31, 1991, after 9 years of negotiation. The treaty was transmitted to the Senate for its advice and consent to ratification on November 25, 1991, but the Soviet Union dissolved formally on December 25, 1991, before the Senate could take action or the treaty could enter into force.

The breakup of the Soviet Union created a number of complex state succession issues with respect to the treaty. The most important of these issues was that strategic offensive nuclear weapons were left deployed in four former Soviet republics.

In order to resolve this key succession problem, the START I Treaty was converted into a multilateral treaty among the United States, Russia, Belarus, Ukraine, and Kazakhstan by means of the May 23, 1992, Lisbon Protocol (Treaty Doc. 102–32).

The Protocol constituted an amendment to, and integral part of, the START I Treaty. It provided that the four former Soviet republics would together assume the legal obligations of the U.S.S.R. for the START I Treaty. It further obligated the four states to make arrangements among themselves as necessary to implement the treaty's limitations, to permit verification of the treaty's provisions on their territory, and to allocate costs. The Lisbon Protocol also obligated Belarus, Ukraine, and Kazakhstan to accede to the 1968 Nuclear Non-Proliferation Treaty NPT as nonnuclear weapons states as soon as possible.

In letters submitted with the Protocol, Belarus, Ukraine, and Kazakhstan pledged to eliminate all nuclear weapons and strategic offensive arms on their respective territory within 7 years after entry into force of the START I Treaty. To date, all tactical nuclear weapons have been removed from the three states and transferred to Russia. While Belarus, Ukraine, and Kazakhstan were under no legal obligation to transfer any nuclear weapons to Russia, and could have, at least in theory, eliminated such weapons on their own territories, those remaining strategic nuclear weapons are, in fact, being transferred and eliminated in Russia.

Based on the clarifications and obligations associated with the Lisbon Protocol, the Senate provided its advice and consent to ratification of the START I Treaty in a 93 to 6 vote on October 1, 1992.

The treaty between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms, or the START II Treaty, was signed by the United States and the Russian Federation on January 3, 1993, and was transmitted by President Bush to the Senate on January 15, 1993.

The START II Treaty builds upon and goes even further than the START I Treaty. START II's central limits require the parties to reduce their strategic offensive arms so that specified limits are reached by the year 2003. The START II Treaty, together with the START I Treaty, will reduce both nations' deployed strategic offensive arms by more than two-thirds, and will completely eliminate land-based intercontinental ballistic missiles [ICBM's] deployed with multiple warheads. Strict, lower limits will be imposed on all deployed strategic offensive arms, including warheads carried on ICBM's, submarine-launched ballistic missiles [SLBM's], and heavy bombers. Stabilized sea-based forces will be retained but will carry significantly lower numbers of warheads. In contrast to the START I Treaty, all heavy bombers will be attributed with warheads based on the number of nuclear weapons for which they are actually equipped.

There are five parties to the START I Treaty; in contrast, the START II Treaty is bilateral: the United States and the Russian Federation are its only parties. According to the Lisbon Protocol, no nuclear warheads or deployed strategic offensive arms will be located on former Soviet territories other than Russia, at the time the first phase of the reductions in this treaty are required to be completed. Nevertheless, the START II Treaty draws upon the START I Treaty for definitions, counting rules, prohibitions, and verification provisions and only modifies those as necessary to meet unique requirements of the START II Treaty.

The terms of the START II Treaty are based on the joint understanding signed between the United States and Russia on June 17, 1992. Its impetus was the desire to strengthen stability by eliminating the most destabilizing systems remaining under the START I Treaty. The joint understanding established the START II Treaty guidelines.

The START II Treaty, unlike START I, is relatively brief and straightforward. The START II Treaty calls for reductions, in two phases, in ICBM's, ICBM launchers, ICBM warheads, SLBM's, SLBM launchers, SLBM warheads, heavy bombers, and heavy bomber nuclear armaments. Seven years after entry into force of the START I Treaty, the aggregate number for each party shall not exceed 4,250 deployed strategic warheads. By the same date the following sublimits are to be reached as well: between 3,800 and 4,250, for the aggregate number of warheads on deployed ICBM's, deployed SLBM's, and deployed heavy bombers; 2,160, for warheads on deployed SLBM's; 1,200, for warheads on deployed multiple-warhead ICBM's; and 650, for warheads on deployed Russian heavy ICBM's (SS–18s).

Upon the completion of the above reductions during the second and final phase, the parties shall further reduce their strategic offensive arms so that no later than January 1, 2003, and thereafter, the aggregate number for each party shall not exceed 3,500 deployed strategic warheads. By the same date the following sublimits would also apply: between 3,000 and 3,500, for the aggregate number of warheads on deployed ICBMs, deployed SLBM's, and deployed heavy bombers; between 1,700 and 1,750, for warheads on deployed SLBM's; Zero, for warheads on deployed multiple-warhead ICBM's; and Zero, for warheads on deployed heavy ICBM's.

The START II Treaty provides that after January 1, 2003, neither party may deploy land-based missiles with more than one warhead and all heavy ICBM's must be destroyed. Specifically, all launchers of ICBM's to which more than one warhead is attributed under article III of this Treaty, including test and training launchers, must either by destroyed or be converted to launchers of ICBM's to which no more than one warhead is attributed. This will require the United States to eliminate or convert Peacekeeper ICBM's and their launchers. The Russians will have to eliminate or convert SS–19 and SS–24 ICBM launchers, except those that contain the permitted number of SS–19's downloaded to a single-warhead configuration. Also exempt from this provision are launchers of non-heavy ICBM's located at space launch facilities that are permitted under the START I Treaty. For the United States, this means the Peacekeeper can be used as a vehicle for space launch. All SS–18 ICBM launchers, including all those at space launch facilities, must be physically destroyed. There is one exception—90 deployed launchers may be converted, under agreed provisions, to single-warhead SS–25 type ICBM launchers with canisters no more than 2.5 meters in diameter, such that rapid reconversion is effectively precluded.

All United States Minuteman III ICBM's, and 105 of the 170 Russian SS–19 ICBM's, may be retained and downloaded to one warhead pursuant to article III of this Treaty. Any number of SLBM's with multiple warheads may also be downloaded by up to four warheads per missile. Thus, the United States could theoretically meet the numerical constraints of the START II Treaty on SLBM warheads by downloading and retaining up to 18 Trident submarines with missile warhead loads reduced from eight warheads to four.

The START I Treaty requires that 154 of the 308 former Soviet heavy ICBM launchers must be destroyed by the end of the 7-year reduction period. The START II Treaty goes further and requires the elimination or physical conversion of all heavy ICBM launchers. The Russian Federation will be allowed to convert, under agreed constraints and subject to inspection, 90 of these deployed missile launchers within which only SS–25 single-warhead ICBM's may be deployed. The remaining 64 heavy ICBM launchers must be destroyed by the end of the second phase of reductions in accordance with START II Treaty procedures. The constraints on SS–18 silo conversion require that the Russians pour concrete to a height of five meters above the silo base and mount in the upper portion of the silo a restrictive ring that is smaller in diameter than the diameter of the SS–18. These modifications preclude an SS–18 from being launched from these silos, and would be extremely difficult and time-consuming to reverse. The constraints also require the destruction of all deployed and nondeployed SS–18 missiles and their launch canisters.

In the START II Treaty, all deployed heavy bomber nuclear armaments will be counted according to how the bombers are actually equipped. Each deployed heavy bomber—except for 100 bombers reoriented to a conventional role—will be attributed with the aggregate number of long-range nuclear air-launched cruise missiles, nuclear-armed air-to-surface missiles with ranges of less than 600 kilometers, and nuclear gravity bombs for which it is actually equipped. Under this agreement, heavy bombers will be attributed with a realistic number of warheads that reflects operational considerations; in many cases, this number may be lower than the maximum number of weapons that could be physically loaded on the aircraft using all available attachment points. In addition, each party may reorient 100 of its heavy bombers to a conventional role; these bombers were never accountable under the START I Treaty as heavy bombers equipped for long-range nuclear ALCM's. Such bombers would not count toward START II warhead ceilings, but would continue to count against the START I Treaty limits.

Each party may, on a one-time basis, return such bombers back to a nuclear role, if it wishes. If some, but not all, bombers within a specific type or variant, under the START I Treaty, are reoriented to a conventional role, they must be given a difference observable by national technical means from the bombers within that type or variant that remain in a nuclear role. Likewise, if a bomber that has been reoriented to a conventional role is subsequently returned to a nuclear role, it must receive an observable difference from other heavy bombers of the same type and variant.

The START I Treaty provisions will be used to verify the START II Treaty's limits, except as otherwise provided. The START II Treaty provides for additional inspections to confirm the elimination of heavy ICBM's and

their launch canisters, as well as additional inspections to confirm the conversions of heavy ICBM silo launchers. In addition, the START II Treaty provides for exhibitions and inspections to observe the number of nuclear weapons for which heavy bombers are actually equipped and their relevant observable differences.

The START II Treaty requires the elimination or conversion of launchers of deployed ICBM's with multiple warheads. To reinforce this limitation, the acquisition of such weapons from another state is prohibited after the second phase of reductions. After that date, the START II Treaty also prohibits the production, flight-testing—except from space launch facilities—or deployment of ICBM's to which more than one warhead is attributed. The parties are obligated under the treaty not to produce, flight-test, or deploy an ICBM or SLBM with more warheads than it has been attributed under the START II Treaty. Also, the parties are obligated not to transfer heavy ICBM's to any other state, including any other party to the START I Treaty. The START II Treaty provides that this last prohibition is to be applied provisionally from the date of signature of the START II Treaty. This has no effect on the United States since there are no U.S. heavy ICBM's.

To provide a forum for discussion of implementation of the START II Treaty, the treaty establishes the bilateral implementation commission [BIC]. Through the BIC, the parties can resolve questions of compliance and agree upon additional measures to improve the viability and effectiveness of the treaty.

The START II Treaty will enter into force upon the exchange of instruments or ratification by the parties. However, since the START II Treaty is built upon the START I Treaty, it could not have entered into force prior to the START I Treaty's entry into force in December 1994. It will remain in force as long as the START I Treaty remains in force.

The START II Treaty consists of the main treaty text and three documents which are integral parts thereof:

The Protocol on Procedures Governing Elimination of Heavy ICBM's and on Procedures Governing Conversion of Silo Launchers of Heavy ICBM's Relating to the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms—the Elimination and Conversion Protocol;

The Protocol on Exhibitions and Inspections of Heavy Bombers Relating to the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms—the Exhibitions and Inspections Protocol; and

The Memorandum of Understanding on Warhead Attribution and Heavy Bomber Data Relating to the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms—the Memorandum on Attribution.

Also submitted to the Senate for its information are documents that are associated with, but not integral parts of, the START II Treaty. These include three exchanges of letters by the sides addressing SS–18 missiles on the territory of Kazakhstan, heavy bomber armaments, and heavy ICBM silo conversion. Although not submitted for the advice and consent of the Senate to ratification, these documents are relevant to the consideration of the START II Treaty.

The first exchange of letters relates to the negotiation of an agreement between Russia and Kazakhstan regarding SS–18 missiles and launchers on the territory of Kazakhstan. In his December 29, 1992, response to Russian Foreign Minister Kozyrev's commitment of December 29, 1992, to spare no effort to conclude such an agreement, Secretary of State Eagleburger confirmed that the START II Treaty would be submitted to the United States Senate for its advice and consent on the understanding that the agreement referred to by Minister Kozyrev—providing for the movement to Russia and elimination of heavy ICBM's from Kazakhstan—would be signed and implemented, and that, not later than 7 years after entry into force of the START I Treaty, all deployed and nondeployed heavy ICBM's now located on the territory of Kazakhstan will have been moved to Russia where they and their launch canisters will have been destroyed.

The second exchange of letters of December 29, 1992, and December 31, 1992, between Secretary of State Eagleburger and Russian Foreign Minister Kozyrev relates to heavy bombers, and constitutes the assurance of the United States, during the duration of the START II Treaty, never to have more nuclear weapons deployed on any heavy bomber than the number specified in the memorandum on attribution for that type or variant. This letter creates no new legal obligation for the United States but merely reiterates the obligation already assumed under paragraph 3 of article IV of the START II Treaty.

The third exchange of letters of December 29, 1992, and January 3, 1993, between Russian Minister of Defense Grachev and Secretary of Defense Cheney, sets forth a number of assurances on Russian intent regarding the conversion and retention of 90 silo launchers of RS–20—referred to by the U.S. as SS–18—heavy ICBM's. In his letter, which is politically binding on Russia, Minister Grachev reaffirms the steps that Russia will take to convert these silos and assures the Secretary of Defense that missiles of the SS–25 type will be deployed in these converted silos.

In January 1992, President Bush proposed to ban land-based MIRVed ICBM's and to cap actual warheads at 4,700, while cutting U.S. Trident warheads by one-third. President Yeltsin agreed with the ban, but wanted deeper cuts to 2,000 to 2,500 warheads. President Yeltsin considered the Bush proposal too inequitable because it cut the Russians where they were the strongest, the land-based MIRVed systems, while letting the U.S. retain its supremacy in bombers and submarines. In addition, the Russians would lose considerable forces in Belarus, Kazakhstan, and Ukraine. The breakthrough came when the United States agreed to reductions in its submarine-based ballistic missile warheads. On June 17, 1992, Presidents Bush and Yeltsin signed a joint understanding in Washington that called for a treaty on deep cuts. The joint understanding paved the way for the conclusion of the START II Treaty.

ASSESSMENT OF THE JOINT CHIEFS OF STAFF

The U.S. START II negotiating position was based on a Joint Chiefs of Staff assessment of how many and what kind of nuclear forces were necessary to retain a credible deterrent force beyond the year 2003. The logic at the time, and during the negotiations, was to reduce the numbers of warheads but to preserve a balanced force—a mix of ICBM's, SLBM's, and bombers sufficient in size and capability to meet future U.S. deterrent requirements. It was the JCS view, that with the 3,500 warheads allowed under this treaty, the United States would remain capable of holding at risk a broad enough range of high value political and military targets to deter any rational adversary from launching a nuclear attack against the United States or against its allies.

In September 1994, the United States completed the nuclear posture review [NPR]—an effort chartered to determine what roles its nuclear forces must meet to protect against future challenges to U.S. national security interests. The NPR assumed the post-START II nuclear force levels and its analysis reconfirmed the calculations that were done before and during the negotiations for START II. The review reaffirmed both that the United States must maintain a viable nuclear deterrent in the post-cold war world and that 3,500 warheads will be sufficient to hold at risk those assets which any foreseeable enemy would most value—the core determinant of effective deterrence.

More specifically, the JCS concluded that the START II/NPR force is sufficient to prevent any foreseeable enemy from achieving his war aims against the United States or its allies, no matter how a nuclear attack against the United States is designed. In practice, this means that U.S. nuclear forces must be robust enough to sustain the ability to support an appropriate targeting strategy and a suitable range of response options, even in the event of a powerful first strike that attempts to disarm U.S. nuclear forces. The JCS analysis shows that, even under the worst conditions, the START II force levels provide enough survivable

forces, and survivable, sustained command and control to accomplish U.S. targeting objectives.

This force will consist of 14 Trident submarines equipped with the D–5 missile system, 66 B–52 bombers, 20 B–2 bombers, and 450–500 Minuteman III missiles. When the START II reductions are completed, United States strategic forces will be roughly equivalent to those of Russia and will be sufficient to meet our deterrent requirements.

CRISIS STABILITY

The START II Treaty builds upon the accomplishments of START I by further reducing strategic arms in a way that increases crisis stability. START II does this by eliminating the most destabilizing nuclear weapons—land based MIRVed ICBM's and heavy ICBM's.

In the past, with MIRVed ICBM's a significant part of the forces of both sides, there was much greater incentive to shoot first during a crisis. The inherent vulnerability of land-based missiles to a first strike, compounded by the consideration of losing the multiple warheads on MIRVed missiles, argued for launching these weapons before they could be disabled by an enemy strike. Thus, according to the JCS analysis, eliminating this entire category of nuclear weapons relieves the incentive to launch first, adding greatly to crisis stability. START II also eliminates the last of the heavy ICBM's—the remaining Russian SS–18's—which are hostage to the same logic and are therefore equally destabilizing in a crisis.

In addition to eliminating these two kinds of systems, the JCS concluded that the restructuring of the U.S. triad made under the terms of this treaty will improve stability in its own right. The U.S. START II ICBM leg will be a less attractive target than has been the case in the past. All remaining ICBM's will have single warheads; making them less valuable targets than MIRVed missiles. But, in addition, the combined calculus of rough equivalency in overall warheads between the United States and Russia, and the fact that all remaining ICBM's will be equipped with single warheads, will make it highly unlikely that Russia will consider launching an effective first strike to disarm United States ICBM's. According to the JCS analysis, under the warhead calculus of this treaty, to achieve the levels of confidence needed to disarm this one leg of the United States triad would require such a high proportion of Russia's overall warheads that this course would leave the attacker at a serious disadvantage. By any rational calculation, the costs would greatly outweigh any potential gains. The second leg of the U.S. triad will consist of SLBM's, which have long been, and will remain the most secure and survivable part of the U.S. nuclear force. The third leg will be manned bombers, which have the inherent advantage that they can be recalled up to the last minute. The JCS concluded that in combination, these systems provide a redundant mix of mutually supporting capabilities—in short, a viable, effective triad that provides stability during a crisis. This improved crisis stability, even as the United States maintains an effective deterrent that is militarily sufficient, is the hallmark of the START II Treaty—it is, in fact, an even more noteworthy goal than the warhead reductions themselves.

VERIFICATION AND METHODS OF RESTRUCTURING

The third element of the treaty that the JCS analyzed is compliance verification. The JCS analyzed the verification procedures from two standpoints: do the verification procedures offer the United States confidence that it can effectively verify compliance and detect significant violations of the treaty; and do the verification procedures provide adequate safeguards for protecting U.S. national security against unnecessary or unwarranted intrusion.

START II builds upon the interlocking and mutually reinforcing verification provisions established in START I. Unless otherwise specified, the counting rules, notifications, verification, conversion, and elimination procedures from START I are used for START II. The breakup of the former Soviet Union has not undermined the confidence of the members of the Joint Chiefs of Staff in these procedures. In fact, the increased openness of Russian society, and the capabilities of America's own national technical means [NTM] are additional factors that add to JCS confidence in the United States ability to effectively verify. The JCS believe that the verification procedures are adequate to ensure that the United States will be able to detect any significant violations. Conversely, the JCS also believes that the verification provisions are sufficiently restrictive to protect the United States against unnecessary intrusion.

REDUCTIONS THROUGH RESTRUCTURING

One notable aspect of the treaty is that it breaks new ground by permitting both Russia and the United States to achieve the stipulated nuclear reductions by restructuring their current forces. This is an improvement over START I because it allows the parties to reduce their forces more cost effectively and quickly through a combination of hardware elimination, conversions, and downloading. The key to making this restructuring possible is the inclusion of some specially designed verification procedures that will allow the United States to monitor and check compliance.

DOWNLOADING

The START II Treaty differs from START I in its provisions for reducing nuclear warheads by downloading. In START I, either side could remove up to four warheads from a missile, but could only get credit for the reduced warhead number if the warhead mounting platform was destroyed and replaced—an expensive option. There was also a limit on the aggregate number of downloaded warheads permitted for each party. START II encourages each side to take greater advantage of downloading. For economic reasons, and at United States insistence the warhead mounting platforms do not have to be destroyed under START II. The advantage for the United States is that this permits Trident sea-based missiles to be downloaded cost effectively without the need to replace all of their mounting platforms. The treaty also goes beyond the START I limit of only crediting the downloading of up to 4 warheads per missile, as it permits the downloading of 5 warheads from each of 105 Russian SS–19 ICBM's as these missiles are converted to a single warhead configuration. When both parties are done downloading, all remaining missiles will have a single warhead. However, these downloading procedures will not be applied to Russia's SS–18 force because all SS–18's will be completely eliminated under START II.

United States confidence in the actual warhead numbers deployed on future ICBM's will be based on existing provisions for reentry vehicle onsite inspections [RVOSI], coupled with national technical means [NTM]. The JCS is confident that the combination of RVOSI and United States NTM will provide the means to detect any significant violations should the Russians at some time in the future attempt to return their missiles to a MIRVed configuration.

SILO CONVERSION

The treaty also permits the Russians to convert 90 of their SS–18 silo launchers into launchers for SS–25 single warhead ICBM's. The Russians agreed to convert the silos under procedures that preclude their later use for SS–18's. The procedures for conversion are specifically designed to be both time consuming and difficult to reverse. Once the conversions are completed, any attempt to reconvert the silos back to a configuration capable of housing heavy ICBM's would be readily detected by visual inspections and U.S. NTM. To verify these silo conversions, the Russians agreed to more extensive verification procedures that the START I Treaty allowed. Additionally, they agreed to destroy the SS–18's themselves, including those in Kazakhstan as they are returned to Russia. U.S. inspectors will get to observe both the silo conversion procedures and the missile eliminations.

HEAVY BOMBER

The third provision for restructuring is delineated in the details for heavy bomber counting and conversion. Under the terms of the treaty, the number of warheads attributed to heavy bombers with nuclear roles, including those equipped with long-range nuclear air-launched cruise missiles [ALCMs], will be determined by totaling the number of nuclear weapons with which each type of bomber can be

equipped. To make this counting determination, each side will have to demonstrate to the other side the nuclear weapons configuration of each type of bomber that is designated to retain a nuclear mission. In addition, the United States obtained Russian agreement that up to 100 heavy bombers never attributed with long-range nuclear ALCM's may be reoriented to conventional missions without having to undergo the conversion procedures that applied under START I. These reoriented heavy bombers will not be counted under the warhead limits of the START II Treaty nor will they be deemed part of the United States nuclear force under START II and can be used for nonnuclear, conventional missions only. As defined by the treaty, the reoriented bombers will have to be based separately from heavy bombers with nuclear roles; they will be used only for nonnuclear missions; they will not be used in exercises for nuclear missions; and their aircrews will not train or exercise for nuclear missions. Currently, the United States plans to reorient its B–1's to a conventional role using these START II procedures.

FORCE STRUCTURE IMPLICATIONS

START II will require the United States to eliminate its Peacekeeper-MX MIRVed ICBM force. However, the treaty will not require the United States to eliminate any Minuteman MIRVed ICBM's, because they may be downloaded from three warheads to one warhead in accordance with article III. Similarly, the United States will not have to eliminate any Trident submarines or SLBM's that could have been deployed under START I. Once again, reduction of SLBM warheads may be accomplished by downloading. On the other hand, START II will cause substantial changes in the U.S. heavy bomber force. The executive branch concluded in its recent nuclear posture review that all B–1B's would be reoriented to a conventional role. In addition, B–52 bombers may be equipped with either 8 or 12 air-launched cruise missiles, rather than the current 20 cruise missiles.

Russian strategic forces will be dramatically affected under the START II Treaty. Russia will have to eliminate approximately 250 strategic ballistic missiles carrying 2,500 warheads. Much of these reductions will be achieved by the total elimination of the SS–18 MIRVed heavy ICBM force—the most potent hard-target kill-capable force in the Russian strategic arsenal. Furthermore, because of the MIRV ban and the limitations on downloading, Russia will also have to eliminate its capable and mobile SS–24 ICBM force—the Russian equivalent of the MX.

The JCS has testified that the START II Treaty offers a significant contribution to U.S. national security. Under its provisions, the United States achieves the longstanding goal of eliminating both heavy ICBM's and the practice of MIRVing ICBM's, thereby significantly reducing the incentive for a first strike.

The Joint Chiefs of Staff have carefully assessed the adequacy of U.S. strategic forces under START II, and have testified that, with the balanced triad of 3,500 warheads that will remain once this treaty is implemented, the size and mix of the remaining U.S. nuclear forces will support the deterrent and targeting requirements against any known adversary and under the worst assumptions. Both American and Russian strategic nuclear forces will be suspended at levels of rough equivalence; a balance with greatly reduced incentive for a first strike. The JCS stated that, by every military measure, START II is a sound agreement that will make our Nation more secure. Under its terms, U.S. forces will remain militarily sufficient, crisis stability will be greatly improved, and the United States can be confident in the ability to effectively verify its implementation. This treaty is clearly in the best interests of the United States.

VERIFICATION AND COMPLIANCE

The bottom line of the intelligence community's assessment about the prospects for monitoring the START II Treaty is that they will be able to monitor many—and the most significant—provisions of START II with high confidence. In some areas, though, they will have some uncertainty.

The intelligence community was deeply involved in the senior-level interagency process that led to the development of U.S. positions during the START II negotiations. The intelligence community helped design specific Treaty provisions that were included in the treaty to complement U.S. monitoring capabilities and thereby inhibit cheating. Information resulting from these provisions interacts synergistically with data from U.S. national intelligence means to enhance monitoring capabilities. For instance, the procedures for converting SS–18 silos for use by smaller, single warhead missiles make undetected reconversion to SS–18 launchers virtually impossible. The process would be time consuming, difficult, expensive, and easily observed. Moreover, onsite inspections permit the United States to visit a sample of silos of its choosing.

RATIFICATION AND IMPLEMENTATION

The steps Russia has taken toward implementing the deep reductions of the START I Treaty are significant. Since the Senate last considered the START II Treaty in 1993, Russia and Ukraine have largely been able to bridge their differences over the control and ultimate disposition of the strategic nuclear weapons in Ukraine. Moreover, Belarus, Kazakhstan, and Ukraine have ratified START I and acceded to the nonproliferation treaty as nonnuclear states, setting the stage for START I entry into force on December 5, 1994. Russia is well on the way to meeting the reductions of START I and significant progress has been made in deactivating missiles in Ukraine and Kazakhstan and consolidating strategic nuclear weapons on Russian territory. Russia also has completed the destruction of substantial numbers of launchers for older missiles, well in advance of the reduction required by START I.

MONITORING TASKS: GENERAL CONCLUSIONS

Under START II the intelligence community will be expected to monitor the activities associated with the reduction of Russian strategic offensive nuclear forces through January 1, 2003, as well as Russia's subsequent adherence to the numerical limits in the treaty. These tasks will be in addition to the requirements to monitor activities relative to qualitative restrictions on the technical characteristics and capabilities of the weapon systems involved, and location restrictions contained in the START I Treaty. Finally, the intelligence community is charged to detect and correctly interpret any activities that are prohibited by either treaty.

Specific new monitoring tasks under START II include the requirements to:

Monitor warhead reductions to between 3,000 and 3,500, including a 1,700 and 1,750 sublimit on SLBM warheads.

Monitor the ban on production, flight-testing, acquisition, and deployment of MIRVed ICBM's after January 1, 2003.

Monitor the conversion of up to 90 SS–18 silos for smaller, SS–25-type single-warhead ICBM's.

Monitor the elimination of the remaining SS–18 heavy ICBM silos, and of all SS–18 missiles and canisters.

Monitor up to 105 SS–19 ICBM's that are downloaded to carry only a single warhead.

Monitor the number of nuclear weapons with which Russian heavy bombers are actually equipped.

Determine that heavy bombers reoriented for conventional roles do not carry nuclear weapons or train for nuclear missions.

MONITORING JUDGMENTS

The intelligence community's monitoring judgments are based on three decades of experience collecting against and analyzing Soviet strategic forces as well as in monitoring other arms control agreements. More specifically, the monitoring judgments are based on:

Analyses of testing, production, deployment, and operational practices as well as engineering assessments of strategic weapon systems characteristics.

The strengths and weaknesses of current and programmed collection systems.

The potential contribution of verification measures contained in the two START treaties.

With regard to monitoring specific limitations in the START II Treaty, the intelligence community's confidence will be highest when monitoring the mandated restrictions, including the elimination of SS–18 ICBM's, as well as accounting for the number of deployed strategic weapons systems—single-warhead ICBM's, submarine-

launched ballistic missiles, and heavy bombers—that remain in the force.

As all MIRVed ICBM systems are eliminated, the intelligence community expects the single-warhead SS–25 road-mobile force to expand and a silo-based variant of this missile to be deployed. With the help of notification requirements, the intelligence community believes it will be able to track the growth of this force.

The intelligence community will be able to monitor the ban on MIRVed ICBM's after 2003 both by tracking the elimination of launchers for MIRVed ICBM's and by analyzing the data from flight tests of new missiles.

Since the START I Treaty was signed, Russia and the United States have demonstrated telemetry tapes, as called for by the treaty, and installed telemetry playback equipment on each other's territory. With START I entry into force, the intelligence community is now receiving telemetry tapes and associated interpretive data as required under treaty provisions.

Based on the information and equipment provided by Russia, intelligence community experts have high confidence that the agreed procedures will enable them to process, interpret, and analyze data contained in the Russian tapes.

For some START II monitoring tasks the intelligence community's uncertainties will be greater. As it stated in 1992, during the START I ratification hearings, monitoring missile production activity is more difficult than monitoring reductions and deployed forces.

At facilities where continuous portal perimeter monitoring is conducted, the uncertainties in monitoring future production will be low.

Estimates of missile production at facilities not subject to continuous monitoring or onsite inspection, however, will continue to be more uncertain.

An outgrowth of the historical difficulty in monitoring missile production is that estimates of the nondeployed missile inventory are less certain. Nevertheless, the intelligence community stands by the judgment it made in 1992: It does not believe the Russians have maintained a large-scale program to store several hundred or more undeclared, nondeployed strategic ballistic missiles. It acknowledges, however, that it is possible that some undeclared missiles have been stored at unidentified facilities.

THE POTENTIAL FOR CHEATING

With regard to detecting and correctly interpreting prohibited activity, the intelligence community examined nearly 40 cheating scenarios in 1991 when analyzing their ability to monitor START I. In light of START II limitations and bans, they examined additional scenarios. In both cases the intelligence community sought to devise scenarios that theoretically would be the most feasible and potentially interesting to the Russians as well as most challenging to United States intelligence capabilities. They consulted with the Office of the Joint Chiefs of Staff and other experts to make certain that they had included those scenarios that would have the most military significance to our strategic military planners.

The cheating scenarios that continue to be the most potentially troublesome are those that would involve the covert production and storage of mobile missiles and their launchers. START II has neither increased nor reduced these concerns.

The intelligence community continues to doubt that Russia will be able to initiate and successfully execute a significant cheating program. This confidence is due to United States national technical means, verification provisions in the treaty, and to some extent, the increased difficulty of keeping Russian Government activities secret.

Although an effort to hide a small number of weapon systems would be almost impossible to detect, the intelligence community judges that it would also be of little interest or value to Russia.

TREATY PROVISIONS TO ENHANCE MONITORING

Although open-source information is now more abundant and relevant than in the past and the intelligence community has an impressive array of technical collection systems, it was clear during the negotiations of both START treaties that they would encounter significant uncertainties in monitoring some provisions if they had to rely only on national intelligence means. All START I provisions designed to enhance verification, including those that guarantee access to telemetry data from ballistic missile flight tests, will continue to apply under START II. In addition, START II provides for supplementary onsite inspections that will aid United States ability to monitor its unique provisions.

The value of these treaty provisions for monitoring varies, depending on the task. In some cases provisions—particularly those for onsite inspections—provide unique opportunities for directly monitoring treaty-required activities. In other cases the Russians provide detailed information on their forces so that the intelligence community need only find an individual discrepancy to identify an ambiguous, or perhaps illegal situation. In any case, onsite inspections, notifications, and regular data exchanges will facilitate our ability to optimize the employment of intelligence collection systems.

In addition to the START I Treaty's 13 types of inspections, START II's new onsite inspection provisions would assist in monitoring specific activities:

The intelligence community would have the right to observe the elimination of all declared SS–18 missile airframes that are not eliminated through launches, as well as all associated launch canisters.

The intelligence community would have the right to confirm by direct measurement that 5 meters of concrete have been poured into converted SS–18 silos, as well as to observe the entire process of concrete pouring, and to measure the inner diameter of the restrictive ring installed in the upper portion of each silo.

The intelligence community would have the right to conduct four additional RV inspections per year at converted SS–18 silos to confirm the single-RV load of the SS–25-type missile, observe the upper portion of its canister for identification purposes, and confirm the continued presence of the restrictive ring.

During special heavy bomber exhibitions and all short-notice inspections of heavy bombers after the START I baseline period, the intelligence community would have the right to inspect the interiors of weapons bays and external weapons attachment points.

As the intelligence community stated during the START I hearings, for some monitoring tasks it will continue to rely most heavily on information acquired from their independent technical sensors. For example, neither START treaty requires the exchange of telemetry tapes from the flight tests of bombers and cruise missiles, nor do they prohibit the encryption of such test data. Moreover, START provisions will provide little assistance in detecting prohibited activity at locations the Russians do not declare.

VERIFICATION CONCEPTS, CAPABILITIES, AND CONCERNS FOR MAJOR TREATY ELEMENTS

Verification of START II will be based largely upon the capabilities and provisions designed to verify START I, and generally reflect the same assumptions and considerations. The two central elements of START II are the elimination of MIRVed ICBM's—including all heavy ICBM's—by the year 2003, and deeper reductions in the same basic categories of strategic offensive arms as START I. Accordingly, the conceptual basis for verification of START II is the same as that for START I. The same capabilities and measures that provide for effective verification of START I limits on launchers, missiles, and attributable warheads will be effective in verifying the lower aggregate limits in START II.

THE STATUS OF IMPLEMENTATION PLANNING FOR START II

The START I Treaty entered into force on December 5, 1994. The Department of Defense was ready for entry into force and has been able to implement and comply with the extensive START I Treaty. The Military Services and Defense Agencies which must implement START II are getting invaluable experience right now in implementing the even more complex START I Treaty.

Planning for START II Treaty implementation within the Department of Defense began prior to the signature of the treaty in order to ensure that the United States will be in compliance at entry into force. In November 1992, the USD(A&T) issued DOD guidance which directed all Military Services and Defense Agencies to begin planning for START II and assigned specific START II implementation guidance with DOD's overall approach to implementation planning—centralized oversight and decentralized execution—which

proved so successful and cost effective during implementation of the INF Treaty. The Department of Defense is in the process of updating this guidance to the Military Services and Defense Agencies.

Because of the inherent relationships between START I and START II, the DOD START I implementation working group [SIWG] will be used to address implementation issues for START II. The SIWG consists of representatives of the Military Services and Defense Agencies. The SIWG, which first met in August of 1991, meets monthly to review the status of preparations within each Military Service and Defense Agency to issue planning guidance, assign additional responsibilities, conduct reviews, and resolve questions which may arise during planning for, and actual implementation of, START I and START II. To date, no major issues for START II have been identified which would impact United States ability to successfully implement the treaty.

In addition, the mechanisms for ensuring long-term compliance within the Department of Defense will be similar to those used to ensure DOD compliance with other arms control treaties. Specifically, the START I DOD compliance review group [CRG] will also be the forum for resolving any START II DOD compliance issues. The CRG is composed of representatives of the USD(A&T), the Under Secretary for Policy [USD(P)], the Joint Chiefs of Staff [JCS] and the DOD General Counsel. The CRG meets as required to ensure DOD compliance with START I and, pending entry into force, START II Treaty compliance.

POTENTIAL START II IMPLEMENTATION COSTS

DOD has provided some preliminary estimates of the cost of START II implementation. The following assumptions were used in developing these estimated implementation costs: The United States will draw down to the aggregate limit of no more than 3,500 warheads by January 1, 2003. This reduction will include the elimination of all Peacekeeper launchers. The costs associated with reducing the number of SLBM warheads assumes that the United States will retain 14 Trident submarines but download each deployed SLBM to 5 reentry vehicles. The assumptions are based on the results of the nuclear posture review [NPR] and do not reflect NPR programmatic costs.

These estimates also assume that the United States will exercise all of the START II onsite inspection rights, including those for the elimination of all SS–18 missiles and their launch canisters, the conversion of 90 SS–18 silos and the four additional reentry vehicle onsite inspections [RVSOI] allowed annually at converted SS–18 silos. Heavy bomber inspection and protection are included in these figures.

A preliminary estimate for START II shows that the total costs could amount to approximately $201.9 million between 1995 and the end of the second treaty reduction phase in 2003. These costs break down as follows:

[In millions of dollars]

Elimination of MIRVed ICBMs	42.5
Reduction of deployed SLBM warheads	110.0
ICBM launcher elimination	14.5
Bomber exhibitions	1.3
Data reporting	2.0
Bomber conversion	10.5
Verification of SS–18 silo conversion	12.6
Verification of missile and launch canister elimination	2.8
Verification of rail-mobile ICBM launcher elimination	2.9
Additional reentry vehicle inspectors	2.8
Total	201.9

The figures show that the total estimated cost of United States compliance activities will be approximately $180.8 million with the majority of that—about 61 percent—to be dedicated to deployed SLBM warhead reductions. Total START II Treaty verification costs are approximately $21.1 million, with the verification of silo conversions representing about 60 percent of that total estimate.

It is important to contrast these relatively small, 8-year costs for START II with the START I implementation costs for just fiscal year 1994 and fiscal year 1995. For this period, the Department of Defense budgeted approximately $180 million for the implementation of the START I Treaty. This investment is paying off because START I preparations formed the basis for START II requirements and will allow the even deeper reductions at a relatively moderate cost.

Two additional inspection and security issues are worthy of mention. First, START II does not add any new inspectable facilities in the United States—although the portion of Whiteman AFB where B–2s are being deployed will be subject to inspection under START II only. This will help minimize costs and security concerns. Second, U.S. heavy bombers, particularly the B–2, will be subject to more intrusive exhibitions and inspections than under the START I Treaty. The START II Treaty requires inspections to verify that heavy bombers are not actually equipped for more nuclear weapons than declared but also allows portions of the heavy bomber not related to making this determination to be shrouded, covered. The U.S. Air Force is developing an inspection implementation plan that will ensure protection of sensitive-classified information during the inspection-exhibition but which also will ensure that our treaty obligations are met. The Assistant Secretary of Defense for C3I is responsible for providing security policy guidance to the DOD components.

CONCLUSION

In conclusion, the START II Treaty is the result of a bipartisan effort. Negotiated by a Republican administration and submitted by a democratic one. Three Secretaries of State and Defense have supported it. START II represents a substantial step forward in attempting to codify strategic stability at greatly reduced levels of armaments. Final reductions must be completed by January 1, 2003—namely, to levels of 3,000 to 3,500 total warheads, 1,750 of those based on submarines. It was the Joint Chiefs of Staff view, that with the 3,500 warheads allowed under this treaty, the United States would remain capable of holding at risk a broad enough range of high value political and military targets to deter any rational adversary from launching a nuclear attack against the United States or against its allies. START II removes the most destabilizing segment of nuclear inventories, namely MIRV warheads and heavy ICBM's. Elimination also includes all deployed heavy ICBM silos and all test and training launchers. The Joint Chiefs of Staff believe that the verification procedures are adequate to ensure that the United States will be able to detect any significant violations. Conversely, the Joint Chiefs of Staff also believe that the verification provisions are sufficiently restrictive to protect the United States against unnecessary intrusion. It is my belief that on balance the START II Treaty is in the national security interests of the United States.

I urge my colleagues to consent to its ratification, subject to the conditions and declaration contained in the modified resolution of ratification.

Mr. HELMS. Mr. President, I support ratification of the START II Treaty because it will serve America's national security interests in at least three critical respects. First, when fully implemented, START II will ban the deployment of all intercontinental ballistic missiles with more than one warhead—traditionally these missiles have been the mainstay of Russia's nuclear forces. Second, this treaty rectifies a dangerous deficiency of the START I Treaty by completely eliminating all of Russia's heavy ICBM's. Third, START II creates a managed process for nuclear arms reductions. While no one will deny that much of Russia's motivation to engage in deeper cuts stems from its economic woes, I cannot in good conscience rely solely upon economic forces for reassurance that Russia's nuclear arms reductions will be undertaken in a sustained or stabilizing fashion.

START II ensures that Russia will eliminate those weapons of greatest concern to the United States, leaving nothing to chance.

Now of course, Mr. President, there is a quid pro quo for these benefits. The effect of the START II Treaty for the United States will be the elimination of our MX missile, significant reductions in our nuclear bomber fleet, and limits on the number of warheads we can deploy on submarine launched ballistic missiles. However, these changes do not fundamentally alter the deterrence value of our nuclear forces. In

fact, reductions under START II will result in a more survivable U.S. force structure than what we would have with just the START I Treaty.

Furthermore, START II preserves the triad of U.S. strategic offensive forces. We will continue to rely upon this combination of ICBM's, SLBM's, and heavy bombers to complicate any would-be aggressor's attack and to offer flexibility in any U.S. nuclear response. In fact, START II will improve the viability of the triad by eliminating those elements of the Russian force which directly threatened its integrity throughout the cod war—namely all of its SS–18 heavy ICBM's and its newer, mobile SS–24 ICBM's.

We should recall that in 1983, the Scowcroft Commission declared: ''The Soviets now probably possess the necessary combination of ICBM numbers, reliability, accuracy, and warhead yield to destroy almost all of the 1,047 U.S. ICBM silos, using only a portion of their own ICBM force.'' One of the problems with the START I Treaty was that it did little to alleviate this concern. Although it reduced the number of deployed SS–18's by one-half, it also reduced the number of U.S. silo-based ICBM's by roughly half. Thus the ratio of SS–18 warheads to U.S. silos remained virtually unchanged. START II fixes this problem.

Now I would be remiss not to mention several areas where I continue to have misgivings. For example, I am concerned that Russia—at some point—might upload warheads on its SS–19 missiles, and that they might deploy their bombers with more warheads than the treaty allows. I also am concerned over the inherent difficulty of tracking mobile missiles. Yet even in the most serious cheating scenarios, Russia would be hard-pressed to achieve a military significant advantage over the United States.

However, we should not enter into this arrangement starry eyed. To those who say Russian cheating is implausible, or that Russia lacks the motivation to engage in such activities, I only need ask: ''What arms control agreement have they not cheated on?'' If the Senate decides to ratify START II, we must demand that Russia break with its lackluster record of treaty compliance. We should not agree to a new arms control measure while at the same time tolerating Russia's ongoing biological weapons program, its refusal to implement the bilateral destruction agreement for its chemical weapons program, its failure to comply with the Treaty on Conventional Armed Forces in Europe, or its persistent violation of the ABM Treaty. The burden of proof is upon Russia to demonstrate that it is capable of breaking with the arms control legacies of the cold war.

We also must realize the limitations of this arms control treaty. START II is bilateral in nature, and does not address the growing strategic arsenals of other countries such as China. Neither have we heard hide nor hair from this administration regarding United States-Russia cooperation on ballistic missile defenses as a stabilizing complement to the well-structured reductions under START II. I therefore will resist any further efforts to reduce U.S. strategic nuclear arms to the point where the equilibrium between our strategic capability and our targeting requirements is disrupted, or to the point where the coherency of any leg of the U.S. nuclear triad is threatened.

Finally, I am concerned over the reckless abandon with which this administration raced to fully implement the START Treaty before it even had entered into force. That exuberance created a serious imbalance in the sizes of the United States and Russian nuclear arsenals. Given the deep levels of reductions contemplated under START II, we must proceed very cautiously with implementation.

That said, even with these concerns, START II will enhance significantly our national security. The resolution of ratification transmitted to the Senate from the Foreign Relations Committee contains six conditions and seven declarations that go to the heart of the issues I have mentioned here. And even in the event of serious Russian noncompliance, the United States will retain a mix of survivable nuclear forces more than sufficient to deter Russia. For all of these reasons, Mr. President, I reiterate my support for ratification of the START II Treaty.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wonder if I might ask the distinguished acting chairman of the Foreign Relations Committee a question or two.

As you know, the group working with Senator STEVENS—and I am part of that group—has proposed certain amendments. I want to ask first, procedurally, at what time during the course of our deliberations does the Senate take up those amendments?

Mr. LUGAR. Mr. President, I am pleased to answer the distinguished Senator from Virginia that after the opening statements by the managers and others, then the resolution of ratification that came from the Foreign Relations Committee will be the pending business, and amendments will be in order at that point.

Mr. WARNER. I see. I thank the distinguished Senator, Mr. President, because I have worked with Senator STEVENS and others, and the acting chairman recounted those Senators who have been a part of that.

I think it is very important that those amendments be included in this treaty, and, frankly, I think it is wise that we are trying to act today so that those amendments and the treaty itself may once again be the subject of public comment until such time as we have the opportunity to vote on final passage.

I wish to, Mr. President, commend Senator STEVENS for leading this group. I just inquired, I say to my colleague from Alaska, about the timing of his presentation which I anticipate.

Mr. LUGAR. Mr. President, I thank the distinguished Senator for his comments and his question. I simply indicate that I share his enthusiasm for the package of amendments.

Senator STEVENS has been our leader on the arms control observation group in which the distinguished Senator from Virginia and others have participated, and it will be my hope that in the event there is no controversy surrounding those amendments, they might all be adopted as a managers amendment. That would be the procedure that we hope to follow. But as soon as the resolution of ratification is before us, those amendments will be in order.

Mr. WARNER. Mr. President, I thank the Senator. I observe the presence on the floor of the distinguished Senator from Alaska.

Several Senators addressed the Chair.

Mr. LUGAR. Mr. President, I would be happy to yield in just a moment. I want to yield first to my distinguished colleague, Senator PELL, for his opening statement.

Mr. KYL. Mr. President, I simply wanted to add a comment to what the Senator was speaking of. I just came from the room in which the staff had put together the final language. Representatives of the administration had signed off on it as well as the representatives from Senator LEVIN's office, and I signed off on it as well.

I anticipate that at the point when it is agreeable with all of the Senators, that it represents the final piece in the agreement. As far as I know, there has been agreement reached, in other words, on all of those provisions.

I thank both Senator LUGAR and Senator STEVENS for their leadership in bringing this group together to allow the creation of these additional declarations and one addition to be added for the treaty.

Mr. LUGAR. Mr. President, I thank especially the Senator from Arizona who has had many concerns about the treaty and has expressed those in a very articulate, constructive way. And his views, I believe, are represented substantially in the amendments that will be offered.

MORNING BUSINESS

Mr. REID. Mr. President, I am wondering if I could ask the indulgence of the Members of the Senate. I know how important this legislation is, but Senator BROWN and I would ask unanimous consent that we be allowed to go to morning business for an extremely short period of time to introduce legislation. We will make our statements part of the RECORD.

So I ask unanimous consent that we be allowed to go to morning business.

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

BOARD OF TEA EXPERTS

Mr. BROWN. Mr. President, I will be extremely brief.

Earlier this year, on the agricultural appropriations bill, Senator REID and I offered legislation that would defund the Tea Tasting Board, and I offered an amendment that would eliminate the underlying legislation that passed in 1879.

Literally, we spend a quarter million dollars a year of taxpayers' money on tasting tea, a practice that is designed to restrict competition.

Tragically, when that measure got to conference, the conferees were advised that the Food and Drug Administration would lose their ability to stop poisonous substances coming into the country in the form of tea if we did not have a Tea Tasting Board. That information is incorrect. The advice they gave the conferees is incorrect.

So we intend to, at the appropriate point when the continuing resolution comes forward, to offer an amendment that does what the Senate did earlier, and that is eliminate the Tea Tasting Board.

Mr. President, it is important because this is a clear waste and a clear obstruction of competition in this country. It is a drag upon our efficiency, and it is the signpost of the kind of changes we need to make to get our country back on track.

That is the reason we think it is appropriate to offer it on the continuing resolution.

I yield to my distinguished colleague from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, 2 years ago I stood on this floor and offered an amendment to the 1993 Agriculture Appropriations bill.

My efforts were successful and the measure passed. The intent of my measure was to eliminate the Board of Tea Experts. To my chagrin, in recent months I discovered that the tea experts were still in business. In mid-September of this year I returned to the floor with Senator BROWN to once again eliminate the Tea Board and abolish the Tea Import Act. Well, here we are again. Why?, because it seems that the Agriculture appropriation conferees did not see their way clear and abolish the act.

That is why Senator BROWN and I have returned to the floor to offer this amendment calling for an end to the Tea Importation Act. Why, I have been told that the Department of Agriculture informed the conference committee that the act was needed to ensure safe, healthy tea. What this program has is somewhat akin to the fictional creature, Count Dracula. I have come here with Senator BROWN to once again attempt to rid this Government of this scourge. I ask unanimous consent to have printed in the RECORD this article from the December 15 business section of the Washington Post that clearly outlines this problem.

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

(From the Washington Post, Feb. 15, 1995)

THE FDA'S TEA PARTY LIVES ON. AND ON. AND ON.

(By Cindy Skrzycki)

The tempest in the teapot still brews. Despite the efforts of Sens. Harry M. Reid (D-Nev.) and Hank Brown (R-Colo.) to dump a government-sponsored tea-tasting program, last-minute lobbying and legislative maneuvering has kept the Food and Drug Administration in the business of fine tea and good china.

Just when it looked like the FDA could wash its hands of the 98-year-old Tea Importation Act and its Board of Tea Experts, Sen. Thad Cochran (R-Miss.), chairman of the Senate Agriculture Appropriations Committee, quietly decided to kill the part of the Reid-Brown amendment that would have cut FDA's involvement with the board.

The result is that the FDA, long-criticized for its tea-tasting sessions, actually may have a more complicated role to play as it figures out how to comply with the part of the amendment that did pass.

As things now stand, the Tea Importation Act—which charges the FDA with making sure imported tea meets a government-endorsed standard of quality and purity—remains in force. What changes is the FDA's involvement in setting the standard since an FDA employee will no longer be allowed to sit on the six-member Board of Tea Experts.

The problem is, the agency still has to figure out a way to come up with the annual tea standard—without being involved—so that its longtime employee (a man reknowned for distinguishing fine tea from foul brews) can carry out the day-to-day tasting of imported tea, making sure it meets the standard.

Complicated? Yes, But, hey, this is the government.

So much for victory proclamation that Reid and Brown happily offered in September when the Senate passed their amendment. The conference on the legislation—and the lobbying—wiped out Reid's wish ''to end this tea party.''

The tea leaves aren't clear on this, but the brew's lobby apparently did a good job of preserving FDA's tea-tasting role. The industry has maintained through numerous attempts to abolish the board that it was necessary to have the $200,000 government program to keep bad tea out of the country.

Congress not long ago eliminated the board's modest travel subsidies for its annual meeting at FDA offices in New York. It also raised the tax on imported tea to pay for the salaries of the FDA employees involved in setting the standard and tasting the tea to make sure imports adhered to the standard.

The current standard expires May 1, so the FDA has to come up with a way to set a new measure. Like any good government agency, it has convened a ''small working group'' to figure this out.

Among the options the group is considering: disallowing tea imports altogether, maintaining the current standard indefinitely, turning the standard-setting over to some other department within the Department of Health and Human Services. Or, the more likely scenario, proposing a standard in the Federal Register and asking for comments on it.

''You've now finding out what perpetual life is,'' said Brown. ''It's such a disgrace.''

Anyone for tea?

Mr. REID. Mr. President, we do not have a coffee tasting board, why a tea testing board?

According to an FDA spokesman this Congress is sending mixed signals regarding tea tasting.

According to an FDA spokesman ''the law doesn't say we should not have a tea taster at FDA.''

According to an article in the Review-Journal, the largest newspaper in Nevada, the Board of Tea Experts is funded by the tea industry. However, its members work closely with FDA chemist Robert H. Dick to set standards for imported tea.

Mr. Dick who has chaired the tea board for 56 years, is paid $68,000 per year. He also has two part-time assistants, all of whom are taxpayer supported.

Mr. President, the Food and Drug Administration, as well as the Agriculture Appropriations Committee, has done a diservice to the American people. It is no wonder the American people have lost faith in their government. I see no reason why those in this country who enjoy drinking tea need someone else to tell them it tastes good. Once again I am back on the floor to complete the task that I originally set out to do.

Mr. President, once again let me give the Senate some background on the Board of Tea Experts.

The Tea Expert Board was created as part of the Tea Import Act of 1897. You heard me correctly, 1897, not 1987.

There are six outside experts and one from the Food and Drug Administration [FDA] that comprise the Board. It is the Board of Tea Experts duty to set standards for imported tea. There is also others at the FDA that also as part of their official duties, taste tea.

The cost of this program is approximately $200,000 per year; even though there is an industry offset of approximately $70,000 per year.

Although, the fiscal year 1996 Agriculture appropriations bill withholds funds to operate the Board of Tea Experts, it does not repeal the act as the Senate unanimously agreed to do. Even so, the adventures of the Board of Tea Experts still cost the American taxpayer over $130,000 per year. That may not seem like much, but it is the kind of waste that taxpayers detest.

We do not have a board of coffee experts, why then, do we need a Board of Tea Experts. The Board of Tea Experts only serves industry. Let the industry serve itself, and pay for its own quality assurance out of its own pockets. It is not my intent to have the FDA to stop testing imported agricultural products. These activities can continue without the Board of Tea Experts and without Mr. Dicks or the FDA's involvement.

As I have stated on the floor before, What we need is a congressional tea party. We must dump the Board of Tea Experts as well as the Tea Importation Act overboard.

It seems inappropriate, and some might say morally reprehensible, to expend money from the Treasury for such a program.

How can this reform minded Congress allow the Tea Importation Act to continue?

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1996

Mr. LOTT. Mr. President, as in legislative session, I ask unanimous consent that the Senate now turn to the consideration of House Joint Resolution 134, the continuing resolution with respect to the veterans, and that it be in order for me to amend the joint resolution to also include funding for AFDC, District of Columbia Government, foster care, adoption assistance, and Medicaid quarterly payments, all of which would expire January 3, 1996, that the amendment be agreed to, the joint resolution be read a third time and passed, and the motion to reconsider be laid upon the table.

Mr. BROWN. Mr. President, reserving the right to object, I cannot go along with that without an opportunity to offer an amendment with regard to the Tea Tasting Board.

So I object to the unanimous-consent request.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, could I ask the Senator from Colorado to withhold his objection so we can at least discuss this a moment?

Mr. BROWN. I am glad to reserve my right to object. That would allow discussion.

Mr. WARNER. Mr. President, reserving the right to object.

Mr. LOTT. Mr. President, if I could respond to his objection, first I want to commend the Senator from Colorado for the work he has done in this area, and Senator REID from Nevada who has been working in this area. I am very sympathetic to what they are trying to do.

I know they are looking for an opportunity to do this on any vehicle that might be available, and I certainly understand that. But let me again emphasize that we are in a particularly difficult spot here.

The majority leader and the minority leader are now meeting with the President at the White House. They are working on the budget agreement. And it is very important that the UC be worked out with the House of Representatives, which is very anxiously waiting for this matter to come over to them.

The former chairman of Veterans' Affairs Committee and some of the veterans committee members just came over and are very anxious for us to get this work done and sent back over. This agreement was worked out between the leaders, all of the interested staff, and Members on both sides of the aisle. It is very important that we get it done.

I urge my colleagues who are working on this particular tea issue to withhold their objection so that we can move this continuing resolution through that the leaders are expecting us to get done.

Mr. BROWN. Will the Senator yield?

Mr. LOTT. If I have time, I would be glad to yield.

Mr. BROWN. Mr. President, I appreciate what the distinguished Senator has said. All of his observations, which I agree with, are accurate.

Mr. President, this is a little unusual circumstance for two reasons. First, the amendment originally eliminating the Tea Tasting Board passed without a dissent in the Senate.

Second, it was dropped in conference because of misinformation provided by an administrative spokesman who simply was wrong. They had indicated that the Government did not have any way to stop poisonous tea from coming into the country, when in reality they did and do. So it was only dropped from the conference report on agriculture because of inaccurate information.

It would be a tragedy to reward the conveyance of inaccurate information.

Last, Mr. President, let me assure Senators that I do not seek to slow down this bill at all. All I want is an opportunity to offer this amendment. If the amendment loses, obviously Senator REID and I are not going to interfere in any way with the passage of this continuing resolution. But we do think it is of sufficient importance to the integrity of the process that this be included.

I have every reason to believe the House will go along with this, that there will not be any objection of any kind from the House.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Reserving the right to object, I hope that the Senator from Colorado would not interfere with, hopefully, the funding of AFDC, foster care, adoption assistance, and, maybe if we can get to it, keeping the Government open, for a tea tasting question that seems to be paramount here to kids out there getting their AFDC checks.

Now, if you want to stop the veterans from getting their checks, AFDC from getting their checks, our Government staying open, then you get your tea tasting amendment on this resolution or we just withdraw it, then we will let your tea tasting amendment bring it down.

Mr. BROWN. Will the Senator yield?

Mr. FORD. Yes, I will be glad to yield.

Mr. BROWN. Let me simply observe, first of all, Senator REID and I both wrote to Senator DASCHLE and to Senator DOLE advising them of this problem early on and indicating some time ago we intended to offer this on a continuing resolution as a way of get it through, so this is not a surprise. This is something we have advised the leadership of a long time ago.

Let me assure the Senator there is no intention on my part and I do not believe—I am sure there is no intention on Senator REID's part to interfere with the fine things that are in this measure at all. All we want is an opportunity to have it voted on. If it is voted down, we simply are not going to interfere in any way.

Mr. FORD. May I regain my time here?

If the Senator wants to vote it down now, I think it can be done. I do not think he wants that because it would be a voice vote, and I do not believe he wants to ask for a rollcall vote. Then we would have to postpone it because the majority leader has already said there will be no more votes today.

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

Mr. FORD. Be glad to.

Mr. LOTT. Will the Senator be willing to accept a voice vote on this issue at this time? If he would, we could have a vote and proceed.

Mr. REID. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask that everyone in the Chamber stop and think about this for a little bit. I think everyone understands, for lack of a better word, how resentful Senator BROWN and I feel. We agreed on the matter that came before the Senate this year not to have a vote on it. We had already won the thing on a previous occasion. But the bureaucrats, you see, always figure a way to resurrect things. And even though the funding has been stopped, there will still be two people paid for tea tasting.

I have expressed my dismay to the senior Senator from Mississippi and the senior Senator from Arkansas, the chairman and ranking member of the subcommittee. We have in the Chamber now the minority whip and the majority whip. We have the President pro tempore of the Senate and a number of very distinguished Senators. I am wondering if—for this Senator, I would be happy to withdraw my objection if I would have the word of the Senators that are now in the Chamber that the first thing moving through here after we come back, that you would help Senator BROWN and me affix this because in logic and good sense and good government, there is no reason that the Tea Tasting Board is still in existence.

So I personally would withdraw whatever reservations I have if I could have the support of the people on this floor to get rid of the Tea Tasting Board.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I appreciate the remarks of the distinguished Senator from Nevada, and I have a lot of sympathy, frankly, for what he is trying to do. He has already referred to the fact that the senior Senator from my State may have some knowledge that I am not aware of, and I certainly want to be sensitive to that. But I believe there is a lot of sympathy in the direction of the Senator from Nevada

and the Senator from Colorado, and in order to move this very, very important agreement forward, I would certainly make a commitment on my behalf to work with these two very fine Senators to see if we cannot find an early opportunity to resolve this problem. I could not say much more than that this morning. I really do not know the details of what is involved. But from what I have heard, I think I am in agreement with you, and I would certainly work with you to see if we could not find a way to move this initiative forward.

Mr. FORD. Will the Senator yield?

Mr. LOTT. I would be glad to yield.

Mr. FORD. I personally do not want a voice vote because I have a strong indication it would not pass, and I think it would be a shame because this is, while not of great consequence as far as dollar sums, as a signal to the American public I think it would be a shame that the Senate voted to reject this amendment.

Mr. LOTT. I think the Senate would rather not do that.

Mr. REID. I am sure that is what would happen. My friend from Colorado and I worked very hard on this. I think he has the same disappointment, rejection, and all the statements that would go to tell how we feel we have been had, for lack of a better word, by the nameless, faceless bureaucrats that are someplace down there off the Hill. But that is how I feel about it.

If I could have the commitment of the people in this Chamber, and I know who is here now, I would withdraw my objection.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Let me also add my voice to this. I think my colleague on the other side of the aisle said he did not commit himself to a piece of legislation, but subject to consultation with his leadership, that at the best possible moment, first possible moment that would be an adequate or proper way to do it, that he would assist. I will do the same.

I do not want to speak for my leader under the circumstances that I have not asked him nor has he told me about a letter and advice here. I am sure it has been done. I do not try to impugn anyone's integrity here. I understand what they are trying to do. I hope that this would be held over until sometime soon.

I believe you could get a standing piece of legislation here that you could just go right through the order right quick and we could maybe get it done quicker than with an amendment to a continuing resolution. So you could offer a stand alone piece of legislation and we could go through the parliamentary procedures. I am sure the Parliamentarian would advise us how to do that. We may get it passed this afternoon or January 3 because we will back here doing something on the 3d because that is when this resolution expires.

So I look forward to working with them. If you want to go ahead with it, that is fine. If you want to take a voice vote on this, fine. Then we will voice vote some other things I am going to suggest here this afternoon. That might change your mind a little bit. But we will offer some voice votes on other amendments to this resolution.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, I have enormous confidence in the integrity of the fine Senator from Kentucky and the fine Senator from Mississippi, and I appreciate their consideration of this matter, and in light of that I will withdraw my objection.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Reserving the right to object, Mr. President, if I understand it, the distinguished Senator from Kentucky, the whip of the minority, has raised a question about an amendment that would reopen the entire Government. Is that a question now pending before us?

Mr. FORD. No, it is not. I have not had a chance to reserve the right to object. Others quicker than I have on that side of the aisle.

Mr. WARNER. Mr. President, I shall await the colloquy between the distinguished Senator from Kentucky and the Senator from Mississippi and renew my objection.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Reserving the right to object to the motion that has been made by the distinguished majority whip, I ask him this. The cost of Government being shut down I understand is somewhere around $40 million a day, with the statements of the Speaker of the House and the majority leader of the Senate saying all those who have been furloughed would be paid. I do not think that includes the inconvenience to a lot of folks as it relates to the services of Government. Let me give you a couple of—well, just one. We have a band from Lexington, KY, that is going to participate in the Fiesta Bowl. They have worked their fingers to the bone and worked their little hearts out to raise enough money to go to the Fiesta Bowl. There will be about 400 of them, members of the band, parents, chaperones, et cetera, and they have reservations in national parks next week, and the parks have notified them they are closed.

They cannot get in. So you have a large group of high school students, bands, their parents, chaperones, a real coup, by being invited to where they will decide the national championship as it relates to football, collegiate football in this country, and we are saying to them, ''You can't get in because the Government's closed because we didn't get a balanced budget, or are even close to an agreement.''

So I ask my friend, would it be possible to have an amendment that would open the entire Government?

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, this side of the aisle would not be in a position to clear that amendment at this time. I would like to say and remind my colleagues that our leaders are, in fact, meeting with the President at this hour, and with the Vice President, I believe, and others. They are working very seriously to try to reach an agreement on a balanced budget over the next 7 years.

I think that they are acting in good faith. There have been preliminary meetings occurring with the chief of staff and our budget chairman, both yesterday and I believe earlier this morning, and the process is underway and we should allow that process to go forward.

What we are talking about is trying to get an agreement to control the rate of Government spending, to reduce the tax burden on the workers of America, and we perhaps are at the point where some progress will be made in that area. I have talked to the chairman of the Budget Committee, Senator DOMENICI, and he said, ''We're not going to get an agreement until the end.'' The question is, how do you get to the end?

I think maybe we are approaching that. And so while our leaders are down there working to try to get an agreement to really come to a balanced budget agreement, I think we should not be undermining that by moving forward legislation at this point, particularly since, when the leaders discussed this issue, they understood what the unanimous-consent request would be.

I am sympathetic to what the distinguished Senator from Kentucky said about the band from Kentucky. I bet they are great. I wish their football team was going from the SEC to the Fiesta Bowl. If the President had in fact signed the Interior appropriations bill instead of vetoing it on the 18th, we would not have this problem.

So now it is a part of the overall budget negotiations. We need to hope for the best and wish them well, but we should not at this point change the agreement. We are not able to agree to that amendment at this point.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. I just hate to see all these crocodile tears— they are just dripping down everybody's cheeks and off their chin—that we cannot get a balanced budget. We have agreed to 7 years. We have agreed to CBO. You cannot put CBO to it until you have a final agreement.

What we are doing is costing taxpayers $40 million a day. Our employees get half a check. They cannot make the payment on their mortgage and

cannot make their payment on their car. The contractors are laying people off in droves. They are laying them off in droves because you are saying, ''We're going to shut the Government down until we get what we want.''

You have the right to do that. You are in the majority. But I will say one thing: I believe you will rue the day that you shut the Government down. I believe that you will rue the day that that widow with two children could not make her mortgage payments. You cannot do these things. I think that is a mistake.

But if that is the position of the majority, then I will further reserve the right to object and ask the Senator, would it be possible to have an amendment reinstating the military COLA that is included in the DOD authorization bill which is going to go into effect in January?

Mr. LOTT. I would say to the Senator, this side of the aisle would not be able to clear that amendment either at this time. Let me comment on that, if I could.

First of all, I am concerned about $40 million a day, but I am more concerned about $600 billion of the taxpayers' money being spent over the next 7 years that is not necessary, that can be saved, that could be used to reduce the deficit, could be used to allow the people to keep a little bit of their money at home.

We did not shut down the State-Justice-Commerce, Interior, HUD, or VA. The President vetoed the legislation. He shut it down. And I am crying alligator tears about the shipyard worker in my hometown that gets up every morning at 5 o'clock to be in that shipyard at 7 o'clock, trying to make ends meet, while the Government is putting burdens on him with regulations and taxes. That is who I really care about. That is the human face on this. We are worried about that shipyard worker and the tobacco farmer in Kentucky and the future of their children. That is what our tears are about.

Mr. FORD. Mr. President.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. The Senator says it is all the President's fault.

Mr. LOTT. No.

Mr. FORD. Yes, the Senator did. And the Senator said the President would not sign it, would not sign it, would not sign it. That is fine. But when I give you something you do not want, you are not going to swallow it. So you have given him something he does not want, and he vetoed it. That is No. 1.

No. 2, the strategy has been, and if you go back and read all the statements that have been made, is to come to this point where the Congress would be equal to the President with shutting the Government down versus the veto power. Now, quote after quote after quote.

So this is a premeditated shutdown. This is a premeditated shutdown. So whatever you say, $40 million a day, people not being able to get their checks, not being able to pay their mortgages, and we could stop all this by a clean CR. And we cannot get a clean CR. You object to it. You object to it.

Mr. President, I believe the Senator from Virginia wants to reserve the right to object, and I will be glad to yield the floor at the moment.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. If I could respond, the way to resolve all these problems is to get a budget agreement. Our leaders are trying to do that right now, and we should give them that opportunity. When that budget agreement is reached, then there will be a continuing resolution and debt ceiling. It will all come together. But it is at the supreme level, the President and the Vice President, the leaders of the Congress are there meeting. I wish them the very best.

With regard to the particular point of the military, once again the Congress passed a good Department of Defense authorization bill with military retirees' pay, COLA's for our military personnel, the procurement we need for our military.

Our troops are going into Bosnia right now. How are they getting there? They are getting there by airlift, sealift, because we have good equipment across the board for all our military branches. We want to keep that. So we would urge the President to sign the authorization bill.

This military COLA is not needed now. All we need is for the President to sign the Department of Defense authorization bill that has already passed the Congress and the problem is taken care of, and for us to presuppose that he is going to veto this bill, making this action necessary, I do not think is the proper thing to do. The President is considering the arguments that are being made by our distinguished President pro tempore and others for this legislation. I know the Secretary of Defense supports many, many of the features we have in this Defense authorization bill.

Mr. FORD. Not all.

Mr. LOTT. So let us wait until we know what has happened, and then we will work together, I am sure, in a bipartisan way, to make sure that our military personnel are taken care of with their COLA's.

With that, I would be glad to yield.

Mr. WARNER. Mr. President, reserving the right to object, I shall not object because I prepared a draft of this very important measure on the matter pending in the unanimous consent.

I wish to first associate myself with the remarks from the distinguished acting majority leader, the Senator from Mississippi. I think he has very carefully and accurately stated the case. I certainly join with him in saying it is not the Congress that shut the Government down, it is simply the veto of these bills, Mr. President.

Further, it is my fervent hope that the authorization bill will be signed because it does cover the pay raises outlined in addition to many other very important and badly needed—badly needed—legislative additions to our armed forces.

Mr. President, at this point I ask unanimous consent that correspondence between myself and the distinguished majority leader, Mr. DOLE, relating to the guarantee of the Federal employees being paid be printed in the RECORD along with a correspondence between myself and the majority leader, Mr. DOLE, and the Speaker of the House, Mr. GINGRICH.

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

U.S. SENATE,
December 19, 1995.

Hon. ROBERT DOLE,
Senate Majority Leader, U.S. Capitol, Washington, DC.

DEAR MR. LEADER: Thank you for the strong words of support for the federal employee community in your Sunday, December 17 appearance on NBC's Meet the Press.

On behalf of the 280 thousand federal employees affected by the shutdown in Virginia and across the nation, it was gratifying to hear your commitment that they indeed will get back pay.

As you said, Mr. Leader, ''. . . it's not their fault.'' And you reiterated, ''Federal employees shouldn't be punished because the Congress and the President are at odds.'' I couldn't agree more.

I would also like to commend you for leading by example in the donation of your own salary to the Department of the Treasury for reducing the federal debt. A significant portion of the government is in a state of budgetary emergency. The Congress should be the first to share in the sacrifices which have been required of our dedicated federal employees through no fault of their own. I am doing likewise.

With best wishes, I am

Sincerely,

JOHN W. WARNER.

Enclosures.

CONGRESS OF THE UNITED STATES,
Washington, DC, December 20, 1995.

Hon. JOHN WARNER,
U.S. Senate.
Hon. FRANK R. WOLF,
Hon. CONSTANCE A. MORELLA,
Hon. TOM DAVIS,
House of Representatives.

DEAR COLLEAGUES: Because of your interest in the ongoing budget negotiations and your strong support for federal employees, we wanted to take this opportunity to reaffirm our letter of November 10, 1995, in which we made clear that employees furloughed through no fault of their own should not be punished.

It is unfortunate that President Clinton has chosen to veto appropriations bills that would have funded the salaries of federal employees at the Departments of Justice, State, Commerce, Veterans Affairs, and Housing and Urban Development, as well as independent agencies such as the Environmental Protection Agency. Similarly, procedural objections by Democrats have prevented the funding of salaries at the Department of Labor, HHS and Education.

The direct result of those actions is that furloughed federal employees at those particular agencies cannot be paid. However, we would like to reaffirm our commitment to

restoring any lost wages for federal employees in a subsequent funding bill.

Thank you for your continued and strong leadership on behalf of federal workers.

NEWT GINGRICH,
Speaker of the House.
BOB DOLE,
Senate Majority Leader.

Mr. WARNER. I too am very concerned about the $40 million a day, but it is not the fault of these innocent people. And every day I shall try and work, as I did during the last closure, to assure that they are justly compensated at the proper time.

Mr. President, I withdraw any objections I had.

Mr. President, I wish to associate myself with the remarks of the distinguished Senator from Texas because together we have worked into this particular CR at this time certain protections for the veterans. I again commend my colleague from Texas.

Mr. LOTT. Mr. President, if I could respond to the distinguished Senator from Virginia.

I appreciated his comments and all of his good work on the defense authorization bill and all of his efforts to make sure that our veterans are taken care of and that they do receive their checks, but also his continuing to urge that the leaders of Congress and the President come to an agreement on a balanced budget so, as a matter of fact, all of the Government can go back into operation.

We certainly are hoping for that. Our leader has stood in this very spot and said he wants that to be achieved. I believe that that is what he is trying to do right now, and that will solve our problem.

Mr. WARNER. I thank my distinguished colleague. Senator DOLE and I and the Senator did stand here not more than an hour and a half ago, and the majority leader reiterated his desire to put the Government back to work.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, just for my own information, is there a parliamentary situation here that a limited CR is about to be voted on by voice vote?

The PRESIDING OFFICER. That is correct.

Mr. BUMPERS. Before doing that, Mr. President, I ask unanimous consent that a list of examples of reduced Government services that exist during this shutdown be printed in the RECORD.

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

EXAMPLES OF REDUCED GOVERNMENT SERVICES DURING A SHUTDOWN

A. National Park Services facilities are closed.

1. On an average December day, 383,000 people visit National Park Services facilities.

2. Potential per day losses for businesses in communities adjacent to National Parks could reach $14 million, due to reduced recreational tourism.

B. The Smithsonian Museums, Kennedy Center, National Zoo, and National Gallery of Art are closed.

1. On an average day, 80,000 people visit the Smithsonian Museums on the Mall and the National Zoo.

2. On an average day, 12,400 people visit the National Gallery of Art.

3. On an average day, 6,900 people visit the JFK Center for Performing Arts. (This does not include individuals who pay to attend performances, for which the Kennedy Center will continue to be open.)

C. FHA mortgages are halted.

1. On an average day, the Federal Housing Administration processes 2500 home purchase loans and refinancings totaling $200 million worth of mortgage loans for moderate-and low-income working families nationwide.

D. Applications for passports are not being processed and foreign visitors are unable to obtain visas.

1. On an average day, the State Department receives 23,000 applications for passports.

2. On an average day, the State Department issues 20,000 visas to visitors who spend on average of $3,000 on their trips for a total of $60 million.

E. Veterans will suffer because while claims applications are being accepted and questions answered, processing of claims and payment of benefits has ceased. In addition:

1. 3.3 million veterans and survivors will not receive their January 1 benefit checks on time if an appropriation is not available by next Thursday, December 21.

F. The most vulnerable in our country will lose vital income support through AFDC. Specifically:

1. AFDC grants necessary for January 1 benefit checks will delayed to 4.7 million families representing over 13 million recipients if an appropriation is not available by December 22.

G. ''Deadbeat Dads'' are getting a holiday through the shutdown.

1. The Federal Parent Locator Service, to which 20,000 cases per day on average are referred, is closed.

H. Assistance to Small Businesses is interrupted.

1. On an average day, over 260 small businesses are not receiving SBA guaranteed financing totaling over $40 million of loans.

2. On an average day, over 90 small businesses are prevented from bidding on government contracts because they are unable to receive SBA guaranteed bid bonds which allow them to bid on those contracts.

3. On an average day, 1,200 small business owners are not receiving SBA-sponsored training and counseling normally available to them.

4. Banks issuing federally-guaranteed loans from SBS, VA, and HUD have stopped receiving default claim payments. In addition to potential cashflow shortages to participating banks, this will result in higher costs to the Government, because the claims will accrue additional interest during the furlough period.

5. No outyear payments for Advanced Technology Program awards made in prior years to over 100 innovative, high-tech companies are being made totalling $68 million.

I. Many protections for American workers are suspended due to the shutdown of much of Labor Department. For each day of the shutdown:

1. 1. 95 percent of workplace safety complaints are going unanswered.

2. 170 workplace safety and health inspections are not being performed.

3. 190 worker complaints of minimum wage and overtime violations remain unresolved.

4. 500 requests for information and assistance from pensioners participating in plans with $3 trillion in assets are going unanswered.

J. Important environmental protections are curtailed due to the shutdown. For each day of shutdown, on average:

1. All EPA non-Superfund civil environmental enforcement actions have stopped. On an average day, $3 million of fines or injunctive relief against polluters will be lost and 8 Federal environmental compliance inspections of polluters' facilities will not be conducted.

2. About 240 calls each day to EPA's ''hotline'' for drinking water contamination outbreaks are going unanswered. Five other ''hotlines'' receiving thousands of calls each month are shut down, depriving the public of potentially critical information on pesticides and toxic substances, asbestos in schools, and other public health information.

3. EPA-issued permits for air, land, and water pollution limits nationwide cannot be approved and necessary EPA technical assistance to States for State-issued permits cannot be provided. Approvals of some companies' activities will be put on hold while their competitors with approved permits are allowed to operate.

4. All emergency exemptions for farmers to use restricted pesticides to fight pest outbreaks have stopped, potentially resulting in severe crop damage and loss of income.

K. Vital Education programs are shutdown.

1. Middle and low income parents and students cannot get Federal college aid. On an average day at this time of year, 20,000 students and parents apply for Federal Pell grants or student loans. These applications cannot be processed because verifications of Social Security numbers (at SSA) and immigrant status (at INS) cannot be carried out. Without this application processing, these students and families are denied the aid without which they may not be able to pay for college.

2. Civil rights violations in schools cannot be investigated. In an average week, the Education Department's Office for Civil Rights receives about 100 new complaints of discrimination on the basis of race, color, national origin, sex, age or disability. These complaints cannot be investigated or remedies sought. Buildup of backlogs delays justice for individuals.

3. Criminal investigations in education programs have been suspended.

4. Help cannot be given to parents and teachers. During an average week, the Department of Education answers 8,000 inquiries from teachers, school administrators and concerned parents, seeking help with education problems that cannot be answered during the shutdown.

L. American exporting businesses are being disadvantaged during a shutdown.

1. On an average day, over 30 export licenses with a value of $30.5 million that would otherwise have been approved by the Bureau of Export Administration will not be acted upon.

2. On an average day, over 2500 telephone calls and faxes from U.S. businesses seeking export advice, information and counseling are not being responded to by the Bureau of Export Administration or the International Trade Administration due to the shutdown.

M. Vital legal and law enforcement functions are shutdown or will be delayed.

1. FBI training of state and local law enforcement officers has ceased.

2. Investigations of employment discrimination on the basis of race, sex, religion, or national origin are suspended.

3. Processing of prison grant applications has slowed down. Appropriated funds to assist states in constructing and bringing on line new prison facilities will be delayed.

4. Collection activities by Justice's Civil Division has ceased. The cessation of collection activities means that the Treasury receives less income and thus the deficit actually grows. In addition, individuals who owe the government money can withhold payment without any particular penalty.

N. Key statistical data are not being collected and disseminated.

1. Important statistical releases will be delayed-most importantly the Bureau of Economic Analysis' Gross Domestic Product and Corporate Profits for the 3rd Quarter of 1995, the October 1995 U.S. International Trade in Goods and Services, and Personal Income and Outlays for October and November.

2. On an average day, 2,000 people call the Census Bureau and 4,000 people call the Bureau of Labor Statistics request information on economic and demographic statistics. These calls are going unanswered.

O. After expending carryover balances in one day, the National Institute of Standards & Technology would shut down.

1. Companies, universities, hospitals, and defense and law enforcement agencies depend upon NIST's laboratory-based research and services. For example, NIST provides in excess of 20,000 measurement samples and performs thousands of calibration tests each year for more than 3,000 large and small companies.

2. U.S. firms will be denied critical support in their efforts to deal with international standards and testing requirement that limit the sale of U.S. goods overseas.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. FORD. Are you going to reserve the right to object?

Mrs. HUTCHISON. Mr. President, I reserve the right to object, but I will be happy to yield to the Senator from Kentucky.

Mr. FORD. I will be glad to yield to the Senator.

Mrs. HUTCHISON. Reserving the right to object, and I will not object, but I did want to clarify with the distinguished majority whip to ask if this does, in fact, pass in the next few minutes, can the veterans of this country and those receiving AFDC, people who work for the District of Columbia Government, people who are receiving foster care and adoption assistance and Medicaid be assured that they are going to, in fact, get their payments? Is that what this means?

Mr. LOTT. If the Senator will yield, that is absolutely what it means. I personally do not think it is absolutely necessary. I believe the authority exists for this to occur, but we do not want to leave any doubt. We want to make sure the authorization is there for our veterans and those dependent on funding of AFDC, D.C. Government, those dependent on the funds for foster care and adoption and Medicaid quarterly payments. Without question, they are authorized and will get those checks.

Let me also say to the Senator from Texas, I am satisfied that if it had not been for her persistence and efforts in support of the veterans, this legislation would not be here this minute. I commend her for that.

Mrs. HUTCHISON. Mr. President, I want to thank the majority whip for those comments and just say that Senator WARNER, Senator SIMPSON, and I, and many others, have been very concerned about many aspects of this. Those veterans who have served our country cannot be left at the gate. We could not go through Christmas without making sure that these people know they are covered, that they are not worried about it.

Let me just say that tonight, leaving from Fort Hood is a reserve unit on its way to Bosnia. For those people and the many others who are going to be veterans very quickly by serving in Bosnia, it is very important that they know that this body will always act responsibly when it comes to them.

Thank you, Mr. President. I thank the distinguished majority whip.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi?

Mr. FORD. Continuing reserving the right to object.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, it is hard for me to understand how we can tell the people out there how concerned we are about them when the Government is shut down and there is no reason for it except to force the President into signing a budget with which he does not agree.

I do not agree with it. We have 10 Republicans and 9 Democrats who have gotten together on a budget that does not agree with the budget that the Republican majority has sent to the President. So you have 10 of your membership that do not like it, and we are trying to get together.

As we worked through—I have the papers, I wish I had them with me—where we had the first budget and then the second budget and then there was a first agreement and a second agreement, we moved a little toward the Republicans and they moved a little toward us. I thought that is what negotiation is all about. But it is just like "If you don't play by my rules, Sam, I'm going to take the ball and go home," and that is exactly where we are left.

I can hear we want all these people to have their money, but you do not want anybody else to have it. You do not want that family to have it. There is not a soul on this side that I know of who has any objections to the veterans getting their money, AFDC, D.C. Government, foster care, adoption assistance, particularly the Medicaid quarterly payments. States probably would not have enough money to take care of it if we did not do this.

There is not a Senator on this side of the aisle that objects to anything that is in this continuing resolution. The only thing we say is that you ought to treat everybody else the same. That individual that is out there working every day, the honest worker, as you talked about, and he needs, or she needs, to have a full check.

Second, if they do not get the money, then they are laid off. All you have to do is read the paper every day, and I am sure most of you do before you come to work. Dad always told me, "Never go to work without drinking a cup of coffee and reading the newspaper." So I try to do that.

I am very disappointed we are costing taxpayers—we want to try to protect the taxpayers—we are costing them $40 million a day, giving them half checks, they cannot meet their mortgage payments, contractors are laying off their employees. All we have to do is pass a clean CR. People are working around here and want to get it done, and you know you will get it done but you are creating hurt, harming people rather than trying to help them. So the harm is now greater than the help that they will ever get.

So, Mr. President, I reluctantly remove my objections because I cannot get an agreement, and it has to be by unanimous consent. I reluctantly remove the objection from this side if we are not going to get help for the people in this country.

Mr. THURMOND. Will the majority whip yield?

Mr. LOTT. Yes, I yield.

Mr. THURMOND. Mr. President, I rise to support the majority whip and the position he has taken and the remarks he has made. We must not let these veterans and others down. Now is the time to act. I commend the majority whip for the position he has taken.

AMENDMENT NO. 3110

Mr. LOTT. Mr. President, I send an amendment to the desk.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. Will the Senator from Arkansas withhold for a moment?

Mr. BUMPERS. If the majority whip wants to offer an amendment, I withhold.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT], for Mr. HATFIELD, proposes an amendment numbered 3110.

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

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

The amendment is as follows:

Strike all after the resolving clause and insert in lieu thereof:

TITLE I

AID TO FAMILIES WITH DEPENDENT CHILDREN AND FOSTER CARE AND ADOPTION ASSISTANCE

That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

SEC. 101. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995 for continuing the following projects or activities including the

costs of direct loans and loan guarantees (not otherwise specifically provided for in this joint resolution) which were conducted in the fiscal year 1995:

All projects and activities funded under the account heading ''Family support payments to States'' under the Administration For Children and Families in the Department of Health and Human Services;

All projects and activities funded under the account heading ''Payments to States for foster care and adoption assistance'' under the Administration For Children and Families in the Department of Health and Human Services; and

Such amounts as may be necessary for the Medicaid program under title XIX of the Social Security Act for the second quarter of fiscal year 1996;

All administrative activities necessary to carry out the projects and activities in the preceeding three paragraphs:

Provided, That whenever the amount which would be made available or the authority which would be granted under an Act which included funding for fiscal year 1996 for the projects and activities listed in this section is greater than that which would be available or granted under current operations, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate.

(b) Whenever the amount which would be made available or the authority which would be granted under the Act which included funding for fiscal year 1996 for the projects and activities listed in this section as passed by the House as of the date of enactment of this joint resolution, is different from that which would be available or granted under such Act as passed by the Senate as of the date of enactment of this joint resolution, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate or the rate permitted by the action of the House or the Senate, whichever is lower, under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

(c) Whenever an Act which included funding for fiscal year 1996 for the projects and activities listed in this section has been passed by only the House or only the Senate as of the date of enactment of this joint resolution, the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the one House at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

SEC. 102. Appropriations made by section 101 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 103. No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

SEC. 104. No provision which is included in the appropriations Act enumerated in section 101 but which was not included in the applicable appropriations Act for fiscal year 1995 and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this joint resolution.

SEC. 105. Appropriations made and authority granted pursuant to this title of this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 106. Unless otherwise provided for in this title of this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this title of this joint resolution shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this title of this joint resolution, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) January 3, 1996, whichever first occurs.

SEC. 107. Expenditures made pursuant to this title of this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 108. No provision in the appropriations Act for the fiscal year 1996 referred to in section 101 of this joint resolution that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 106(c) of this joint resolution.

SEC. 109. Appropriations and funds made available by or authority granted pursuant to this title of this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

TITLE II

DISTRICT OF COLUMBIA

That the following sums are hereby appropriated, out of the general fund and enterprise funds of the District of Columbia for the District of Columbia for the fiscal year 1996, and for other purposes, namely:

SEC. 201. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1996 for continuing projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this title of this joint resolution) which were conducted in the fiscal year 1995 and for which appropriations, funds, or other authority would be available in the following appropriations Act:

The District of Columbia Appropriations Act, 1996:

Provided, That whenever the amount which would be made available or the authority which would be granted in this Act is greater than that which would be available or granted under current operations, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate.

(b) Whenever the amount which would be made available or the authority which would be granted under the Act listed in this section as passed by the House as of the date of enactment of this joint resolution, is different from that which would be available or granted under such Act as passed by the Senate as of the date of enactment of this joint resolution, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate or the rate permitted by the action of the House or the Senate, whichever is lower, under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995: *Provided*, That were an items is not included in either version or where an item is included in only one version of the Act as passed by both Houses as of the date of enactment of this joint resolution, the pertinent project or activity shall not be continued except as provided for in section 211 or 212 under the appropriation, fund, or authority granted by the applicable appropriations Act for the fiscal year 1995 and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

SEC. 202. Appropriations made by section 201 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 203. No appropriation or funds made available or authority granted pursuant to section 201 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

SEC. 204. No provision which is included in the appropriations Act enumerated in section 201 but which was not included in the applicable appropriations Act for fiscal year 1995 and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this title of this joint resolution.

SEC. 205. Appropriations made and authority granted pursuant to this title of this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this title of this joint resolution.

SEC. 206. Unless otherwise provided for in this title of this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this title of this joint resolution shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this title of this joint resolution, or (b) the enactment into law of the applicable appropriations Act by both houses without any provision for such project or activity, or (c) January 3, 1996, whichever first occurs.

SEC. 207. Notwithstanding any other provision of this title of this joint resolution, except section 206, none of the funds appropriated under this title of this joint resolution shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.

SEC. 208. Expenditures made pursuant to this title of this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 209. No provision in the appropriations Act for the fiscal year 1996 referred to in section 201 of this title of this joint resolution that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 206(c) of this joint resolution.

SEC. 210. Appropriations and funds made available by or authority granted pursuant to this title of this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 211. Notwithstanding any other provision of this title of this joint resolution, except section 206, whenever the Act listed in

section 201 as passed by both the House and Senate as of the date of enactment of this joint resolution, does not include funding for an ongoing project or activity for which there is a budget request, or whenever the rate for operations for an ongoing project or activity provided by section 201 for which there is a budget request would result in the project or activity being significantly reduce, the pertinent project or activity may be continued under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995 by increasing the rate for operations provided by section 201 to a rate for operations not to exceed one that provides the minimal level that would enable existing activities to continue. No new contracts or grants shall be awarded in excess of an amount that bears the same ration to the rate for operations provided by this section as the number of days covered by this resolution bears to 366. For the purposes of this title of this joint resolution the minimal level means a rate for operations that is reduced from the current rate by 25 percent.

SEC. 212. Notwithstanding any other provision of this title of this joint resolution, except section 206, whenever the rate for operations for any continuing project or activity provided by section 201 or section 211 for which there is a budget request would result in a furlough of Government employees, that rate for operations may be increased to the minimum level that would enable the furlough to be avoided. No new contracts or grants shall be awarded in excess of an amount that bears the same ratio to the rate for operations provided by this section as the number of days covered by this resolution bears to 366.

SEC. 213. Notwithstanding any other provision of this title of this joint resolution, except sections 206, 211, and 212, for those programs that had high initial rates of operation or complete distribution of funding at the beginning of the fiscal year in fiscal year 1995 because of distributions of funding to States, foreign countries, grantees, or others, similar distributions of funds for fiscal year 1996 shall not be made and no grants shall be awarded for such programs funded by this title of this resolution that would impinge on final funding prerogatives.

SEC. 214. This title of this joint resolution shall be implemented so that only the most limited funding action of that permitted in this title of this resolution shall be taken in order to provide for continuation of projects and activities.

SEC. 215. The provisions of section 132 of the District of Columbia Appropriations Act, 1988, Public Law 100–202, shall not apply for this title of this joint resolution.

SEC. 216. Notwithstanding any other provision of this title of this joint resolution, except section 206, none of the funds appropriated under this title of this joint resolution shall be used to implement or enforce any system of registration of unmarried, cohabiting couples whether they are homosexual, lesbian, heterosexual, including but not limited to registration for the purpose of extending employment, health, or governmental benefits to such couples on the same basis that such benefits are extended to legally married couples; nor shall any funds made available pursuant to any provision of this title of this joint resolution otherwise be used to implement or enforce D.C. Act 9–188, signed by the Major of the District of Columbia on April 15, 1992.

TITLE III

VETERANS' BENEFITS

That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

SEC. 301. ENSURED PAYMENT DURING FISCAL YEAR 1996 OF VETERANS' BENEFITS IN EVENT OF LACK OF APPROPRIATIONS.

(a) PAYMENTS REQUIRED.—In any case during fiscal year 1996 in which appropriations are not otherwise available for programs, projects, and activities of the Department of Veterans Affairs, the Secretary of Veterans Affairs shall nevertheless ensure that—

(1) payments of existing veterans benefits are made in accordance with regular procedures and schedules and in accordance with eligibility requirements for such benefits; and

(2) payments to contractors of the Veterans Health Administration of the Department of Veterans Affairs are made when due in the case of services provided that directly relate to patient health and safety.

(b) FUNDING.—There is hereby appropriated such sums as may be necessary for the payments pursuant to subsection (a), including such amounts as may be necessary for the costs of administration of such payments.

(c) CHARGING OF ACCOUNTS WHEN APPROPRIATIONS MADE.—In any case in which the Secretary uses the authority of subsection (a) to make payments, applicable accounts shall be charged for amounts so paid, and regular appropriations become available for those purposes.

(d) EXISTING BENEFITS SPECIFIED.—For purposes of this section, existing veterans benefits are benefits under laws administered by the Secretary of Veterans Affairs that have been adjudicated and authorized for payment as of—

(1) December 15, 1995; or

(2) if appropriations for such benefits are available (other than pursuant to subsection (b)) after December 15, 1995, the last day on which appropriations for payment of such benefits are available (other than pursuant to subsection (b)).

SEC. 302. Section 301 shall expire on January 3, 1996.

Mr. BUMPERS. Mr. President, can the majority whip tell us what this amendment is?

Mr. LOTT. This is the amendment that the unanimous-consent agreement related to, and we are, I believe, ready to go to the vote on that.

Mr. BUMPERS. I hate to keep beating to death a dead horse, but I just want to say to my friends and colleagues on the other side, this morning the Senate did exactly what it is supposed to do, exactly what the Constitution says we should do. It says that when the President disapproves a bill and returns it to the Congress, we will either attempt to override his veto with a two-thirds constitutional majority, or maybe it is two-thirds of those present and voting, or we will not.

In this particular case, we were talking about securities legislation, which I thought generally was a good idea, but I thought it was flawed in some ways. The point is the Congress has done exactly what the Founding Fathers intended us to do, and that is, if the President disagrees with us, we will either muster the votes, as the Republicans did this morning with the help of some Democrats to override the President's veto, or we will try to get with the President and work out our differences.

What we have seen here for too long, 3 or 4 weeks now, is we will override the veto when we have the votes and we will say to the President, ''Any other time you veto a bill and we don't have the votes to override, we will shut the Government down until you sign.''

Mr. LOTT. Will the distinguished Senator yield?

Mr. BUMPERS. Yes.

Mr. LOTT. What I would like to inquire about is, what is regular order? I believe the Senator is speaking on another issue, and he is entitled to do that, but we need to complete action on the unanimous-consent agreement and the amendment that has been worked out. So if we can get that done.

Mr. KERRY. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Am I not correct that this is an amendment and, therefore, it is subject to debate?

The PRESIDING OFFICER. This is the unanimous-consent agreement. It is not debatable.

Is there objection to the request of the Senator from Mississippi?

Mr. KERRY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I may not object, but I want to ask the Senator from Mississippi a question.

Is it true that it is the stated intention of the leadership that those people who are currently not working as a result of this shutdown are going to be paid?

Mr. LOTT. If I could get the Senator to yield.

Mr. KERRY. Yes.

Mr. LOTT. It is my understanding from all the parties in key positions, including the leader and the Speaker and, I presume, the President, have indicated that is the case.

Mr. KERRY. Reserving, again, the right to object, could the Senator tell me how one explains to Americans, at a time when we are supposedly trying to reduce the deficit and show common sense, that we are announcing to people that people are not going to work, but they are also going to be paid for not working? Now, what is the common sense in that?

Mr. LOTT. Mr. President, first, I would like to note that the House of Representatives is awaiting, very anxiously, this legislation, which has been agreed to by our leadership on both sides, and I do see that we have Veterans' Affairs Committee members who are anxious for this to be done. I would like to respond at length to the Senator from Massachusetts, and I will be glad to engage him in discussion later on this. I have to say, very briefly, that it is very hard to explain that. But we can talk about that and engage in a dialog.

I urge my colleagues here that we go ahead and complete this action and

talk at a later point on the details of what he is asking about.

Mr. KERRY. Reserving the right to object, Mr. President. I ask my colleague, then, if I may just answer the question myself and say a couple of words, and then I will not object.

I know there are members of the Veterans' Affairs Committee and others waiting. I am a veteran and I am waiting. I am hearing from a lot of veterans, and they are not happy with the notion that some of their claims cannot be processed, but they are also not happy—some of these veterans I have talked to in the spinal cord injury division of the Brockton VA—that some of them are going to be thrown out after 18, 20 years of living there with injuries suffered that they received serving their country.

Speaking as a veteran, but much more just as a citizen, not even as a Senator, it is incomprehensible to me that we are going to claim common sense and rectitude with respect to the reduction of this deficit, while telling our workers of this country they are going to be paid for not working and not serving the country.

If this is the price we pay, this hostage-taking of an entire budget and Government for simply one group of people getting their way, this is a sad day in the democracy of this country.

Mr. LOTT. Mr. President, I am trying my very best to restrain myself. I will be glad to discuss this with the Senator and debate him later on.

Mr. KERRY. I would just like to finish. I know——

The PRESIDING OFFICER. The Senator from Mississippi now has the floor and has made a unanimous-consent request. Is there objection?

Mr. KERRY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I ask that I simply be permitted to say to the Senator from Mississippi that I share with the Senator what I know is his devotion to balancing this budget. We have offered, again and again, 7 years, CBO figures, a good-faith offering of several different budgets by our side—two of them, as a matter of fact—a moderate so-called budget and another by the entire Democratic Caucus, both of which, by CBO figures, balance the budget.

This is unnecessary. Shutting down of the Government is unnecessary. This hostage taking is unnecessary.

I simply will close by saying it is very regrettable—regrettable for the country.

I will not object.

Mr. DORGAN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Reserving the right to object. I want to ask the Senator a question or two, largely because of some comments he made a couple of minutes ago. I am trying to understand whether there is a way, later today, of having by unanimous consent, or whether there will be an opportunity later today by which we might consider a broader CR. The reason I ask the question is this: My understanding, at least at the start of today, was that the Senate would probably be able to do two CR's, one narrower, which the Senator from Mississippi is now asking unanimous consent about, and the second, a broader one that would essentially restore people back to their jobs, and I do not know what period we were talking about.

My understanding was that it was a broader CR that would put people back to work. There are 270,000 Federal workers today who are not going to work but are going to be paid. That was true yesterday, the day before, and it is going to be true each day until we pass a broader CR. I would like to ask the Senator from Mississippi if he thinks or understands that there are conditions under which we might be able to entertain, later this afternoon, after the White House meeting, a broader CR so that we can put all these folks back to work.

Mr. LOTT. Mr. President, if I could respond. Again, I am trying to restrain myself so that we can get this agreed to, this very important resolution. I will just say that I can conceive how that might happen. I know the leader has said he would like for us to get that done. I do not know what will happen at the White House meeting this afternoon where the majority leader and Senator DASCHLE presently are.

I can envision maybe that they would meet and there would be some sort of immaculate conception, and out of these various bills that have been suggested, alternatives, they would come together and say, yes, here is an agreement in principle; we agree on the numbers and policy. We have an agreement in concept that is real, and we can rely on it. We would put it in law and, lo and behold, it would all come together tonight. I hope and I pray that that is what is going to happen.

So I can write a scenario. In fact, I could write the numbers that we could agree on. I hope that happens. But unless that happens, I do not see how we can get it resolved this afternoon. I would like to leave it to the leaders. They are doing their best. I would rather not have the infantry back here shooting the guys up there that are trying to fly to a higher zone to get this done.

Mr. DORGAN. Continuing my reservation. I am not saying anything that I think requires great restraint on the Senator's part. I am not alleging anything. I thought I heard him say that he expected there not to be a CR that would be clean or a broad CR until and unless there is an agreement. That suggests to some of us that we are talking about having these 270,000 Federal workers who are not working continue in that circumstance for a week or 2 weeks. That is a much different scenario than some of us thought might be possible this morning.

Mr. LOTT. I do not know when that agreement might come or how you would define the agreement. I still think they can achieve it. I put my faith in them. That is all we can do. If we will let them meet and work and if we can spare ourselves some of our comments in press conferences, I think they can come together. I am just going to have to assume that the President wants to get this done, and I know the leaders do. I hope they get it done.

Mr. DORGAN. Under my reservation, one final question. Is the objection to a clean CR at this moment an objection that persuades the Senator that that objection will continue to exist the rest of the day, or is it an objection that is based on a temporary situation because the leaders are at the White House? I am trying to understand the circumstances under which the Senator indicated there must be an agreement before we have a clean CR.

Mr. LOTT. Typically, in the Senate, I do not have any idea what is going to come out of that agreement or when the schedule will be provided to us. The leaders are there. We are working in their stead on an agreement that they worked out. Let us let them do their job and come back and see what happens.

Mr. DORGAN. I will not object. I hope that we will be able to propound a unanimous-consent request later this afternoon for a clean CR and that there would be no objection to it. I shall not object.

Mr. BOND. Mr. President, I rise in strong support of House Joint Resolution 134. This legislation will enable the Department of Veterans Affairs to make disability and pension payments to approximately 3.3 million veterans in the event a continuing resolution is not enacted soon. It ensures that any time this fiscal year in which there is no appropriation authority, VA will be able to make benefit payments to veterans, including compensation and pensions, education and training, and also pay vendors in the Veterans Health Administration. The House should be commended for their prompt action initially on this necessary legislation and I urge expeditious consideration and enactment of this measure in the House.

This legislation is based on S. 1414, a bill introduced by Senators SIMPSON and HUTCHISON in November. Their concern over this vital matter and initiative in seeking prompt action has facilitated this legislation.

In a recent letter to me, the Disabled American Veterans National Commander, Thomas McMasters III, said ''Many veterans rely on their VA disability compensation payments for the necessities of life and any delay, no matter how short, can have a devastating effect upon them and their families.'' This is precisely why House Joint Resolution 134 is so important, and I thank the DAV and other veterans service organizations for their advocacy of this critical legislation.

I ask that the full text of this letter from the DAV be inserted into the RECORD at the conclusion of my statement.

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

(See exhibit 1.)

Mr. BOND. In addition to being able to make benefits payments, the legislation ensures that the VA's 173 hospitals will be able to pay their vendors and continue to provide high quality medical care. This will prevent costly violations of the Federal Prompt Payment Act, and avoid potential disruptions in the delivery of contracted services, pharmaceuticals, or other necessary medical supplies in veterans hospitals, nursing homes, and outpatient clinics.

Mr. President, none of us finds any merit or advantage in this second lapse of funding authority to continue the operations of the Government. I agree with the Republican Leader that this budget impasse does none of us any credit . . . indeed, it is time for some adult supervision to end this squabbling and finger-pointing. I can only hope we soon will hear clearly the American people express their growing disgust and contempt for all of this political posturing, and get on with the business of running the Government.

I have been very critical of the Secretary of Veterans Affairs, Jesse Brown. He and I have very different views of the responsibilities of the Secretary in charge of managing one of the largest Departments in the Federal Government. He clearly sees his role as an extension of his previous advocacy for more funding of veterans programs. By contrast, I believe he should be alarmed by the Federal deficit and aggressively looking within his Department to improve operations as a means of better serving our Nation's veterans, a task made all the more critical by the budgetary constraints necessary to bring the budget back into balance. But despite our differences, we do share a commitment to those served by this Department. Although he didn't even bother to pick up the phone to express his concern over the necessity of enacting this bill, there can be no doubt that he also supports this measure to prevent any disruption in the payment of veterans benefits.

Mr. President, as we look for means of resolving the budgetary gridlock which has caused this latest shutdown of the Government, I hope that we can draw upon these points of agreement. The growing frustration and polarization still can be reversed if we build upon these shared concerns. Agreement on a framework for a mutually binding process to achieve a balanced budget must be achieved without further delay.

The appropriations bill vetoed by the President earlier this week would have provided a $400 million increase for veterans medical care. Despite that veto, I am hopeful that this funding increase soon will be enacted into law. At that point, the full $37.7 billion proposed by the Congress for veteran services and benefits will be available to be administered by the Department. This is an enormous responsibility. I hope to be able to work with Secretary Brown to assure that this large commitment to our veterans will serve their needs in the most effective and beneficial manner possible. At some point he must turn his attention from politics to management. That massive task will provide ample opportunity for a moving beyond our current differences.

Mr. President, we now have the responsibility for taking an important first step toward restoring a necessary governmental function. Let us not hold America's veterans hostage to this budget impasse. For veterans January benefits checks to be on time, this legislation must be enacted today. I strongly urge the adoption of this joint resolution.

EXHIBIT 1

DISABLED AMERICAN VETERANS,
807 Maine Ave., SW.,
Washington, DC, December 19, 1995.

Hon. CHRISTOPHER (KIT) BOND,
Chairman, VA, HUD, and Independent Agencies Subcommittee,
Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN BOND: As National Commander of the more than one million members of the Disabled American Veterans (DAV), I request your support for S. 1414, introduced by Senator Kay Bailey Hutchison. This measure would allow the Department of Veterans Affairs (VA) to pay compensation or pension awards, notwithstanding the fact that an appropriations bill or continuing resolution has not been enacted.

As you know Mr. Chairman, VA benefits payments will be delayed if the impasse on the budget is not resolved by December 21, 1995. Expeditious handling of S. 1414, which has currently been referred to the Senate Veterans' Affairs Committee, is necessary if veterans' benefits are to be paid in a timely manner.

Many veterans rely on their VA disability compensation payments for the necessities of life and, any delay, no matter how short, can have a devastating effect upon them and their families. It is extremely important that the men and women who served their country with honor in its time of need are not forgotten in their time of need.

Accordingly, I call upon you, Mr. Chairman, in your position of leadership in the Senate, to take all action necessary to expedite S. 1414.

Thank you for your prompt attention to this matter, and I look forward to your reply at your earliest possible convenience.

Sincerely,

THOMAS A. MCMASTERS III,
National Commander.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 3110) was agreed to.

The joint resolution (H.J. Res. 134), as amended, was deemed read a third time, and passed.

Mr. LOTT. I yield the floor.

Mr. BOND. Mr. President, I think it is very important to note that there is a lot of credit due to the managers, the whips, Senator LOTT, Senator FORD for the passage of Hourse Joint Resolution 134. This legislation enables the Department of Veterans Affairs to make disability and pension payments to approximately 3.3 million veterans in the event a continuing resolution is not enacted. It ensures that any time this fiscal year in which there is no appropriations authority VA will be able to make benefits payments to veterans including compensation, pensions, education and training, and also to pay vendors in the veterans health administration.

This measure was made necessary, let us be quite frank about it, because the President vetoed the VA-HUD bill. Last week, when we considered that bill, I pointed out that if the President vetoed it, we put all of these programs at risk.

The reason given was that there was not enough money in the bill. Mr. President, the money in the bill we passed was all of the money that was allocated to us in the appropriations process under the budget. I suggested at that time that they sign the bill so they could continue these vital programs and if and when an agreement is reached more money could be added. Unfortunately, they did not choose that path. I commend Members on both sides for enabling us to go forward. I urge the House to move promptly. It is vitally important. We need to get on with the process, and I hope that we can continue to make progress in other areas.

I thank the Chair.

Mr. BUMPERS. I ask unanimous consent that I be permitted to speak for 2 minutes as in morning business.

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

TEA-TASTING BOARD

Mr. BUMPERS. Mr. President, I was in my office a moment ago preparing some notes to speak on the START II Treaty. I have since found we will have more debate when we return, possibly next week, so I will forego until next week.

I heard the Senator from Colorado and the senior Senator from Nevada discussing the so-called tea-tasting provision of the agricultural appropriations bill, and the Senator from Nevada, the senior Senator from Nevada, said he had taken this up with the senior Senator from Mississippi, chairman of the committee, and the senior Senator from Arkansas, namely me, as ranking member of the committee about how did the tea-tasting provision wind up in the bill.

The answer to that is, if it is in the bill, I certainly did not have anything to do with it. I thought we had killed that sucker once and for all. But I just want to say I really resent the situation that somehow or other I was in on it, some conspiracy to put the tea-tasting provision back in the agricultural appropriations bill. I detest that provision as much as the Senator from Nevada or anybody else does.

I came over here to say that people ought to be very careful about how they implicate other people and what happened to show up on a bill—as the Senator from Nevada knows, our side of the aisle is not in control of these things. I am not speaking for the Senator from Mississippi because he is capable of speaking for himself. When I get an opportunity, I will join the Senator from Nevada in trying to get rid of that provision once and for all.

I want to make it clear to my colleagues when the Senator from Nevada mentioned this to me the other day, I was as shocked as he was. I can tell you I certainly had nothing to do with it and will do everything I can to take it out. I yield the floor.

TREATY WITH THE RUSSIAN FEDERATION ON FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE START II TREATY)

The Senate continued with consideration of the treaty.

Mr. PELL. Mr. President, I am very pleased—as all of my fellow Members should be—that the Senate will now be considering whether to give its consent to ratification of the START II Treaty.

We can anticipate that the floor debate will be relatively brief by contrast with the time devoted to previous strategic offensive arms accords—the 1972 Interim Agreement and the 1991 START Treaty.

This treaty deserves the Senate's careful consideration, and approval. In the nearly 3 years since it was negotiated, the treaty has been carefully weighed, and I believe it to be clear now to almost all Members that START II is a logical and significant successor to the first START Treaty, which is also assuredly in the national security interests of the United States.

The Russian legislature has started, but not finished, its work on this treaty. The Russian Federation has just had elections, and the consideration and approval process, if successful, will involve many new members heretofore unfamiliar with START. I deeply believe that Russian legislators will carefully consider the present political, economic and military situation of their nation, will weigh priorities, and will see that START is a significant achievement that is clearly in their national interests. I believe very strongly that our activities and action in committee and the consideration being taken in the Senate today will serve to reassure their legislature that we are a serious party to this endeavor and will be of value as they consider their approach to the treaty.

Mr. President, the START II Treaty, which builds upon START, was signed by the United States and the Russian Federation on January 3, 1993, and was transmitted by President Bush to the Senate on January 15, 1993. The treaty builds upon the reductions of offensive strategic nuclear arms required by START.

The START Treaty, Members will recall, requires about a one-third reduction in the strategic offensive nuclear arms of the United States and, collectively, of Russia, Ukraine, Belarus, and Kazakhstan. The treaty specifically cuts the former Soviet Union's heavy ICBM totals in half.

In addition the START Treaty and the subsequent Lisbon protocol obligates Ukraine, Belarus, and Kazakhstan to give up all of their nuclear weapons and to join the START II Treaty, which is a bilateral treaty between the United States and the Russian Federation.

The START II Treaty has several critically important aspects:

First, it will reduce by 2003, Russian and American deployed strategic warheads to a level at or below 3,500—a more than two-thirds reduction over pre-START levels.

Second, it bans deployment of multiple-warhead intercontinental ballistic missiles [MIRVed ICBMs]. These missiles are generally considered to be the most threatening component of each nation's strategic arsenal.

Third, it legally obligates Russia to destroy all 154 SS–18 heavy ICBMs and to destroy or convert all silo launchers for such missiles. The SS–18 missile is the largest and most destabilizing ICBM in the world. Half of them were eliminated by START. This treaty will finish the elimination process.

These are three very important accomplishments. All of them are important to strategic stability. The details make that evident.

The START II Treaty calls for reductions, in two phases, in ICBMs, ICBM launchers, ICBM warheads, SLBMs, SLBM launchers, SLBM warheads, heavy bombers and nuclear armaments on heavy bombers.

The first phase of reductions is to be completed no later than seven years after entry into force of the START Treaty.

The second reduction phase, to be completed no later than January 1, 2003, requires each party to achieve the following final reduction limits:

Between 3,000 and 3,500, for the aggregate number of warheads on deployed ICBMs, deployed SLBMs, and deployed heavy bombers;

Between 1,700 and 1,750, for warheads on deployed SLBMs;

Zero, for warheads on deployed MIRVed ICBMs; and

Zero, for warheads on deployed Russian heavy ICBMs (SS–18s).

Mr. President, the START II Treaty was considered thoroughly in hearings that I chaired in May and June 1993, and that Senator LUGAR, my colleague from Indiana, chaired in January, February, and March 1995. Witnesses included Secretary of State Warren Christopher; former Secretary of State Lawrence Eagleburger; Secretary of Defense William Perry; General John Shalikashvili, Chairman, Joint Chiefs of Staff; John Holum, Director of the Arms Control and Disarmament Agency; Ambassador Linton Brooks, chief negotiator of the treaty; Thomas Graham, Jr., Acting Director of the Arms Control and Disarmament Agency; Director of Central Intelligence, Mr. James Woolsey and Douglas MacEachin, Deputy Director for Intelligence, Central Intelligence Agency. Non-governmental witnesses included Steven Hadley, an attorney with Shea and Gardner; Sven Kraemer, president, Global 2000; Michael Krepon, president, Henry L. Stimson Center, and Jack Mendelsohn, deputy director of the Arms Control Association.

Earlier this month, the committee considered and approved a resolution of ratification in an 18 to 0 vote. The resolution contains six conditions and seven declarations, none of which will require any renegotiation of the provisions or the further agreement of the Russian Federation. These are the key points of the conditions and declarations:

Condition 1, on noncompliance makes it clear that the Senate would view as a most serious matter actions by the parties to START or by the Russian Federation with regard to START II that are inconsistent with the object and purpose of the treaties or in violation of the treaties. In such an event, it specifies courses of action to be taken by the President with regard to the Senate and the noncompliant party.

Condition 2, makes it clear that the Senate, in approving START II, is not obligating the United States to accept any modification of the 1972 ABM Treaty.

Condition 3, makes clear that Russian ratification and implementation of START II is not contingent upon a United States-Russian agreement for financial aid.

Condition 4, makes clear that specified exchanges of letters are of the same force and effect as treaty obligations.

Condition 5, recognizes that the administration has reached an agreement with the Russians under which there will be strict accountability for all ballistic missiles associated with START. The Senate reaffirms its view that space-launch vehicles containing items limited by START are subject to the relevant treaty terms.

Condition 6, embraces the administration's view that the START and START II provisions on national technical means do not preclude the United States from pursuing options to urge the Russian Federation to dismantle its electronic eavesdropping facility at Lourdes, Cuba.

Declaration 1, deals with cooperative threat reduction. Vigorous continuation of the Safe and Secure Dismantlement talks is urged. The resolution makes clear the importance of confirming the irreversibility of the process of nuclear weapons reduction.

Declaration 2, urges the President to regulate reductions so as to avoid any strategic imbalance endangering the national security.

Declaration 3, expressed the sense of the Senate that the President should

consult with the Senate as to whether START II remains in the national interest should any nation other that Russia expand its strategic arsenal so as to jeopardize the United States'—security—interests.

Declaration 4, recalls earlier commitments to reduce armaments and calls upon the United States and Russia to seek further strategic offensive arms reductions and calls upon the other three nuclear-weapon states to give careful and early consideration to corresponding reductions.

Declaration 5, urges the President to insist that Belarus, Kazakhstan, and the Ukraine abide by the guidelines of the Missile Technology Control Regime.

Declaration 6, states that the Senate will consider agreements obligating the United States to reduce or limit the Armed Forces or armaments in a militarily significant manner only pursuant to treaty power as set forth in the Constitution.

Declaration 7, affirms the applicability to all treaties of the constitutionally based principles set forth in condition 1 of the resolution of ratification of the INF-Treaty.

The START and START II Treaties and the 1972 Anti-Ballistic Missile Treaty limiting strategic defensive arms, truly represent a continuum of arms control that has already had considerable benefits to the nations involved and promise still more over the next 7 years.

There is no question that all of this effort, more than two decades-long, characterized by new initiatives that build upon earlier achievements step-by-step, has been critically important in the effort to curb the costly and essentially pointless arms competition that characterized much of the postwar period prior to the collapse of the Soviet Union. While I, together with many others, am pleased that we finally have reached a point at which we can anticipate the elimination of the most destabilizing weapons—land-based missiles with multiple warheads, it also is saddening to realize that this Nation's leaders might have been wiser earlier. The pointless and wasteful MIRV competition that has been central to the arms race well might have been averted.

It is useful to recall that the Committee and the Senate endeavored in 1970 to forestall the development of MIRVed systems.

Senate Resolution 211 stated in part:

Whereas development of multiple independently targetable reentry vehicles by both the United States and the Soviet Union represents a fundamental and radical challenge to such stability;

Whereas the possibility of agreed controls over strategic forces appears likely to diminish greatly if testing and deployment of multiple independently targetable reentry vehicles proceed;

Resolved further, That the President should propose to the Government of Union of Soviet Socialist Republics an immediate suspension . . . of the further development of all offensive and defensive nuclear strategic weapons systems, subject to national verification or such measures of observation and inspection as may be appropriate.

Senate Resolution 211 was introduced by Senator Edward Brooke and 39 cosponsors with three later additions on June 17, 1969. The Foreign Relations Committee reported favorably Senate Resolution 211 on March 24, 1970, and it passed the Senate on April 9, 1970, on a vote of 72 to 6.

I remember well making the case to several senior administration officials that we would do well to do our best to avoid a race in multiple-warhead missiles. Nonetheless, the administration did not agree with the Senate on the matter, believing instead that the United States enjoyed a technological lead over the Soviet Union, and would do better if MIRVs were allowed. Accordingly, the United States never proposed, in any serious way, that MIRV's be banned in SALT I. Two decades later, Soviet MIRVs have become a matter of considerable concern, and much effort in START and further effort in connection with the de-MIRVing Treaty have been required to deal with the problem. Now, 25 years later, it is clear how prescient the Senate was. Now that we are coming full circle, only five of Senate Resolution 211's cosponsors—Senators DOLE, HATFIELD, INOUYE, KENNEDY, and I—remain in the Senate.

The achievements of SALT, START, and the ABM Treaty demonstrate that the United States and the successors to the Soviet Union are fulfilling pledges made repeatedly since the 1963 Limited Test Ban Treaty to reduce their nuclear arsenals. These pledges were seen as justification by other nations for decisions to refrain from nuclear weapons testing, join the non-proliferation treaty as non-nuclear weapon states and, earlier this year, to agree upon the permanent extension of the Non-Proliferation Treaty.

I hope very much that we will have the wisdom to understand what has been achieved, the resolve to preserve our achievements, and the foresight to build upon them.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, yesterday I wrote to the majority leader to indicate that I intended to object to any time agreement or other agreement to conclude debate on the START II Treaty until the administration is willing to support the defense authorization conference report. In my letter to the leader I made it clear that I do not oppose the START II Treaty and will eventually support an agreement for expedited consideration of the treaty.

I also indicated, however, that the administration and Senate Democrats have linked START II to the fiscal year 1996 Defense Authorization Conference Report. While I strongly reject such linkage, given the administration's insistence that linkage exists, I now have no choice but to clarify what I believe is a misleading assertion.

In order to clarify what the defense authorization conference report actually requires, and the fact that it contains nothing that could cause Russia to reject START II, I will require a significant amount of time. I had not intended to offer any amendments or declarations to the START II resolution of ratification, but it now appears as if I will be forced to. I simply cannot stand by while the administration spreads misleading information regarding the defense authorization conference report.

Let us be clear about what does and does not threaten START II. START II will be ratified by the United States. The treaty enjoys overwhelming support in the Senate; there is no threat to it here. In Russia, however, there are many groups opposed to START II, including factions in the military and many hard-line nationalists. These Russians who oppose START II do so for reasons having nothing to do with anything in our conference report.

But these same Russian opponents of START II have found all kinds of convenient excuses to justify their real objections, including opposition to the expansion of NATO and United States policy in Bosnia. What the administration has done by arguing that the ballistic missile defense provisions in this conference report threaten START II is to create yet another excuse for Russian opponents of START II. Those who have already decided to oppose START II will simply repeat the administration's rhetoric.

If anything in the United States threatens START II in Russia it is the administration's own rhetoric. False assertions about how the defense authorization conference report violates the ABM Treaty are prepackaged Christmas presents for the Russian opponents of START II.

The day after the Senate passed the defense authorization conference report, the chairman of the House National Security Committee and I wrote to the President to clarify that nothing in the conference report required or advocated a violation of the ABM Treaty.

Mr. President, I ask unanimous consent a copy of that letter written to the President, dated December 20, 1995, be printed at this point in the RECORD.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 20, 1995.

The PRESIDENT OF THE UNITED STATES,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As you know, the House and Senate have now passed the fiscal year 1996 Defense Authorization Conference Report. Given the importance of this legislation for our military men and women and their families, and for the national security of the United States, we are disturbed by the fact that your Statement of Administration Policy (SAP) indicates that you intend to

veto this conference report, primarily because of provisions regarding ballistic missile defense.

We are writing to clarify misconceptions contained in your SAP that the ballistic missile defense provisions in this conference report either constitute a breach of, or establish an intent to breach, the Anti-Ballistic Missile (ABM) Treaty. In fact, there is nothing in the conference report that advocates or requires any action by the United States to breach its obligations under the ABM Treaty. Our conferees went to great length to ensure that Administration concerns in this regard were fully addressed.

Our conference report does require deployment of a national missile defense (NMD) system by 2003, and it urges you to enter into negotiations with the Russian Federation to amend the ABM Treaty to allow for a multiple-site NMD deployment. There is no requirement, explicit or implied, for the United States to deploy a multiple-site NMD system by 2003. In fact, the language in the conference report regarding ABM sites is taken verbatim from the Senate-passed bill, which the Administration has endorsed.

We urge you to join us in working with Russia to allow both sides to eventually deploy a multiple-site NMD system. We believe that it is in the interests of both countries to do so. However, nowhere does this legislation mandate such a deployment. Therefore, the concerns raised in your SAP concerning Russian responses are not supported by the legislation itself.

With the only operational ABM system in the world deployed around Moscow, and since it is fully within our treaty rights to deploy a single-site NMD system, we find it difficult to understand your Administration's linking this conference report to Russia's consideration of the START II Treaty. Such linkage is highly questionable and extremely risky, both for START II and for United States national security.

It is unclear to us whether or not your Administration supports deployment of even the most limited NMD system. However, to maintain that your objections concerning ballistic missile defense provisions in this conference report are based on a putative requirement to breach the ABM Treaty is simply not consistent with the actual legislation.

We respectfully urge you to more carefully examine the ballistic missile defense provisions in this conference report. We believe that you will conclude that there is nothing even approaching a commitment to violate the ABM Treaty contained therein.

This conference report adequately addresses the ballistic missile defense concerns raised by your Administration over the last several months. Therefore, we urge you to sign the conference report and thereby ensure that the men and women of our armed forces receive the benefits and material support that they so badly need and deserve.

Respectfully,

FLOYD SPENCE,
Chairman, Committee on National Security, House of Representatives.

STROM THURMOND,
Chairman, Committee on Armed Services, U.S. Senate.

Mr. THURMOND. Let me clarify some of the false assertions about the defense authorization conference report. It has been asserted that the conference report requires the United States to deploy a multiple-site national missile defense system and even a space-based system. Both of these assertions are flat wrong.

The conference report does require the Secretary of Defense to deploy a ground-based national missile defense system by the end of 2003. But nothing in the conference report requires the system to include multiple-sites.

I continue to believe that the United States should ultimately deploy a multiple-site system, but nothing in this conference report requires such a system. Nor does the conference report advocate, let alone require, a violation of the ABM Treaty.

The language in the conference report urges the President to undertake negotiations with Russia to amend the ABM Treaty to allow for deployment of a multiple-site national missile defense system. This and other provisions in this conference report envision a cooperative process, not unilateral abrogation.

It has been asserted that there is no way to defend the territory of the United States from a single site, and therefore this conference report indirectly requires a multiple-site system. While I believe that a multiple-site system should be our goal, I must point out that the Army has concluded that it can defend all 50 States, including Alaska and Hawaii, from a single, ABM treaty-compliant, site. I would also point out that the Army's report on this subject was prepared at the request of the ranking minority member of the Armed Services Committee.

Unfortunately, despite all our efforts in conference to resolve concerns related to the ABM Treaty, we continue to hear the artificial argument that this conference report constitutes an ''anticipatory breach'' of the ABM Treaty. Since there is no requirement to deploy a multiple-site national missile defense system in this conference report, there can be no ''anticipatory-breach'' contained in it.

But even if there were a multiple-site requirement, this would still not constitute an ''anticipatory breach''. Since there are treaty-compliant ways to get to a multiple-site system, just having a policy that points us in that direction cannot constitute an ''anticipatory breach.'' To quote the senior Senator from Alabama, who was a distinguished judge prior to coming to the Senate, ''While there are legal methods to deploy multiple sites within the framework of the ABM Treaty, there can be no anticipatory breach.''

It has also been argued that this conference report requires a space-based defense. The conference report does call on the Department of Defense to preserve the option of deploying a layered defense in the future. But there is no requirement to deploy any specific space-based system or to structure an acquisition program that includes space-based weapons. The conference report does increase funding for the space-based laser program. But this increase is merely to keep a technology program alive. We have asked for a report to illustrate what a deployment program would look like, but this is hardly a mandate to deploy.

We can certainly debate the merits of what this conference report requires. But let's be clear about what it actually contains. If Senators want to debate the need for deployment of a national missile defense system by 2003, that is a legitimate debate. But to argue, as several Senators have, that this conference report requires deployment of space-based weapons and mandates a violation of the ABM Treaty is simply an act of disinformation. Senators are entitled to their views, but they owe the American people an honest statement of fact.

Mr. President, I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I think we have come to a very auspicious time in our United States history, the history of the Russian Federation, and probably the history of the world because we have the opportunity now to move forward and ratify START II and hopefully implement it.

As the Senate knows, this is the second such treaty, following on the precedent set by the first START Treaty. We are doing our best to further reduce the United States and Russian strategic offensive nuclear weapons.

I believe it is the result of President Reagan's vision. He certainly led the United States and the former Soviet Union to begin negotiations on the first START Treaty back in 1982. President Reagan's initiatives were carried on by President Bush, who, through his leadership concluded this effort that resulted in the signing of the first START Treaty on July 31, 1991.

START mandates reductions in strategic offensive nuclear weapons, including intercontinental ballistic missiles, or ICBM's, and submarine-launched ballistic missiles, or SLBM's, and heavy bombers.

START also limits each country to 6,000 accountable warheads on 1,600 strategic offensive nuclear weapons. These limits reduce the number of warheads carried on ballistic missiles and nuclear weapons carried on heavy bombers by about 30 percent from the 1990 levels.

Just before the end of President Bush's term in office on January 3, 1993, the United States and Russia signed the second effort to further reduce these nuclear weapons, and this is treaty before us now—START II.

For the record the START II Treaty is formally titled ''The Treaty Between the United States of America and the Russian Federation on Further Reductions and Limitation of Strategic Offensive Arms.''

This second treaty limits each country to 3,500 accountable warheads on strategic offensive nuclear weapons and reduces the number of warheads on ballistic missiles and nuclear weapons on bombers in each country to about one-third of the 1990 levels.

I think that we have to really consider seriously where we are going with

START II. It is I think the right direction for this country. It has come about not only because of the administration's commitment—both the prior administrations and this administration—to the reduction of these systems. But, also, I think because of the members of the committees on both sides of the aisle here in the Senate and the staffs of those committees involved, the Senate Committees on Foreign Relations, Armed Services, Intelligence, and Appropriations, as well as the staff of the Senate Arms Control Observer Group.

I want to have the RECORD show my deep appreciation for those who have been so much involved in this process.

On this side of the aisle, certainly the floor manager of this bill, Senator RICHARD LUGAR, deserves a great deal of credit; our distinguished President pro tempore, Senator THURMOND; and I want to note that Senator COCHRAN and our relatively new Senator, Senator KYL, brought a great deal of leadership and direction into this world-shaping issue. And I commend the counsel that has been given to us from the other side of the aisle, particularly from my good friend, whom I see returning to his seat right now, former chairman and now distinguished ranking member of the Foreign Relations Committee, Senator PELL. Senator NUNN, and Senator LEVIN have also been very much involved, and their counsel is likewise appreciated.

Let me also mention, Mr. President, the support and thoughtful insights provided by the administration's representative in these negotiations—he is well known to us—he served on the Senate committee and is now the Special Assistant to the President, Bob Bell.

One particular reason for my statement now is to make a record of what has happened with regard to the Arms Control Observer Group participation in these efforts. In 1985, this group was created by our leader, Senator DOLE, in an effort to have greater Senate participation in the negotiations and the processes that would lead to arms control agreements. Along with other Arms Control Observer Group Senators, I made trips in 1985, 1986, 1987, 1989, and on through the 1990's to Geneva, to Vienna, to Brussels, to the former Soviet Union, then to Russia, and to many of the countries of the former Soviet Union.

We did so in order to see to it that the Senate was involved in the discussions and the negotiations so that there would be no surprises in the START process.

We are now seeing the fruits of the Senate's wisdom in creating the Arms Control Observer Group, and I congratulate my good friend, Senator DOLE. He did this in 1985 in his first year as being the Senate leader.

It has given the Senate the ability to move through a very deliberative process, and it does so through this group of Arms Control Observer Group Senators who come from the Foreign Relations Committee, the Armed Services Committee, and the Intelligence Committee, as well as the Appropriations Committee.

We have had a very dedicated staff who have assisted us. And it is through staff behind the scenes efforts as well as the members consensus, which is the result of the continued participation of the members of this group, which I think brings us to START II today. It is a relatively noncontroversial subject, Mr. President, because we have been able to give the Senate knowledge of what is going on. We have been able to hold hearings and deliberate on various issues. We have had a series of hearings where representatives of the administration and the military and the intelligence community have come and answered our questions. Only recently now we have come through an additional new process, and that is the process of working up a series of amendments which will soon be presented here as part of the managers' package.

I congratulate all concerned in regard to this. Many of those initiatives came from the Senator from Arizona [Mr. KYL]. Others have added to them. And we now have a package which I think represents the viewpoints of all who have participated in the ongoing efforts of the Arms Control Observer Group.

I can think of no finer gift to give the American people or the people of the Russian Federation and literally all mankind this holiday season than to deliver them a package which says that the Senate is prepared to take a major step for the world's really great major nuclear power. We will make the historic move that I think could significantly reduce the threat of nuclear conflagration, and that is the step to ratify this START II treaty.

I wish to congratulate again the two managers of the bill. I think through their wisdom and knowledge and experience in handling this subject, that it is a subject which any Member of the Senate should be proud to participate in the deliberation of and hopefully the vote for the ratification of the START II Treaty. I hope that it will take place before end of the year, Mr. President. I look forward to the discussion with my friend from Arizona on some of the points that we have intensely reviewed now for the past week or so, and I wish to congratulate him and his staff for working with me and particularly John Roots who is on my staff now working on this matter. I am grateful to them for their assistance.

I yield the floor.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wish to again thank Senator STEVENS for his leadership role in bringing together a group of Senators who wanted to put the finishing touches on the declarations here and to do that in a very short period of time. I appreciate his leadership in bringing the group together and getting this job done so that we could begin the discussion of the treaty now prior to the end of the year.

Mr. President, let me begin by asking unanimous consent to have printed in the RECORD several items which pertain to the matters which I will be discussing relative to the START II Treaty.

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

Baseline START I Force

[For purpose of amendment No. 2]

ICBM:	
Minuteman III	500
Peacekeeper	50
Total	550
Submarines:	
Trident I	8
Trident II	10
Total	18
Bombers:	
B–52H	66
B–1B	96
B–2	20
Total	182

From AMEMBASSY MOSCOW.

To SECSTATE WASHDC PRIORITY 1623, INFO MOSCOW POLITICAL COLLECTIVE, Sept. 1995.

Subject: Internal Duma report recommends major amendments to START–2 treaty

1. Decontrol upon receipt—sensitive but unclassified—protect accordingly.

2. Summary: The Embassy recently acquired an internal state Duma study of the START–2 treaty that recommends ratification certain important amendments (copy being faxed to EUR/RUS). The amendments are designed to correct what the authors see as imbalances in the treaty in favor of the United States. The report recommends that the Duma ratify the treaty while stressing the link between strategic weapons reduction and observance of the ABM treaty. It also recommends amending the treaty to:

Permit each side to keep Mirved ICBM's with four warheads or less, rather than banning Mirved ICBM's altogether;

Provide for the controlled liquidation of warheads removed from Mirved ICBM's and SLBM's as part of the process of meeting treaty-mandates levels of weaponry;

Require liquidation of old launch platforms and their replacement with platforms designed specifically to bear fewer warheads;

In order to reduce the cost of reconfiguring the land-based leg of Russia's deterrent, permit utilization of 154 launch silos built for heavy ICBM's to house single-warhead missiles;

Delete the requirement to fill with concrete such ICBM launch silos;

Permit redefinition of all 170 RS–18 missiles as single-warhead missiles;

Push back the implementation deadline for START–2 by 2–3 years.

START–2 AND THE ABM TREATY

3. The Duma study, written by the parliament's analytical center before the July START–2 hearings, strongly attacks U.S. plans to develop limited anti-missile defense systems. It states that, ''In Reality, deployment of such a limited ABM system, coupled with radical cuts in strategic nuclear forces,

is no less destabilizing a factor than constructing a full-scale ABM system. Since a limited ABM system requires establishing a full infrastructure (Information Systems, Communications, and Military Command), it can grow very quickly to a size at which a retaliatory strike by our strategic nuclear forces could be neutralized.'' Thus, the report concludes, it is essential for the duma to lay down an unbreakable link between strategic force reductions and observance of the 1972 ABM treaty.

ABM RECOMMENDATIONS

4. Thus, the study recommends that, ''When ratifying the START–2 treaty, the state duma of the Russian Federation should declare that the 'exceptional circumstances' mentioned in paragraph 4, article VI of the treaty include as well circumstances arising in connection with one of the parties ceasing to observe the 1972 ABM treaty, or its substantial violation.'' The report goes yet further, and also recommends that, ''Attainment of a coordination and officially confirmed agreement on demarcation of strategic and ''nonstrategic'' ABM systems should precede ratification of START–2.'' The report states that such an agreement on the demarcation issue must include ''precise quantitative limitations on deployment of ''nonstrategic''ABM systems.

MIRVED ICBM'S

5. The report notes that the current text of the START–2 treaty calls for total elimination of MIRVed ICBM's. It calls this provision unacceptable, because it is contrary to Russia's National Security interests and favorable to the interests of the U.S. The study's authors note that 50 percent of Russia's strategic forces consist of land-based MIRVed ICBM's They recommend that the treaty be amended to ban only MIRVed ICM's with more than 4 warheads

6. The authors admit that the effective life of Russia's SS–18 and SS–24 missiles will run out in 10–15 years, and that production of more such missiles will be next to impossible, since the facilities for doing so are in Ukraine. Russia cannot today afford to build a comparable defense industrial infrastructure for producing new SS–18's and SS–24's on its own soil, they note. However, they call for developing a new, Mirved sea-based missile that could also be deployed on land. In the future, they believe, Russia will need to maintain a proper balance between Mirved and single-warhead ICBM's in both its strategic rocket forces and fleet.

ELIMININATING LAUNCH PLATFORMS AND WARHEADS

7. The Dama study states that START–2 would permit the U.S. to maintain essentially intact a large number of launch platforms for nuclear weapons that, while formally speaking no longer used for nuclear purposes, could in a ''Crisis Situation'' be rapidly refitted with nuclear warheads. The report charges that, under the treaty, ''the U.S. would assure itself of a favorable regime for reducing nuclear weapons that would not require liquidation of the carriers of nuclear weaponry, except for 50 MX ICBMs and part of its older B–52 heavy bombers.'' Russia, on the other hand, would have to undertake an expensive reconfiguration of much of its strategic forces. It adds: ''The START–2 Treaty allows the possibility of rapidly deploying the nuclear potential of the U.S. in all components of the Strategic Nuclear triad.''

8. The study asserts that the U.S. would quickly be able to redeploy previously removed nuclear warheads on still extant Minuteman-3 and Trident-2 missiles in a crisis. Similarly, nuclear weapons could be quickly reloaded onto B–LB bombers, since ''START–2 does not require them to be refitted in order to be re-oriented toward non-nuclear tasks.'' ''After realization of START–2 the U.S. will have the possibility in a crisis situation of operationally increasing its nuclear potential by more than 4000 nuclear warheads. Russia cannot compensate such an increase.'' Hence, the report's authors recommend amending the START–2 Treaty to require liquidation of warheads removed from Mirved ICBM's and SLBM's as part of the process of meeting treaty-mandates levels of weaponry. They also call for altering START–2 to require liquidation of old launch platforms and their replacement with platforms designed specifically to bear fewer warheads.

REDUCING THE FINANCIAL COST OF IMPLEMENTATION TO RUSSIA

9. The Study charges that START–2 essentially favors the U.S., permitting it to reduce its nuclear forces in the most economical way, while imposing an unacceptably high burden on Russia. It calls treaty provisions permitting Russia to re-fit 90 launch silos for heavy ICBM's and re-utilize them for single-warhead missiles insufficient. Its answer is to call for amending the treaty to permit Russia to re-use 154 launch silos built for heavy ICBM's to house single-warhead missiles, to delete the requirement to fill with concrete such ICBM launch silos, and to permit redefinition of all 170 RS–18 missiles as single-warhead missiles.

DELAYING TREATY IMPLEMENTATION

10. Finally, the study's authors also call for delaying implementation of the START–2 treaty by 2–3 years. The report argues that, since the seven-year implementation period for START–1 will end in 2001, only one year will remain for completing implementation of START–2. This is not enough time, and so, when ratifying START–2. This is not enough time, and so, when ratifying START–2, the Duma should ''extend'' the implementation period by 2–3 years, in order to avoid ''significant financial and production difficulty.''

COMMENT

11. This study was prepared as a guide for Duma deputies by the Duma's Analytical Center, and thus reflects the views of the Duma's in-house defense and security analysts. While pro-ratification in principle, they are clearly eager to see changes in the treaty that would substantially alter its character in ways that appear to be unacceptable from the standpoint of U.S. policy. In the first round of START hearings in July, deputies did not raise the kind of fundamental amendments addressed in this paper, though they did stress the link between START–2 and the ABM Treaty. The upcoming second round of hearings will show whether many deputies agree with the views outlined in the START study, and, indeed, whether the Duma is willing to ratify START–2 in any form before the December parliamentary elections.

12. The START study also indicates that Russian Government analysts are thinking carefully about how to restructure the country's nuclear deterrent to adapt to the Government's current straitened economic circumstances while maintaining the force's effectiveness. If this study is any indication, at least some analysts are envisaging a Russian deterrent that would still contain significant numbers of Mirved ICBM, both land-based and at sea—in contradiction of what START-2 calls for.

Mr. KYL. Mr. President, in considering whether the United States should ratify the START II Treaty, I believe it is critical that the terms of the treaty be reviewed in the context of the national deterrent strategy of the United States.

Further, it is important to recall why this treaty came about and how it was intended to complement the strategic posture of the United States.

The treaty, in other words, Mr. President, is based on assumptions. If these assumptions change, we have to reassess our position with respect to the treaty. What are some of these assumptions? First, the Bush legacy, how the treaty came into being. As the Soviet communism and the Warsaw Pact were collapsing, President Bush moved to establish a new framework for U.S. strategic forces, and it had two key elements. First involved a restructuring and downsizing of U.S. offensive nuclear forces and operations. This was the precursor for START II.

Second, it involved refocusing the strategic defense initiative from the previous Reagan administration to provide protection against ballistic missile attacks on the United States, our troops deployed abroad, and United States allies, and an offer to work cooperatively with Russia and the allies in developing and fielding such defenses.

President Bush's commitment to a new strategic framework based on fewer but still potent nuclear forces and the development and deployment of effective ballistic missile defenses was perhaps best highlighted during June 1992 when he and President Yeltsin had their famous summit. At that meeting, the two Presidents reached an agreement on the outlines of the START II agreement which committed both sides to reduce their strategic nuclear arsenals to 3,000–3,500 warheads, significantly below the force levels permitted by START I. Importantly, they also agreed to explore creation of a global ballistic missile defense system and to cooperate in the development of missile defense technologies.

The administration's framework rightly retained a strong commitment to ensuring nuclear deterrence and supporting infrastructure over the long term. President Bush and his advisors correctly believed that nuclear weapons should retain a legitimate, albeit more limited, role in U.S. national security policy. They also recognized that efforts to delegitimize or to eliminate nuclear weapons could have the paradoxical effect of increasing national instability and the likelihood of conflict.

Finally, they prudently believed that given the possibility of reversal of reform in Russia, the United States should retain a healthy nuclear capability as a residual deterrent.

In sum, President Bush and his advisers understood that there was simply too much uncertainty in the international arena to justify eliminating what was a central element of U.S. national security policy.

Likewise, President Bush's support for a more prominent role for ballistic

missile defenses in the United States and allied security policy was correctly seen as a means of bolstering, not replacing, nuclear deterrence at reduced strategic offensive force levels. Such defenses also could protect our allies and forward-deployed United States troops from threat posed by short and medium-ranged missiles and provide substantial population defense in the event of an accidental, unauthorized or limited attack on the American homeland from Russia or any other country.

From that foundation, we come to the Clinton administration. This administration has essentially rejected the Bush framework and instead has embraced what I believe is a dangerous and ill-conceived policy of proactive denuclearization. The administration has taken steps to lock in perhaps for decades to come America's vulnerability to missile attack and has used the arms control process to impede development and deployment of effective defenses against short and medium-ranged missiles and has used the arms control process to impede development and deployment of effective defenses against short- and medium-ranged missiles.

The Clinton administration's anti-nuclear sentiments are perhaps best illustrated by reviewing the declining health of the U.S. nuclear weapons infrastructure. America's core nuclear competency is made up primarily of skilled and motivated people, modern facilities, adequate funding, and continued nuclear testing.

I would like to discuss each of these briefly. The concept, Mr. President, is this: When we draw our forces down from a very large component of nuclear warheads and missile delivery systems to a much more modest one under START I, and an even more modest level under START II, we have to be in a position to guarantee that what we are left with will work for the purpose for which it is intended, to deter anyone from a nuclear attack. That is why it is necessary to ensure that our infrastructure is not eroded or dismantled.

I mentioned that the first critical element of this group are the people themselves. The critical skill base, or the expertise of individuals at the weapons laboratories, is rapidly eroding and poses an immediate problem, Mr. President.

As noted in a recent Congressional Research Service report:

> The experience gained from testing is irreplaceable, and aspects of it may be lost unless it is passed on to the next generation. Yet demographic data . . . indicate that skill base is eroding rapidly. The weapons program is losing skills as many experienced scientists retire and few new ones are hired. As a result, gaps in the skill base are opening that have adverse consequences for stewardship.

This means the stewardship of our nuclear stockpile.

> The weapons programs face further strain from a budget that is shrinking no end in sight and from a growth in mandated non-programmed risks.

The CRS report further notes that a majority of weapons designers will be facing retirement within the next 10 to 15 years and that the labs have already lost certain experimental capabilities, and in other areas the labs are only one person deep.

The next critical element of our U.S. nuclear infrastructure are the facilities. Currently the United States has no capacity to produce tritium, a critical gaseous element not only for our new nuclear warheads but also for replenishment of the active inventory.

In sum, Mr. President, our weapons do not work without tritium, which decays at such a rapid rate that it must constantly be reinterjected into the weapons.

Energy Secretary O'Leary has twice delayed a decision to select a new production reactor technology as a replacement for the K reactor at Savannah River, SC. The Department of Defense now indicates that a decision on the selected technology for a future tritium production capability will be made soon. But given the numerous delays by the Department of Defense, I hope you will forgive my skepticism.

For all practical purposes, the United States has lost its capacity to produce critical plutonium components, including the vital pits of our nuclear warheads. And yet the Department of Defense has not decided on where such a production facility will be located.

Meanwhile, the Pantex facility in Texas is so overloaded with the task of dismantling warheads for disposal that it risks not being able to conduct a rigorous program of stockpile surveillance.

The next component for a robust stockpile, Mr. President, is nuclear testing. The Clinton administration continues to embrace a nuclear testing moratorium and a Comprehensive Test Ban Treaty as central to its arms control policy.

Contrary to President Clinton's beliefs, I believe that a moratorium, a continued moratorium on U.S. nuclear testing will do nothing to aid in the fight against proliferation. Extension of the NPT matters little to the pariah nations that are or at least should be the primary object of our nuclear proliferation efforts. And with these states, U.S. nuclear testing has no bearing on their nuclear ambitions and programs.

In fact, Mr. President, Charles Krauthammer captured the essence of this point in a Washington Post op-ed of July 16, 1993, of which he said:

> There is something lunatic about saying that if we devalue and degrade our arsenal, nukes will then have less value for the North Koreas of the world. On the contrary. . . . The future nuclear weapons reliably held by the great powers, the greater the premium—the power—conferred upon the have-not who acquires them.

At the same time, Mr. President, nuclear testing is needed to assure the long-term safety and reliability of our nuclear weapons, and with it our ability to deter Russian nuclear aggression and to convince our allies, such as Germany and Japan, that abstaining from the acquisition of nuclear weapons makes sense as well. Even though U.S. nuclear weapons are at present safe and reliable, it is only through the continued explosive testing that the United States will be able to monitor and improve the stockpile safety and reliability well into the future.

I talked before, Mr. President, about U.S. missile defense plans. And as I said, all of the premises of the START II Treaty are important to understanding why the START II Treaty is believed to be advantageous, but in the event these assumptions change, our position would obviously have to be reassessed.

To the issue of a combination of offense and defense, which was contemplated by the Bush administration at the time that the treaty was signed, I would note that following the Persian Gulf war, which certainly focused attention on the proliferation of missile defenses and weapons of mass destruction, the Congress passed the Missile Defense Act of 1991 to continue this movement toward the development of a robust missile defense system in the United States.

The act urged accelerated deployment of effective theater missile defense capability. Perhaps more importantly, it served as a sign of intent that the Congress was prepared to adequately fund and support a robust U.S. missile defense capability, both the theater missile system and a national missile defense.

But the consensus was short lived. One of the first casualties of President Clinton's quest to cut defense spending in order to pay for costly social programs was the budget for ballistic missile defenses. The DOD Bottom-Up Review of 1993 cut the fiscal year 1994 to 1999 5-year budget for the Strategic Defense Initiative by approximately 60 percent from $41 billion to $18 billion. Hit hardest by this cut was the National Missile Defense Account. DOD not only rejected the option to deploy a defense of the American homeland, but also rejected even a robust research and development effort.

The Clinton administration has also used arms control to further erode the U.S. ability to effectively deploy TMD and NMD systems. Since November 1993, the administration has been engaged in negotiations with Russia and other states of the former Soviet Union in an effort to demarcate the line between permitted TMD systems and those activities and systems that are banned under the 1972 Antiballistic Missile Treaty.

In those talks, the United States has taken the following positions: First, we are no longer seeking to amend the ABM Treaty to allow multiple ground-based ABM sites in the United States, nor is the United States continuing to propose that the treaty be amended to

allow space-based interceptors; for example, the so-called Brilliant Eyes program, to perform direct battle management functions or otherwise substitute for ABM radars. This is despite the fact that the space-based system offers unique capabilities for sensing and intercepting missile threats that ground-based systems simply do not have.

As described above, the United States needs to begin fielding a national missile defense system now in order to be able to have it in place by the time the new threat is deployed.

Second, the administration has agreed to multilateralize the ABM Treaty and accept as treaty partners any of the former 10 Soviet states who want to be secessionites. And this means that all former Soviet Union states will be required to approve any changes to the treaty. So the administration approach will make it much more difficult for any future administration modifying the treaty, for example, to permit multiple ground-based ABM sites or space-based interceptors since, of course, these modifications must be blessed, not only by Russia, but also several other former republics of the Soviet Union.

Third, in November 1993, the administration proposed a standard for determining compliance of TMD systems with the ABM Treaty based on the demonstrated capability of such systems. More recently, however, the administration has accepted specific design/performance limitations on TMD systems and is considering numerical and deployment-area limitations on such systems as well.

The limitations now under discussion are more restrictive than the ABM system limitations already in the treaty. If accepted, such new limitations would effectively transform the ABM Treaty into a Theater Missile Defense/ABM Treaty and would preclude the United States from deploying one or more promising concepts for countering the growing threat posed by theater missiles.

I have reference to the Navy Upper Tier program. Despite five letters from Senate Republicans and clear language from the Senate Armed Services Committee and the House National Security Committee, the administration has kept up its assault on theater ballistic missile defenses.

A clearly stated objective of the Nuclear Posture Review, which was publicly released by the administration on September 22, 1994, was to provide planning stability for the U.S. strategic forces between now and the year 2003, the year that START II is to be fully implemented.

This raises the next important point with regard to the assumptions underlying the START II treaty, Mr. President, because, of course, the Nuclear Posture Review is the document which determines the number and nature of our nuclear warheads and the targets to which they would be assigned.

The administration in this review embraced a force structure of 66 nuclear-capable B–52H bombers, down from previously 94; 450 to 500 ICBM's—currently the number is 550—and 14 missile-carrying Trident submarines, down from 18, all to be backfitted with the D–5 missile.

This force structure was linked to the so-called ''hedge strategy'' designed to take into account the possibility of a reversal of reforms in Russia and the much slower paced nuclear drawdown there. But no sooner had the Defense Department released the results of the nuclear posture review, the President moved to overturn it. Just 5 days after the NPR was released, President Clinton stated his willingness to begin discussions with Russia on a possible START III agreement to reduce strategic forces below the 3,500 weapons permitted by START II and to deactivate all strategic nuclear delivery systems to be reduced under START II by removing their nuclear warheads or taking other steps to remove them from combat status.

The President's declarations served to undermine whatever hoped-for planning stability associated with U.S. strategic forces existed as a result of the NPR. Since 1988, U.S. strategic nuclear forces have been reduced by approximately 50 percent and U.S. nonstrategic nuclear forces by approximately 90 percent.

Furthermore, the annual budget for strategic forces has been reduced from roughly $50 billion per year at the height of the cold war to below $13 billion today, and the United States has no new strategic systems under development.

By contrast, Russia continues to modernize its strategic arsenal. The Russian program involves the development for deployment of two new ICBM's, one new SLBM, submarine-launched ballistic missile, and continuation of deep underground bunkers for control and command and leadership survivor. This seems to indicate, despite severe economic difficulties, Russia intends to modernize down to lower force levels.

In addition, Russia's new doctrine places much greater emphasis on retaliation against conventional attacks on targets in Russia. That brings us to where we are today in consideration of the START II treaty.

START II on January 3, 1993, President George Bush and Russian President Boris Yeltsin signed the treaty. START II builds on the START I treaty which reduces strategic offensive arsenals on both sides by about one-third and which focuses on the conversion and destruction of missile launchers—bombers, silos, submarine launchers—rather than the missiles and the warheads.

START II reduces both countries' nuclear arsenal to about 3,300 warheads for the United States and about 3,000 for Russia. The treaty requires Russia to eliminate all MIRV'd missiles. These are the missiles that have more than one warhead on top of them and present a special threat launched by either side. But it does allow the country to download 105 of the six-warhead SS–19's to a single warhead each, and to make 90 SS–18 silos inoperable by partly filling them with concrete, but it allows Russia to house the less powerful SS–25 missile in the converted silo.

In addition, the treaty allows Russia to inspect, for the first time, the bomb-bays of the B–2, the U.S. bomber, to ensure that the warhead limits are adhered to. It actually also counts the warheads on the B–1 bomber cruise missiles, and it ensures that 100 U.S. bombers have been reassigned to conventional use.

START II requires the United States to scrap or modify its 50 MX missiles, which have 10 warheads each, and to cut by about one-half the number of warheads on its submarine-launched missiles from 3,456 to 1,728.

START II is to be implemented in two phases: the first is to be completed within 7 years of ratification and the second by the year 2003. When reductions are complete, the U.S. level will return to those of the 1960's and the Russian levels to those of the 1970's.

Mr. President, I want to make it very clear that while I believe the START II treaty is fair and is advantageous to the United States, it is only in the interest of the United States if certain key provisions of the treaty are not changed or are not weakened in any way.

I do not think it is too much to expect those in the Senate who ratify this treaty, who support ratification, to expect that the treaty will be adhered to by both sides and will not be changed or weakened in any way. I know that some in the defense community have real concerns with provisions of the treaty. The Washington-based Center for Security Policy, for example, has listed the following provisions as particularly troublesome:

First, the right on the part of the Russians to retain the SS–18 silos. As I said, the START II treaty will not eliminate the infrastructure associated with this most dangerous of the former Soviet Union MIRV'd missile, SS–18 heavy ICBM's. Instead, it allows Moscow to retain 90 of the SS–18 silos and associated launch facilities and support complexes. As the United States has no idea how many SS–18 missiles the Russians actually have in their inventory, even the monitored destruction of ''declared'' heavy ICBM's could leave Moscow in a position to utilize these silos in the future to launch SS–18's. So this is a matter of some concern.

The right to retain the SS–19's: Under START II, Moscow may retain as many as 105 deployed SS–19's as long as these missiles are ''downloaded,'' a process by which five of the six warheads are removed. Unfortunately, as long as the Russians retain replacement warheads, it can, with little fear of U.S. detection, rapidly reverse the

downloading process. In this manner, the Russians can retain a militarily significant breakout capability. This is an obvious concern. Since there are no limits on either START I or START II on the number of ''nondeployed'' SS–19's, the Russians may be able to keep as many of these missiles, even in a fully loaded status, as they wish.

As I said before, the United States agreed to onsite inspections of the B–2. The effect of this provision, though considered necessary for the agreement of the treaty, will be to degrade the deterrent value of this air-breathing leg of the U.S. strategic triad.

This is by no means a comprehensive list of some of the problematic aspects of the treaty. I call my colleagues' attention to the testimony before the Foreign Relations Committee by one of the critics of the treaty, Sven Kraemer, former Director of Arms Control at the National Security Council, in which he lists a comprehensive listing of some of the more troublesome aspects of the treaty.

I note these simply to indicate, Mr. President, that while I believe this treaty, on balance, represents a fair and constructive way to approach the problem of reducing the number of these dangerous weapons as to the interests of the United States, that it is not without concern and that those of us who support the treaty, I think, should be respected in our delineation of these concerns, because, as I have said, much depends on the assumptions that underlie the treaty, and if those assumptions later change, obviously we would have to reassess our position under the treaty.

President Reagan said it well: ''Trust but verify.'' The problem here is that it is not easy to verify. There are some things that are just very, very difficult to verify in this treaty, difficult if not impossible. So, to some extent, there is an element of trust required, and I suspect that all of us base some of our position here on an element of hope as well.

But the point is that as we bring the number of these weapons down to a relatively lower number, much smaller number, we better make sure that they work, we better make sure that the other side does not cheat, because cheating, when both sides only have a few, is much more dangerous than if we both have very large components in our nuclear arsenal.

I also note, Mr. President, that the Russians have certain concerns with START II. This would be, I think, obvious in any negotiation where both sides give and take. So we are not the only ones who have concerns. As a matter of fact, an internal Duma report prepared by the Duma's analytical center and reporting in an unclassified memo from the American Embassy, we note that there are seven specific amendments recommended to the treaty. I will not go into these, although I will be submitting my entire statement for the RECORD, which identifies these particular proposed changes from the standpoint of the Russian Duma. None of these amendments, suffice it to say, would be acceptable to the United States. In fact, if any one of these were to be accepted by the Russian Duma, it would gut the central provisions of START II. That is why, despite the fact that there are those who believe that some amendments might have made the treaty more acceptable from the United States' perspective and urged that we actually offer amendments to the treaty in that regard, I think others of us felt that it was better to keep the treaty as it was negotiated and signed by the two parties, because we did not want to begin the process of amendment which would then give those in the Russian Duma a greater capability to argue the appropriateness of making amendments from their perspective.

That is why it is important that there be no amendments from either side. We have declarations and one condition, which we think help to establish the basis of the treaty from our perspective. Clearly, no amendment to the treaty, along the previously suggested lines, by the Russian Duma would be appropriate. That would be a basis for our withdrawal from the treaty.

I want to make it very clear that there is one thing in particular I would very strongly oppose. I will very strongly oppose any attempt by the administration, or anyone else, to walk back the MIRV downloading provision of the treaty, to allow the Russians to either increase the numbers of SS–18's, or to modify the structural changes to the SS–18 silos, or to delay the implementation of START II. I believe that any changes to the treaty, especially in these two key areas, would obviously require Senate advice and consent.

Mr. President, if there is anyone who, during the course of this discussion, disagrees with that, I would like them to say that. I would like to have a dialog with that individual. I doubt that anyone could conceivably come to that conclusion. But, clearly, we have to have it established, as we vote to ratify this treaty, that in those two most important respects the U.S. Senate would have to provide advice and consent.

I know the administration has agreed with that proposition as of now. I cannot imagine any disagreement. I note, for the Record, that with regard to walking back the MIRV downloading, Mr. Bob Bell, Special Assistant to the President, and an individual well known here in the Senate, who has assisted Senator NUNN for many years, has written, ''This report is totally unsubstantiated and pure fantasy.'' By the way, he was referring to a report that there may be some move toward some MIRV downloading in the treaty. ''The administration is not planning and does not have under consideration any such proposal.''

Mr. President, I accept that statement from Mr. Bob Bell, and I certainly would not oppose the treaty based on assurances from the administration that MIRV downloading will not occur. But, it is an illustration, Mr. President, of the kinds of things which at least have been talked about as possible changes and which I think we have to be very, very careful in considering prior to the ratification of the treaty, so that if those kinds of changes should ever be suggested to us, the record has been very clear that, A, it would require the advice and consent of the Senate, and, B, it would not be in the best interest of the United States.

One more note about Russian compliance with the arms control agreement, Mr. President. Questions about verifiability of the treaty are important because of concerns about whether the Russians will, in fact, abide by the terms of START II. Obviously, we all hope and require that the Russians fully comply with START II. But their record, and the record of the former Soviet Union, with respect to compliance with arms control agreements is somewhat dubious. I will note just a few of the areas of violation in the past:

The Biological Weapons Convention, the Chemical Weapons Agreements, the Missile Technology Control Regime, START I, and the Conventional Forces in Europe Treaties. All of these agreements have provisions that Russia has, in one way or another, failed to comply.

I mention this and the previous arms control agreements to underscore the importance of assuring that the Russians comply with the START II Treaty—not that they intend to comply, but that they are complying. An assumption of Russian compliance with the terms of START II is one significant consideration in my decision to support the treaty. I have confidence that they will comply, and that is the basis for my support of the treaty.

The final substantive point, Mr. President, I would make is this, and it has to do with linkage to the ABM Treaty.

There is no linkage between the ABM Treaty and the START II Treaty—although this is a favorite argument of some members of the administration and of opponents of ballistic missile defenses in the Russian Duma. There is no linkage between these two treaties. There never was and never will be.

There are those who believe that the ABM Treaty and START II are linked; further, that action relating to ballistic missile defenses in the United States will somehow affect ratification of START II in Russia. In fact, the preponderance of the evidence suggests that the Russians have concerns about ratifying START II irrespective of Senate action on the ABM Treaty.

It is incontroverted by a variety of Russian spokesmen themselves, who have made the point crystal clear that their concerns about START II have to do with the treaty itself, with their requirements under the treaty, and with

the costs that their compliance will entail, and not with the United States position with respect to the ABM Treaty.

For example, chairman of the Duma's Foreign Relations Committee, Vladimir Lukin, said ''We need big money to carry out these reductions [in START II], and we don't have it. We do not want to ratify this Treaty and then not be able to comply with its terms. We will have to wait until we see how to pay for our promises.'' As quoted by Jim Hoagland in the Washington Post, July 2, 1995.

Other Russians tie START II ratification to other international issues. Speaker of the Federation Council [upper chamber], Vladimir Shumeyko, stated, ''We closely link [START II] ratification with the overall situation existing between Russia and NATO. We consider the perseverance of NATO as a stumbling block to our cooperation in the area of disarmament and advancement on the road to peace.''—Interfax, 1255 GMT, April 3, 1995.

And, still others see START II as inimical to Russian interests. Viktor Ilyukhin, Chairman of the State Duma Security Committee, commented, ''If this treaty [START II] is fully implemented, the United States will almost double its superiority, while the damage to Russia's national security will be unrecoverable.''—ITAR-Tass, 1849 GMT, February 18, 1995.

There are also political problems with Russian ratification of START II. Aleksander Konovalov, Director of the Russian Academy of Sciences USA and Canada Institute, observed, ''The outlook for the treaty's [START II] ratification by the Russian Federation's Federal Assembly is not at all promising. Some deputies support the treaty in its current version, but they are obviously the minority in parliament. A sizable group of opposition deputies will probably vote against the ratification of START II for purely political reasons.''—Segodnya, November 15, 1994, p.10.

Sergei Karaganov, adviser to President Yeltsin, was quoted as saying, ''There is widespread feeling now that the United States pushed too hard when Russia was weak and that the treaty is unfair.'' As quoted by Jack Mendelshon, from ACDA, week of July 3, 1995.

The U.S. ambassador to the START II talks, Linton Brooks, wrote in a memo dated November 5, 1995 about other factors affecting Duma consideration of START II. Brooks said, ''The major reason START II is in trouble in the Yeltsin government is not pushing it. Indeed, the government has been unable to say what the Russian force structure will be under START II, how much it will cost, or how Russia will pay for it.''

Brooks further stated, ''The bluntest political analysis I heard came from Alexei Mitrofanov of the Liberal Democratic Party. He argued that running against START II was good politics. In the LDP analysis, the Russian public associates the ''reforms'' which have ruined their country with the United States. As a result, there is growing, deep-rooted, exploitable, anti-American sentiments in the Russian electorate. START II is associated with the United States and thus no politician will want to support it.''

Finally, Brooks correctly concluded ''without more action by the Russian government, nothing that the United States does will matter.'' I say ''amen'' to any further discussion about the negative impact of Senate action on the ballistic missile defenses and the negative impact on Duma passage of the START II Treaty.

Now, I want to move from those substantive points to the final point of my presentation, which has to do with the nine managers' amendments to the resolution of ratification—not treaty amendments, but rather declarations, and, in one case, a condition. Again, I express my appreciation to Senator STEVENS, who is chairman of the Arms Control Observer Group, who called the group together to consider these ideas, and Senator LUGAR, who was active in participating in the discussions, and to all of the Members on the other side of the aisle, who were active in negotiating and, in fact, also to Bob Bell, representing the administration's point of view.

As a result of these discussions, we were able to agree to these nine managers' amendments. They will be discussed shortly, and I hope they will be agreed to because they express, in important ways, the substance of what I have been saying here. For example, that there is no linkage between the START II Treaty and ballistic missile defenses; that the President must consult closely with the Senate if he changes the nuclear force structure; that the President must submit for advice and consent any material modification or amendment or reinterpretation of the START II Treaty; that the Senate is concerned about the impact of allowing Russia and Ukraine to use excess ballistic missiles for space launch vehicles; and that the Senate is concerned about the maintenance and preservation of the nuclear weapons stockpile and the attendant facilities.

These are important declarations, and I believe that in adopting them, the Senate is putting the administration and Russians, and everybody else, on notice that this drawdown must be accomplished carefully and with full cognizance of the impact on the future deterrent posture of the United States.

The declarations also place the administration on notice that the Senate must be closely consulted with while it continues to negotiate with the Russians about the precise implementation of START II.

Mr. President, in conclusion, I think President Bush got it right when he moved to reduce nuclear force levels and the role of nuclear weapons in the U.S. national security strategy. But he was also correct in maintaining a strong commitment to ensuring the long-term viability and efficacy of U.S. nuclear deterrent and supporting infrastructure. Likewise, his determination to refocus the SDI program on providing defenses against limited missile strikes reflect the widespread proliferation of ballistic missiles and weapons of mass destruction and the apparent willingness of regional aggressors to use those weapons.

Furthermore, once the United States' ability to manufacture and test new nuclear weapons and repair unsafe or unreliable old ones has disappeared, then neither we nor our allies will be able to count on our arsenal or deter aggression. At that point, we will have become effectively disarmed. Such a situation would result in a rethinking by our allies of their current commitment not to build their own nuclear arsenal—although they are technically capable of doing so—with dramatic consequences for U.S. national security.

Likewise, the administration's abandonment of President Bush's plan to effect the TMD and NMD systems as a means of protection from strikes, at least on the timetable and in the way we believe is important, based on its view of the world, I think, represents a strategic blunder of major proportions.

I will be working in the future to try to readdress that issue so that we can, at the same time we are drawing down our strategic offensive forces, provide a robust national and regional missile defense system.

Mr. President, I hope that in the discussion of the declarations and the condition that will transpire in just a moment, that it would be clear to all of our colleagues that we have tried to express our concerns about the context in which the treaty must be considered, and that our colleagues will agree with us that these are all important declarations and it is an important condition that we place upon the treaty. I, of course, strongly urge the acceptance of that document.

Finally, Mr. President, I, too, would like to make some comments when this matter is finally debated and voted on because I think it is important for all of our colleagues to hear something of the background of this treaty prior to the time—I say immediately prior to the time—that the treaty is voted upon.

Mr. NICKLES. Mr. President, I wish to commend Senators HELMS, LUGAR, and PELL for their fine work on the Strategic Arms Reductions Talks II [START II] Treaty. I rise to support this treaty, which builds on the reductions established under the START I Agreement.

Taken together, START I and START II will reduce the deployed strategic offensive arms of the United States and Russia by more than two-thirds. This treaty, signed by Presidents George Bush and Boris Yeltsin in 1993, limits both sides to between 3,500 and 3,000 deployed warheads, Moreover,

START II obligates Russia and the United States to ban all land-based, multiple warhead ballistic missiles and limits the number of warheads deployed on submarine launched ballistic missiles [SLBMs]. In addition, START II achieves a long-standing U.S. goal of eliminating the threat of Russia's heavy ICBM missile, the 10 warhead SS–18 missiles and their launch canisters.

At the same time, however, the START II Treaty is not without loopholes. For instance, while the Russians are obligated to eliminate their heavy SS–18s ICBM by January 2003, the treaty allows Russia to retain 90 SS–18 silos to be converted to accommodate only single-warhead missiles of the SS–25-type. Of course, the United States is allowed to inspect such conversion to ensure Russia retains only single-warhead missiles, as outlined by the Treaty. But one concern I have is that the ''new type'' SS–25 missile Russia is now testing is an advanced follow-on Topol-M missile, larger than the U.S. MX Peacekeeper missiles.

On the whole, however, I support this treaty, particularly in light of the conditions and declarations added to the Resolution of Ratification by the Foreign Relations Committee, and those proposed in the form of the ''Manager's Amendment.'' I believe these amendments provide a historical record of the Senate's view on a number of national security issues associated with the START II Treaty. It is with this understanding that I can conditionally support ratification of the START II Treaty.

I will address a few what I believe are the most important conditions and declarations proposed by the committee and the managers' amendments.

1. START II AND THE 1972 ANTI-BALLISTIC MISSILE TREATY

The Foreign Relations Committee Resolution of Ratification contains a condition stating that the U.S. government does not accept the view implied by the Russian Federation that Russian ratification of START II is contingent upon continued adherence by the United States to Russian interpretations of United States obligations under the 1972 Anti-Ballistic Missile (ABM) Treaty. This condition makes clear that U.S. ratification of the START II Treaty does not obligate the United States to accept any modification, change in scope or extension of the ABM Treaty.

This condition is wholly warranted, given Russian attempts to expand the scope of the ABM Treaty to include systems never intended to be covered by that Treaty—theater ballistic missile defenses. Further, by giving its advice and consent to the START II Treaty, the Senate is only agreeing to those limitations, eliminations and reductions of strategic offensive weapons contained in that Treaty.

At the same time, I believe it is important to be on record stating the converse. Namely, that Senate ratification of START II must in no way be construed by Russia as changing our rights to renegotiate changes to the ABM Treaty or our right to withdraw from that Treaty should supreme national interests warrant it. Which is why I believe the Managers's amendment, in the form of a declaration, is an essential supplement to the language already contained in the Committee's resolution of ratification.

This manager's amendment adds a new section to specify that ratification does not change any of the rights of either Party with respect to Articles 13 (which allows continual United States/Russian consultation on changes in the strategic situation and their meaning for the ABM Treaty); Article 14 (allowing either Party to propose amendments to the treaty), and Article 15 (allowing either Party to withdraw if supreme national interests are jeopardized).

I believe Articles 13, 14, and 15 are critical provisions of the ABM Treaty. The ABM Treaty is outdated. It may have been relevant to the strategic situation in 1972, when deterrence was based on Mutual Assured Destruction [MAD]. But MAD is completely irrelevant to the strategic environment of the 1990's. The Soviet Union no longer exists. Ballistic missiles and weapons of mass destruction are proliferating throughout the Third World. In a 1994 speech, Secretary of Defense William Perry declared that, ''we now have the opportunity to create a new relationship, based not on MAD, not on Mutual Assured Destruction, but rather on another acronym, MAS, or Mutual Assured Safety.'' [Speech before the Harry L. Stimson Center, 9/20/94]. The United States and Russia should, as the ABM Treaty envisioned, be discussing plans to deploy a mutual protection system against these growing threats, including the possibility of amending the ABM Treaty to allow more than one missile defense site.

2. IMPLEMENTATION ARRANGEMENTS

One particular concern of mine is whether and when the Russian Duma will ratify START II. Perhaps the worst of all possible worlds would be if the United States began drawing down its strategic nuclear arsenal to conform with the limits established under START II, and Russia had not yet ratified the treaty.

I believe, however, that this concern is addressed by a declaration on implementation arrangements proposed in the managers' amendment. Specifically, the language states that the START II Treaty shall not be binding on the United States until such time as the Duma has ratified the Treaty and the Treaty has entered into force. Equally important is the two-step process set up if the President plans to go below the number of forces currently planned and consistent with the START II Treaty. Under these circumstances, the President is called upon to: First, consult with the Senate on how these reductions would effect U.S. national security; and second, take no such action until a Presidential determination is sent to the Senate stating that such reductions are in the U.S. national security interest.

3. NONCOMPLIANCE

Recognizing that compliance is critical to the integrity of any arms control agreement, the Senate Foreign Relations Committee Resolution of Ratification contains a condition on noncompliance. This condition states that if the President determines that a Party to either START I or START II is acting inconsistently with the object and purpose of either Treaty, the President shall submit a report to the Senate detailing the impact of such noncompliance on the Treaty and seek to bring the noncompliant Party into compliance through diplomatic means. Further, any modification or change in obligations shall be submitted for Senate advice and consent. If such noncompliance persists, the President is called upon a to seek a Senate resolution in support of continued U.S. adherence to the Treaty or Treaties in question.

I believe this condition is important for several reasons. First, it sets a standard for evaluating noncompliant behavior. Second, underlying the reporting requirement is the understanding that noncompliant behavior by Russia could actually affect the United States continuing as a party to that treaty. Third, and most important, is that this condition answers the decade-old question of what should be done after a violation is detected. In the case of persistent noncompliance, the Senate, at the President's request, is to vote on whether to remain a party to that treaty.

While this condition addresses a number of compliance concerns, the managers' amendment builds on this language by adding several declarations. Each of these declarations will help ensure the Senate is apprised of compliance concerns the United States Government may raise with the Russian Federation through various channels and the outcome of such discussions.

And finally, this language declares that the Senate expects the Russian Federation to be ''in strict compliance with the terms of START II, as presented to the Senate for advice and consent.''

4. NATURE OF DETERRENCE

In addition to the declarations offered by the Foreign Relations Committee in its Resolution of Ratification, is a declaration, proposed by the managers, on the nature of deterrence. This declaration recognizes that offensive forms of deterrence alone cannot address the emerging threats to U.S. national security and states that missile defenses are ''a necessary part of new deterrence strategies.''

I believe missile defenses make sense not only for addressing growing proliferation threats, but also within the

strategic equation where the United States is reducing its nuclear arsenal to significantly lower levels.

The START II Treaty could actually create conditions conducive to deploying effective ballistic missile defenses. As the United States and the Russian Federation deploy only single warhead missiles, the old argument that missile defenses could be saturated by multiple warheads becomes moot. Further, at the low levels of warheads required by START II, both sides should have an incentive to pursue mutual missile defense deployments. Finally, as with other arms control treaties, START II contains loopholes Russia could exploit to retain a larger, more lethal arsenal, ballistic missile defenses could provide a hedge, or insurance policy against possible Russian treaty violations.

My concerns about the impact of START II on U.S. national security have been adequately addressed by the Foreign Relations Committee's actions and the Managers' amendments which add important conditions and declarations to the Resolution of Ratification. With this in mind, I will support the START II Treaty Resolution of Ratification, with the understanding that these conditions and declarations specify certain U.S. obligations to be fulfilled.

Mr. NUNN. Mr. President, I rise in support of the ratification of the START II Treaty by the Senate. The case for ratification is, I believe, overwhelming. Both the START I Treaty, negotiated under President Reagan, and the START II Treaty, negotiated under President Bush, are the end products of bipartisan arms control support by the Congress and the American people. Ratification of the START II Treaty is supported by the President as well as by the Secretary of Defense, Secretary Perry, as well as General Shalikashvili, the Chairman of the Joint Chiefs.

The START II Treaty is a continuation of the substantial reductions in strategic weaponry brought about by the signing of the START I Treaty. The signing of the START I Treaty occurred after the fall of the Berlin Wall at the end of the cold war, the dissolution of the Soviet Union, and the development of democratic movements and free elections in the countries of the former Warsaw Pact. These events have transformed the longstanding bipolar relationship between the United States and the now vanished Soviet Union.

Given these historic changes, ratification of the START II Treaty is a very logical step. Upon entry into full force, the START II Treaty will further reduce the number of strategic nuclear warheads held in the active inventories of the United States and Russia from about 8,000 weapons in START I levels, to between 3,000 and 3,500 weapons, a reduction of more than 50 percent.

By the time START II is fully implemented, the START I and START II Treaties will have led to more than a threefold reduction in the numbers of strategic nuclear warheads online in both sides. Moreover, the entry into force of this country will eliminate all of the land-based multiple warhead or MIRV intercontinental ballistic missiles from the arsenal of both sides.

It has long been a goal of U.S. arms control policy both under Republican and Democratic Presidents and Congresses to eliminate these poised for instant launch MIRV ICBM's from the inventories of both sides. There was too much incentive on both sides if there was warning of some attack to feel that these weapons had to be used or lost in large numbers, and the ratios gave the wrong incentives. Elimination of these land-based ICBM's, a required measure of the START II Treaty, will help avoid a return to hair-trigger strategic posture on both sides and put an end to any conceivable incentive for a bolt-from-the-blue attack.

Ratification of the START II Treaty is a highly cost-effective way to reduce the threat to the United States' national security interest posed by nuclear weapons. It will eliminate 5,000 warheads from the Russian force. Our modest verification costs will be dwarfed by U.S. defense budget savings that will flow both from the reduced threat and the retirements of our excess nuclear weapons and delivery systems.

Mr. President, I urge my colleagues to support the ratification of the START II Treaty today and to work to build support and understanding of the advantages of the START II Treaty among the members of the Russian Duma prior to the consideration of the treaty next year.

There is considerable work that has to be done, Mr. President, by I think Members of this legislative body if we are going to see the Russian Duma ratify this treaty. They are very dubious about the treaty. They are very concerned about the antiballistic missile developments and discussion and legislation in this country, and it is going to take a considerable amount of effort on the part of the United States and our other allies, as well as friends of Russia, to see that they ratify this treaty also. It is their decision. We cannot force it. But certainly we ought to have every dialog we can with them on this because this treaty is truly in the interests not only of both the United States and Russia but also of mankind.

Mr. GLENN. Mr. President, I rise to speak on behalf of ratification of the START II Treaty.

I would like to begin by summarizing what I see as the three major features of this treaty. First, given that Russia remains the only country that presents a serious nuclear strategic threat to the United States, the treaty effectively addresses three key aspects of this threat: It will eliminate all Russian heavy inter-continental ballistic missiles [ICBMs], it will ban all multiple-warhead ICBMs, and it will put a ceiling of 1,750 on the number of nuclear warheads deployed on submarine-launched ballistic missiles. Second, the treaty continues a process of arms reductions that is vital not just to U.S. national security but that is also good for the U.S. economy: It will require a two-thirds reduction of the number of deployed United States and Russian strategic nuclear stockpiles by the year 2003. Third, reductions in nuclear stockpiles will help to curtail the global proliferation of nuclear weapons both by helping to fulfill America's commitment under the NPT to seek an end to the nuclear arms race.

In these times of partisan bickering on all sorts of issues, I am gratified to see that this treaty had the support of all 18 members of the Senate Committee on Foreign Relations. In my remarks today, I will speak about the importance of the Senate providing its advice and consent to the START II ty Treaty—I will not address today any of the specific non-binding policy declarations that appear in the resolution, some of which I find agreeable, and some I do not support. Instead, I believe it is better to focus on the overall attributes of the Treaty and how it advances the U.S. national security interest.

A VERIFIABLE TREATY

As with all of our arms control and nonproliferation agreements, the United States will depend heavily (but not exclusively) on ''national technical means'' to verify the START II treaty. Though I cannot discuss in any great detail the nature of these methods, I am gratified at the confidence that the Joint Chiefs and other members of our national security community have shown in the verification measures in this treaty.

On March 1, 1995, Gen. John Shalikashvili, as Chairman of the Joint Chiefs of Staff, testified before the Senate Foreign Relations Committee that:

> We believe that the verification procedures are adequate to ensure that we will be able to detect any significant violations. Conversely, we also believe that the verification provisions are sufficiently restrictive to protect ourselves against unnecessary intrusion.

Similarly, on May 17, 1995, Lt. Gen. Wesley Clark, the JCS Director for Strategic Plans and Policy, testified before the Senate Armed Services Committee that:

> We are confident that the majority of monitoring requirements for START II can be accomplished with high confidence and there is little chance that the Russians can engage in militarily significant cheating. Further, the Joint Staff judges that the military risk to U.S. security associated with any monitoring uncertainties is low. In short the START II Treaty is effectively verifiable.

Echoing General Shalikashvili, General Clark added that:

> I am confident that the Treaty verification procedures are sufficiently restrictive to protect ourselves from unnecessary intrusion.

The treaty follows closely the extensive verification regime established to monitor the START I Treaty. In addition, START II includes some new verification measures, such as: U.S. observation of SS–18 silo conversion and

missile elimination procedures; exhibitions and inspections of all heavy bombers to confirm weapon loads; and exhibitions of heavy bombers reoriented to a conventional role to confirm their observable differences.

The START verification regime for conducting on-site inspections is not an anytime, anywhere type of regime. As a result, both parties to the treaty must always be on the watch for covert facilities or activities. Last February 28, CIA Deputy Director Douglas MacEachin testified before the Senate Foreign Relations Committee that:

> . . . when estimating our chances of detecting and correctly interpreting potential cheating, we judged that the increased openness of Russia and the former Soviet republics makes cheating increasingly difficult to conceal.

He added later that:

> The Intelligence Community continues to doubt that Russia will be able to initiate and successfully execute a significant cheating program.

The use of the term ''increasingly difficult'' rather than impossible, however, only underscores the vital importance of maintaining America's intelligence capabilities (both for collection and analysis) to monitor compliance with this treaty. I think this conclusion equally applies to all of America's arms control and nonproliferation agreements.

From my vantage points on the Armed Services Committee and the Select Committee on Intelligence, I will do my best to ensure that our country has the resources it needs to ensure a high standard of compliance with all of these agreements, most particularly START II.

LOOKING AHEAD

Ratification of this treaty will constitute an important arms control milestone—it does not, however, constitute the end of the road by any means. Ratification will set the stage for several additional arms control measures that are vitally needed to strengthen U.S. national security. The treaty should thus not be viewed in isolation, but should instead be seen as a key stepping stone toward a safer world. By any measure, the agenda ahead is a lengthy one.

We need to get on with ratification of the Chemical Weapons Convention. We need to strengthen the safeguards that are used to monitor compliance with the Nuclear Non-Proliferation Treaty. We need to ensure the conclusion in 1996 of a treaty banning all underground nuclear explosions. We need to ensure that our export controls and sanctions policies are enforced and implemented in a manner that is consistent with our treaty obligations—and we have a long way to go, I am afraid, before we achieve that particular goal. We need to bring the British, French, and Chinese nuclear stockpiles into the global arms reductions process, particularly in the context of START III Treaty negotiations. We need to recognize the continuing value of the Anti-Ballistic Missile [ABM] Treaty in stabilizing nuclear deterrence and in holding down defense expenditures in a post-cold war world.

We need to do more—much more—to strengthen controls over bomb-usable nuclear materials that are being produced particularly in Europe, Russia, and Japan for commercial uses. It is not enough merely to pursue a treaty banning the production of such materials for bombs or outside of safeguards—the security-related and environmental hazards of plutonium recognize no national borders or spurious distinctions between civilian and military uses. We should not seek to facilitate or to legitimize large-scale commercial uses of plutonium—whether safeguarded or not—but should instead explore new measures to discourage such uses before the nuclear terrorist threat catches up with us.

Above all, we need to recognize the relationships that exist between all of these important arms control regimes.

If the nuclear-weapons states fail to live up to their obligations to reduce their strategic stockpiles, this will inevitably have an effect on the rate of the proliferation of such weapons to additional countries.

If the United States abandons the ABM Treaty, this will inevitably affect in a most negative way the calculations of Russian leaders on both offensive and defensive nuclear strategies.

If we succeed in reducing the stockpiles of the nuclear weapons states, but fail to curb the burgeoning production of new bomb-usable nuclear materials (especially plutonium and highly-enriched uranium) for commercial purposes, we should not be surprised to find ourselves facing new nightmares of nuclear terrorism, blackmail, proliferation, and extortion down the road.

If we neglect the importance of traditional approaches to nonproliferation (in particular export controls and sanctions) and concentrate our energies and resources merely on developing offensive and defensive military countermeasures to proliferation, we will again face a more dangerous world—our priority must remain to prevent, rather than to manage, the global spread of weapons of mass destruction.

CONCLUSION

With these terms in mind, I urge all my colleagues to vote in favor of ratification of the START II Treaty. I would like to take this occasion to recognize the debt that this treaty owes to the persistent work of Senators PELL, LEVIN, and other long-time supporters of the START II Treaty in the Senate. I also credit the leadership of President Bill Clinton in encouraging timely action by the Senate in ratifying this important treaty.

I can only hope that the bipartisanship the Senate is showing today in voting, I hope overwhelmingly, to approve this treaty will echo into the next session, where I am sure it will be needed as much if not more than the treaty itself.

Mr. BIDEN. Mr. President, I rise in strong support of the START II Treaty which has finally been brought to the floor of the Senate after a long, unnecessary, and perhaps fatal delay. I will elaborate on that last point in a moment.

But first, let me say that START II represents an unprecedented opportunity to dismantle the Soviet nuclear arsenal. I say ''Soviet,'' Mr. President, because START II would, if implemented, eliminate the most devastating nuclear missiles built by the Soviet Union in the 1970's and 1980's: Hundreds of multi-warhead missiles of cataclysmic destructive power—among them, the infamous SS–18, which became the very symbol of the Soviet threat.

Even as we speak today, these missiles remain deployed in launching silos scattered across a Russian nation undergoing enormous political turmoil. They could at a moment's notice be targeted on the United States of America.

For the American people, the future of those missiles is a fundamental, compelling national security question.

The salient feature of START II is its planned elimination of every land-based multi-warhead missile in the Soviet-now-Russian arsenal. These were the weapons that, for years, so worried our defense establishment that we expended hundreds of billions of dollars to counter their first-strike potential.

Mr. President, that apocalyptic potential remains today.

As matters now stand, this threat carries with it considerable irony. For months, the Senate has engaged in yet another round of controversy over whether to build an anti-missile system intended to protect the United States from missile attack.

Earlier this week, this body passed a defense authorization confernece report that would require deployment of such a system by 2003, putting us on a collision course with the ABM Treaty, which has been the basis for all strategic arms controls agreements over the past two decades.

Any such system, if built, would be monumentally expensive, of highly uncertain reliability, likely to provoke additional offensive deployments, and available, at best, only sometime in the next century. Yet, the START II Treaty during that same period would eliminate with verifiable certainty the one serious missile threat the United States has ever faced.

The effort over the past several months to eviscerate the ABM Treaty has been driven by those who do not favor the limits in START II, and, correspondingly, never much cared for the ABM Treaty. They believe that the ABM Treaty prevents us from constructing an impenetrable shield against all types of ballistic missiles.

I admit—a ballistic missile shield is a comforting image. But, as our experience with star wars in the 1980's demonstrated, it is not grounded in reality.

Unfortunately, that ballistic missile shield, if it could ever overcome awesome technical and financial barriers—and I doubt it would, would provide a false sense of security.

That is because it would not alleviate a much greater threat—a terrorist transporting a nuclear device or its components into the United States through very conventional means, and detonating that device near an important landmark.

Our focus ought to be in preventing that possibility by improving our capabilities to tract terrorists and securing the many tons of fissile material spread across the territory of the former Soviet Union.

My colleagues know that last Sunday, the Russian people went to the polls and decided to elect a Duma apparently dominated by Communists and nationalists who are skeptical about START II and suspicious about American motives on the ABM treaty. They do not regard as a mere coincidence that 2003 is the year established for final compliance with the central limits in START II, as well as the target date for deployment of a national missile defense system in the Republican plan.

From their perspective, START II will take away their most effective means of countering a national missile defense—overwhelming it with offensive missiles.

While Russian concerns alone should not determine our policy decisions, it would be shortsighted, to say the least, to ignore them altogether when Russian behavior and Russian missiles can have a direct bearing on our national security.

If the Russians decide that we are intent on abrogating the ABM Treaty, then they will likely refuse to ratify START II, halt START I implementation, and begin a strategic build-up. We would have to follow suit and waste vast sums of money on deploying more offensive missiles and developing more missile defenses.

How ironic that would be—in the post-cold war era when we are on the verge of ratifying a historic reduction in strategic nuclear weapons—to set off an offense-defense spiral that the ABM Treaty was designed to prevent, and did prevent for over 20 years.

For the past several months many here saw the Communist and nationalist clouds building in Russia, and for that reason we repeatedly called for early United States ratification of START II in order to encourage similar action by the Duma. That could have locked in the gains promised by START II. Unfortunately, we did not act.

Now, some reports suggest that the new Duma may wait to see the results of our presidential election before approving START II. I hope that is not the case, because between now and then Russia will hold its own presidential election. That election has the potential to rearrange Russian politics in ways we cannot predict.

Our action today can send a clear signal that we are serious about implementing START II, and provide the incentive for quick action by the Duma.

It is my hope that the Senate's advice and consent to START II will encourage the Duma to act in kind prior to the G–7 Nuclear Safety Summit in Moscow next April. Due to the crowded political calendar in both countries later in the year, the summit would be the ideal, and maybe last, opportunity for Presidents Clinton and Yeltsin to exchange instruments of ratification. I would also hope that the two leaders can at that time agree to begin negotiations toward a new agreement on even further reductions.

I would just like to add here that I am concerned with some of the hortatory language that is contained both within the committee report and the proposed managers' amendment. In particular, I find the language on missile defenses and nuclear testing to be particularly problematic. However, I have decided not to object at this time because I believe it is absolutely critical that we act quickly and favorably on START II. I think it is also important to emphasize for all concerned that the language to which I and many of my colleagues object is non-binding.

Mr. President, the ultimate entry into force of the START II Treaty may well depend on a choice we must make in the months ahead: Do we pursue a technically questionable and prohibitively expensive national missile defense which would doom START II, or do we pursue a path that promises with greater certainty and less cost to eliminate the very missiles such a system would defend against?

In my view, there is not much of a choice. Star Wars technology is uncertain, costly, and likely to undermine our national security. On the other hand, arms control agreements like START II are proven, cost-effective, and will reduce the nuclear threat to the United States.

The American people, having sent us here to protect the security of their homes and children, are entitled to the only rational choice: We should ratify START II and abandon the reckless plans for an ABM Treaty-busting national missile defense system.

Mr. KERRY. Mr. President, today is a very important day in the history of the modern world. It is a crucially important day in the history of humankind's efforts to achieve peace and avoid armed conflict.

For over 50 years following the end of the World War II, the United States was locked in what came to be known universally as the cold war. That war, while it only occasionally broke into open armed conflict, was a very destructive conflict. It consumed the wealth of much of the world as armaments were stacked upon armaments to prepare for the open conflict that we hoped would never come.

There have been countless periods in the history of the world during which there have been uneasy periods of standoff of one power against another. But there has been none even nearly approximating the cold war. The reason is terrifyingly simple. The cold war was the first time in the world's history when human beings possessed weapons of mass destruction in the form of thermonuclear weapons. First the United States and then the Union of Soviet Socialist Republics obtained the ability to manufacture and use nuclear weapons. Eventually that capability was acquired by other nations. The use of just one such weapon is sufficient to annihilate an entire city.

The use of many not only could obliterate an entire nation and all its people from the face of the earth, but arguably might set in motion natural reactions which could lead to the extinguishment of most if not all life on this planet.

All of us in this Chamber endured most if not all of the cold war. We know of many of its human costs, although they will never be fully calculated. We also know today that there were a number of occasions where the world teetered on the very brink of the use of such weapons, which very likely would have been followed by a general exchange between the United States and the Soviet Union, and which very likely would have involved use of their nuclear weapons by the other nations possessing them.

What we also know, Mr. President, is that there was and is no higher objective—while preserving the liberties for which this Nation was founded and for the preservation of which so many have sacrificed so greatly—than to reduce both the threat of and the ability to wage nuclear war.

This objective has been reflected in numerous efforts initiated by both Republican and Democratic administrations to negotiate limits on the manufacture and testing of nuclear weapons, to negotiate limits on the types, capabilities, and numbers of weapons systems armed with nuclear devices, and to negotiate various other measures designed to reduce the likelihood that a nuclear weapon will be used in anger.

The treaty between the United States of America and the Russian Federation on further reduction and limitation of strategic offensive arms—the so-called START II Treaty—which is before the Senate today is one of the most significant milestones among these efforts. It builds upon the foundation established by the original START Treaty signed by the United States and the Russian Federation in 1991.

That first START Treaty was the first treaty that provided for real reductions—rather than just limits on further growth—of strategic offensive arms of both nations. It provided for overall reductions of 30 to 40 percent, and reductions of up to 50 percent in the most threatening systems. That treaty now acts to emphasize and enhance stability in times of international crisis. It provides for rough

equality of strategic forces between the two sides, and was painstakingly crafted to be effectively verifiable. That treaty will result in the elimination of nuclear weapons and their delivery systems from the territories of Belarus, Kazakhstan, and Ukraine and accession of these three states to the treaty on the non-proliferation of nuclear weapons [the NPT] as non-nuclear state parties. As a result, after 7 years, of the states formed upon the disintegration of the former Soviet Union, only Russia will possess deployed strategic offensive arms.

START II adds to these very significant accomplishments. It increases the stability of the nuclear balance. It bans deployment of the most destabilizing type of nuclear weapons system—land-based intercontinental ballistic missiles with multiple independently targetable nuclear warheads [or MIRV's]. Under its terms, Russia and the United States will reduce the number of nuclear weapons each possesses to 3,500.

Mr. President, some believe that with the passing of the former Soviet Union, and the economic weakness and chaos that have in many respects permeated its successor states, there no longer is a danger of nuclear conflict. Some would argue that these nations and their people, already struggling to make their way in a world that passed them by during the cold war period, would never risk losing literally everything they are and have by initiating a nuclear conflict. But that is an incomplete if not naive view of the world situation.

As long as nuclear weapons exist, there is a danger they will be used. Disagreements can escalate, and sometimes become dangerously personalized as national leaders struggle to maintain power and control. It is conceivable that rogue elements of a nation's military could gain control of one or more weapons—or even the entire nuclear apparatus of a nation—and launch one or more or many of those weapons. There are countless scenarios where those weapons could be employed. There is no better reason than this simple reality, Mr. President, for putting in place the reductions contained in the START II Treaty.

As we seek to bring to a conclusion the business of the Senate prior to this weekend of great significance to families and religions, I will not take the Senate's time to exhaustively detail all of the reason why this treaty will provide increased stability to the world, will reduce the danger of nuclear conflict and nuclear accidents, and will do this while preserving the defensive capability of the United States so that it unquestionably can effectively defend our democracy and liberties that are so precious to us. The legislative record of the treaty is available for all to see, and other Senators already have spoken eloquently to these issues.

There is simply no question, Mr. President, that the immediate ratification of this treaty is in the best interests of the United States and, indeed, the world. All of our most senior national security leadership concurs. The Chairman of the Joint Chiefs of Staff joined by all the Chiefs have so testified. Our intelligence leadership has so testified. Our diplomatic leadership has to testified. The agreement is neither partisan nor regional. While exceedingly little of vital importance occurs with absolutely unanimity, the START II Treaty comes as close as any major foreign policy or national security issue of which I am aware.

It is for this reason, Mr. President, that I was distressed, and remain distressed, that the Senate's action on this treaty was delayed for many months when the chairman of the Foreign Relations Committee held it hostage in an attempt to compel Members of this body to acquiesce to his plan to constrain the diplomatic capacity and media that are of critical importance to our Nation and its leaders—regardless of their party affiliation. For months many other Members of this body and I struggled to free this treaty for Senate action.

Finally, last month, the negotiation effort succeeded, and we were assured the Senate would at least take up the treaty before the end of this year. I am pleased to have helped accomplish this.

It is not just that it was and is regrettable that, because of this hostage-taking, the United States did not do everything in its power to speed this beneficial treaty into effect, and thereby the increased safety and security it offers have been unnecessarily delayed. That is regrettable enough—and I only hope that history does not show that this failure resulted in loss of life. The delay, in fact, has placed the entire treaty in jeopardy. While I think there is virtually no doubt that the Senate, when it is permitted to finally act on this treaty, will vote overwhelmingly on a bipartisan basis to approve it, the deteriorating situation in the Russian Federation makes approval by the Russian Duma increasingly uncertain. As nationalists and reconstructed Communists push successfully for greater influence in Russia, it is quite possible they will reject an treaty they see as resulting in too great a reduction in power-projecting weapons systems.

So, ironically, in the very kind of situation where the reduced threat of nuclear conflict would be most significant and valuable, the short-sighted actions here in the Senate could deny us and the world the heightened security this treaty offers. That would be a catastrophe of monumental proportions, Mr. President. If it comes to pass, history will properly and caustically criticize those who have delayed Senate action or acquiesced in that delay.

Before I complete my remarks, Mr. President, I want to address a related issue that is of great importance. There are some who would draw a connection between this treaty and the establishment of a ballistic missile defense. That, in turn, raises questions of continued adherence to the anti-ballistic missile or ABM Treaty. Such a linkage of this treaty to the question of ballistic missile defense is not necessary, is inappropriate, and could be tremendously counterproductive.

I have long and strongly supported development of effective defenses against theater and short-range ballistic missiles. Our troops and sailors deserve such protection whenever they are sent into harm's way. But I have equally fervently supported the ABM Treaty as a critical link in the chain of United States-Russian relations. So much about the cold war—and so much in our new and still unfamiliar post-Soviet relationship—is dependent on each nation feeling confident of its ability to protect its homeland and repel aggressors. The ABM Treaty has made and continues to make an absolutely vital contribution to that confidence. The treaty provides confidence that, in case of an attack launched by the other side, the attacked nation would be able to effectively counterattack with its ballistic missiles. This uneasy but effective balance acted to keep the cold war from ever going hot.

Now, in the form of the START Treaty and the START II Treaty, we are reducing the terror arrayed on both sides, and reducing the likelihood that what remains will be used in anger. But the confidence must remain. The START II Treaty increases confidence on both sides. Nothing in it prejudices the consideration of how to provide for defense against theater and short-range ballistic missiles while maintaining the critical balancing tool of the ABM Treaty. Ratification of the START II Treaty certainly does not increase the need for a national missile defense that would be in violation of the ABM Treaty—to the contrary, it reduces the danger of attack and removes the most threatening of the Russian nuclear delivery systems.

Mr. President, immediately is not too soon to provide the Senate's overwhelming approval of this treaty. All who labored in its negotiation are to be commended for their service to the security of this Nation, the security of the world, and the safety of our citizens and those around the globe. I compliment especially the distinguished Senator from Indiana, Senator LUGAR, and the distinguished ranking Democratic member of the Foreign Relations Committee, Senator PELL, and their staffs, for their roles in managing the treaty and moving it toward approval by the Senate. I urge the majority leader, and the Democratic leader, to ensure that the Senate acts finally and expeditiously on the treaty just as soon as the Senate returns to session after the holidays.

I thank the Chair, and I yield the floor.

Mr. HARKIN. Mr. President, today—at long last—we discuss START II. I urge this body to ratify it quickly.

START II is a truly historic treaty. It will cut the number of the world's

nuclear weapons in half, getting rid of nearly 4,000 deployed H-bombs in Russia and about the same number here. An overwhelming number of our citizens favor implementing this treaty, and a large number of elected officials on both sides of the aisle have expressed their support for it.

Mr. President, START II should be ratified for many reasons. First, START II destroys weapons. This reduces the risk of an accidental launch. Second, every Russian weapon destroyed is a weapon we don't need to defend against. The following table, which I ask unanimous consent be printed in the RECORD, shows the numbers and kinds of ICBMs that can be eliminated under START II.

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

Intercontinental Ballistic Missiles—Eliminated Under START II

Delivery system	Launchers	Warheads
SS–18	188	1,880
SS–19	[1] 170	1,020
SS–24	46	460
SLBM's		[2] 600
Total	304	3,960

[1] Some SS–19s may be converted to carry only a single warhead in order to offset the cost of developing a new launcher.

[2] Based on limit of 1,750 submarine launched ballistic missiles. The current Russian arsenal of SLBMs is estimated at 2,350.

Source: Bulletin of Atomic Scientists, Nuclear Notebook, September/October 1995.

Mr. HARKIN. Additionally, destroying weapons saves taxpayers' money. Just look at the current defense authorization bill. As my friend from New Mexico pointed out in the report to the Defense Authorization Act, the act "proposes a nuclear weapons manufacturing complex sized to meet a need of a hedge stockpile far above the active START II stockpile of 3,500 weapons." The total cost of producing our nuclear weapons to date is about $4 trillion. Compare that with our $5 trillion national debt. In 1995 alone, $12.4 billion was spent to build, operate, and maintain strategic nuclear weapons. If we ratify START II we can give taxpayers the double peace dividend of higher security at lower cost.

Even if START II were fully implemented, we would have more than 3,000 deployed strategic missiles—500 warheads on missiles in silos, 1,680 warheads on submarine-launched missiles, and 1,320 on airplanes. Furthermore, an additional 4,000 nuclear weapons would remain in our stockpile. Surely, this will be more than enough atomic firepower to counter any conceivable threat to the United States.

Mr. President, Russia and other former Soviet Republics are more open than ever before. We have all seen the unprecedented pictures on television of Russian missiles and airplanes being destroyed. This new openness will make START II even more verifiable then START I. With the recent Russian elections and the presidential election season just starting, we must act now to keep this olive branch from withering.

In conclusion, Mr. President, we need to ratify START II quickly. It is not in the national interest to play politics over the ratification of any treaty. Russian President Yeltsin needs quick American ratification of START II to help get the Russian Parliament to ratify it. We need the security of fewer Russian warheads now. We need to stop spending so much money making our nuclear weapons now. We can use the warheads we have now to defend America. We need to ratify START II now.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LUGAR. 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. LUGAR. Mr. President, we have checked with both sides of the aisle to make certain that all parties are in agreement, and after that, I ask unanimous consent that the START II Treaty be advanced through its various parliamentary procedure stages up to and including the presentation of the resolution of ratification, and the managers' amendments which I will offer after consultation with Senator PELL be deemed agreed to, and that no further amendments be in order to the resolution of ratification.

The PRESIDING OFFICER. Without objection, the treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The bill clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That (a) the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms, signed at Moscow on January 3, 1993, including the following protocols and memorandum of understanding, all such documents being integral parts of and collectively referred to as the "START II Treaty" (contained in Treaty Document 103–1), subject to the conditions of subsection (b) and the declarations of subsection (c):

(1) The Protocol on Procedures Governing Elimination of Heavy ICBMs and on Procedures Governing Conversion of Silo Launchers of Heavy ICBMs Relating to the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms (also known as the "Elimination and Conversion Protocol").

(2) The Protocol on Exhibitions and Inspections of Heavy Bombers Relating to the Treaty Between the United States and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms (also known as the "Exhibitions and Inspections Protocol")

(3) The Memorandum of Understanding on Warhead Attribution and Heavy Bomber Data Relating to the Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms (also known as the "Memorandum on Attribution").

(b) CONDITIONS.—The advice and consent of the Senate to the ratification of the START II Treaty is subject to the following conditions, which shall be binding upon the President:

(1) NONCOMPLIANCE.—If the President determines that a party to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, signed at Moscow on July 3, 1991 (in this resolution referred to as the "START Treaty") or to the START II Treaty is acting in a manner that is inconsistent with the object and purpose of the respective Treaty or is in violation of either the START or START II Treaty so as to threaten the national security interests of the United States, then the President shall—

(A) consult with and promptly submit a report to the Senate detailing the effect of such actions on the START Treaties;

(B) seek on an urgent basis a meeting at the highest diplomatic level with the noncompliant party with the objective of bringing the noncompliant party into compliance;

(C) in the event that a party other than the Russian Federation is determined not to be in compliance—

(i) request consultations with the Russian Federation to assess the viability of both START Treaties and to determine if a change in obligations is required in either treaty to accommodate the changed circumstances, and

(ii) submit for the Senate's advice and consent to ratification any agreement changing the obligations of the United States; and

(D) in the event that noncompliance persists, seek a Senate resolution of support of continued adherence to one or both of the START Treaties, notwithstanding the changed circumstances affecting the object and purpose of one or both of the START Treaties.

(2) TREATY OBLIGATIONS.—Ratification by the United States of the START II Treaty obligates the United States to meet the conditions contained in this resolution of ratification and shall not be interpreted as an obligation by the United States to accept any modification, change in scope, or extension of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, signed at Moscow on May 26, 1972 (commonly referred to as the "ABM Treaty").

(3) FINANCING IMPLEMENTATION.—The United States understands that in order to be assured of the Russian commitment to a reduction in arms levels, Russia must maintain a substantial stake in financing the implementation of the START II Treaty. The costs of implementing the START II Treaty should be borne by both parties to the Treaty. The exchange of instruments of ratification of the START II Treaty shall not be contingent upon the United States providing financial guarantees to pay for implementation of commitments by Russia under the START II Treaty.

(4) EXCHANGE OF LETTERS.—The exchange of letters—

(A) between Secretary of State Lawrence Eagleburger and Minister of Foreign Affairs Andrey Kozyrev, dated December 29, 1992, regarding SS–18 missiles and launchers now on the territory of Kazakstan,

(B) between Secretary of State Eagleburger and Minister of Foreign Affairs Kozyrev, dated December 29, 1992, and December 31, 1992, regarding heavy bombers, and

(C) between Minister of Defense Pavel Grachev and Secretary of Defense Richard

Cheney, dated December 29, 1992, and January 3, 1993, making assurances on Russian intent regarding the conversion and retention of 90 silo launchers of RS–20 heavy intercontinental ballistic missiles (ICBMs) (all having been submitted to the Senate associated with the START II Treaty),

are of the same force and effect as the provisions of the START II Treaty. The United States shall regard actions inconsistent with obligations under those exchanges of letters as equivalent under international law to actions inconsistent with the START II Treaty.

(5) SPACE-LAUNCH VEHICLES.—Space-launch vehicles composed of items that are limited by the START Treaty or the START II Treaty shall be subject to the obligations undertaken in the respective treaty.

NTM AND CUBA.—The obligation of the United States under the START Treaty not to interfere with the national technical means (NTM) of verification of the other party to the Treaty does not preclude the United States from pursuing the question of the removal of the electronic intercept facility operated by the Government of the Russian Federation at Lourdes, Cuba.

(c) DECLARATIONS.—The advice and consent of the Senate to ratification of the START II Treaty is subject to the following declarations, which express the intent of the Senate:

(1) COOPERATIVE THREAT REDUCTIONS.—Pursuant to the Joint Statement on the Transparency and Irreversibility of the Process of Reducing Nuclear Weapons, agreed to in Moscow, May 10, 1995, between the President of the United States and the President of the Russian Federation, it is the sense of the Senate that both parties to the START II Treaty should attach high priority to—

(A) the exchange of detailed information on aggregate stockpiles of nuclear warheads, on stocks of fissile materials, and on their safety and security;

(B) the maintenance at distinct and secure storage facilities, on a reciprocal basis, of fissile materials removed from nuclear warheads and declared to be excess to national security requirements for the purpose of confirming the irreversibility of the process of nuclear weapons reduction; and

(C) the adoption of other cooperative measures to enhance confidence in the reciprocal declarations on fissile material stockpiles.

(2) ASYMMETRY IN REDUCTIONS.—It is the sense of the Senate that, in conducting the reductions mandated by the START or START II Treaty, the President should, within the parameters of the elimination schedules provided for in the START Treaties, regulate reductions in the United States strategic nuclear forces so that the number of accountable warheads under the START and START II Treaties possessed by the Russian Federation in no case exceeds the comparable number of accountable warheads possessed by the United States to an extent that a strategic imbalance endangering the national security interests of the United States results.

(3) EXPANDING STRATEGIC ARSENALS IN COUNTRIES OTHER THAN RUSSIA.—It is the sense of the Senate that, if during the time the START II Treaty remains in force or in advance of any further strategic offensive arms reductions the President determines there has been an expansion of the strategic arsenal of any country not party to the START II Treaty so as to jeopardize the supreme interests of the United States, then the President should consult on an urgent basis with the Senate to determine whether adherence to the START II Treaty remains in the national interest of the United States.

(4) SUBSTANTIAL FURTHER REDUCTIONS.—Cognizant of the obligation of the United States under Article VI of the Treaty on the Non-Proliferation on Nuclear Weapons of July 1, 1968 ''to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at any early date and to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective international control'', it is the sense of the Senate that in anticipation of the ratification and entry into force of the START II Treaty, the Senate calls upon the parties to the START II Treaty to seek further strategic offensive arms reductions consistent with their national security interests and calls upon the other nuclear-weapon states to give careful and early consideration to corresponding reductions of their own nuclear arsenals.

(5) MISSILE TECHNOLOGY CONTROL REGIME.—The Senate urges the President to insist that the Republic of Belarus, the Republic of Kazakstan, Ukraine, and the Russian Federation abide by the guidelines of the Missile Technology Control Regime (MTCR). For purposes of this paragraph, the term ''Missile Technology Control Regime'' means the policy statement between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced April 16, 1987, to restrict sensitive missile relevant transfers based on the MTCR Annex, and any amendment thereto.

(6) FURTHER ARMS REDUCTION OBLIGATIONS.—The Senate declares its intention to consider for approval international agreements that would obligate the United States to reduce or limit the Armed Forces or armaments of the United States in a militarily significant manner only pursuant to the treaty power as set forth in Article II, Section 2, Clause 2 of the Constitution.

(7) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in condition (1) of the resolution of ratification with respect to the INF Treaty. For purposes of this declaration, the term ''INF Treaty'' refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols, approved by the Senate on May 27, 1988.

Mr. PELL. Mr. President, the amendments the Senator from Indiana [Mr. LUGAR] and I will accept today, represent a bipartisan effort to reach a reasonable consensus in the committee and with regard to the floor action. In particular, I would note the effective and valuable role played in this process by the bipartisan Senate Arms Control Observer Group at the initiative of its administrative cochairman, the Senator from Alaska [Mr. STEVENS], who worked very closely with a number of the group's members in the START II issue, including Senator LUGAR, Senator LEVIN, and myself.

The package also includes an amendment included on behalf of the Senate Select Committee on Intelligence requiring a Presidential certification that we have sufficient national technical means to verify Russian compliance. The amendment is a positive addition, and we accept it.

UNANIMOUS-CONSENT AGREEMENT

Mr. LUGAR. Mr. President, I further ask unanimous consent that when the Senate resumes executive session to consider the resolution of ratification, there be 6 hours for debate, to be equally divided in the usual form, with unlimited additional time under the control of Senator THURMOND; and following the conclusion or yielding back of time, the Senate proceed to vote on adoption of the resolution of ratification, without further action or debate.

The PRESIDING OFFICER (Mr. SANTORUM). Without objection, it is so ordered.

Mr. STEVENS. Will the Senator yield?

Mr. PELL. Certainly.

Mr. STEVENS. I think we should show that Mira Baratta, working with Senator DOLE, has been very helpful in working with this group.

Mr. PELL. I concur in your thought.

Mr. LUGAR. A point of parliamentary clarification. Am I correct to assume that the report of the Foreign Relations Committee resolution ratification is before the body?

The PRESIDING OFFICER. That is the Chair's understanding of the unanimous-consent propounded.

AMENDMENT NO. 3111

(Purpose: Regarding interpretation of the ABM Treaty)

Mr. LUGAR. The unanimous-consent request stated I would submit, as a manager, amendments. I have submitted those to the desk.

The PRESIDING OFFICER. For the information of the Senate, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. LUGAR], for himself and Mr. PELL, proposes amendments en bloc numbered 3111.

Mr. LUGAR. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

In section 1(b)(2) of the resolution of ratification, insert ''(A)'' after ''START II Treaty''.

In section 1(b)(2), before the period at the end, insert '', and (B) changes none of the rights of either Party with respect to the provisions of the ABM Treaty, in particular, Articles 13, 14, and 15''.

At the end of section 1(b) of the resolution of ratification, add the following new condition:

(7) IMPLEMENTATION ARRANGEMENTS.—(A) The START II Treaty shall not be binding on the United States until such time as the Duma of the Russian Federation has acted pursuant to its constitutional responsibilities and the START II Treaty enters into force in accordance with Article VI of the Treaty.

(B) If the START II Treaty does not enter into force pursuant to subparagraph (A), and if the President plans to implement reductions of United States strategic nuclear forces below those currently planned and consistent with the START Treaty, then the President shall—

(i) consult with the Senate regarding the effect of such reductions on the national security of the United States; and

(ii) take no action to reduce United States strategic nuclear forces below that currently planned and consistent with the START Treaty until he submits to the Senate his determination that such reductions are in the

national security interest of the United States.

In section 1(c)(2) of the resolution of ratification, insert ''(A)'' immediately after ''REDUCTIONS.—''.

At the end of section 1(c)(2), insert the following:

(B) Recognizing that instability could result from an imbalance in the levels of strategic offensive arms, the Senate calls upon the President to submit a report in unclassified form to the Committees on Foreign Relations and Armed Services of the Senate not later than January 31 of each year beginning with January 31, 1997, and continuing through such time as the reductions called for in the START II Treaty are completed by both parties, which report will provide—

(i) details on the progress of each party's reductions in strategic offensive arms during the previous year;

(ii) a certification that the Russian Federation is in compliance with the terms of the START II Treaty or specifies any act of noncompliance by the Russian Federation; and

(iii) an assessment of whether a strategic imbalance endangering the national security interests of the United States exists.

In section 1(c)(4) of the resolution of ratification—

(1) strike ''the parties'' and all that follows through ''national security interests'' and insert ''the President to seek further strategic offensive arms reductions to the extent consistent with United States national security interests''; and

(2) strike ''it is the sense of the Senate that'' and insert in ''and''.

At the end of section 1(c) of the resolution of ratification, add the following new declarations:

(8) COMPLIANCE.—Concerned by the clear past pattern of Soviet noncompliance with arms control agreements and continued cases of noncompliance by the Russian Federation, the Senate declares that—

(A) the START II Treaty is in the interests of the United States only if both the United States and the Russian Federation are in strict compliance with the terms of the Treaty as presented to the Senate for its advice and consent to ratification, such compliance being measured by performance and not by efforts, intentions, or commitments to comply;

(B) the Senate expects the Russian Federation to be in strict compliance with its obligations under the terms of the START II Treaty as presented to the Senate for its advice and consent to ratification; and

(C) Given its concern about compliance issues, the Senate expects the Administration to offer regular briefings, but not less than four times per year, to the Committees on Foreign Relations and Armed Services on compliance issues related to the START II Treaty. Such briefings shall include a description of all U.S. efforts in U.S./Russian diplomatic channels and bilateral fora to resolve the compliance issues and shall include, but would not necessarily be limited to, the following:

i. Any compliance issues the United States plans to raise with the Russian Federation at the Bilateral Implementation Commission, in advance of such meetings;

ii. Any compliance issues raised at the Bilateral Implementation Commission, within thirty days of such meetings; and

iii. Any Presidential determination that the Russian Federation is in non-compliance with or is otherwise acting in a manner inconsistent with the object and purpose of the START II Treaty, within thirty days of such a determination, in which case the President shall also submit a written report, with an unclassified summary, explaining why it is in the national security interests of the United States to continue as a party to the START II Treaty.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) SUBMISSION OF FUTURE AGREEMENTS AS TREATIES.—The Senate declares that following Senate advice and consent to ratification of the START II Treaty, any agreement or understanding which in any material way modifies, amends, or reinterprets United States or Russian obligations under the START II Treaty, including the time frame for implementation of the Treaty, should be submitted to the Senate for its advice and consent to ratification.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) NATURE OF DETERRENCE.—(A) On June 17, 1992, Presidents Bush and Yeltsin issued a Joint Understanding and a Joint Statement at the conclusion of their Washington Summit, the first of which became the foundation for the START II Treaty. The second, the Joint Statement on a Global Protection System, endorsed the cooperative development of a defensive system against ballistic missile attack and demonstrated the belief by the governments of the United States and the Russian Federation that strategic offensive reductions and certain defenses against ballistic missiles are stabilizing, compatible, and reinforcing.

(B) It is, therefore, the sense of the Senate that:

(i) The long-term perpetuation of deterrence based on mutual and severe offensive nuclear threats would be outdated in a strategic environment in which the United States and the Russian Federation are seeking to put aside their past adversarial relationship and instead build a relationship based upon trust rather than fear.

(ii) An offense-only form of deterrence cannot address by itself the emerging strategic environment in which, as Secretary of Defense Les Aspin said in January 1994, proliferators acquiring missiles and weapons of mass destruction ''may have acquired such weapons for the express purpose of blackmail or terrorism and thus have a fundamentally different calculus not amenable to deterrence. . . . New deterrent approaches are needed as well as new strategies should deterrence fail.''.

(iii) Defenses against ballistic missiles are essential for new deterrent strategies and for new strategies should deterrence fail. Because deterrence may be inadequate to protect United States forces and allies abroad, theater missile defense is necessary, particularly the most capable systems of the United States such as THAAD, Navy Upper Tier, and the Space and Missile Tracking System. Similarly, because deterrence may be inadequate to protect the United States against long-range missile threats, missile defenses are a necessary part of new deterrent strategies. Such defenses also are wholly in consonance with the summit statements from June 1992 of the Presidents of the United States and the Russian Federation and the September 1994 statement by Secretary of Defense William J. Perry, who said, ''We now have the opportunity to create a new relationship, based not on MAD, not on Mutual Assured Destruction, but rather on another acronym, MAS, or Mutual Assured Safety.''.

(iv) As the governments of the United States and Russia have built upon the June 17, 1992, Joint Understanding in agreeing to the START II Treaty, so too should these governments promptly undertake discussions based on the Joint Statement to move forward cooperatively in the development and deployment of defenses against ballistic missiles.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) REPORT ON USE OF FOREIGN EXCESS BALLISTIC MISSILES FOR LAUNCH SERVICES.—It is the sense of the Senate that the President should not issue licenses for the use of a foreign excess ballistic missile for launch services without first submitting a report to Congress, on a one-time basis, on the implications of the licensing approval on nonproliferation efforts under the Treaty and on the United States space launch industry.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) UNITED STATES COMMITMENTS ENSURING THE SAFETY, RELIABILITY, AND PERFORMANCE OF ITS NUCLEAR FORCES.—The Senate declares that the United States is committed to ensuring the safety, reliability, and performance of its nuclear forces. To this end, the United States undertakes the following additional commitments:

(A) The United States is committed to proceeding with a robust stockpile stewardship program, and to maintaining nuclear weapons production capabilities and capacities, that will ensure the safety, reliability, and performance of the United States nuclear arsenal at the START II levels and meet requirements for hedging against possible international developments or technical problems, in conformance with United States policies and to underpin deterrence.

(B) The United States is committed to reestablishing and maintaining sufficient levels of production to support requirements for the safety, reliability, and performance of United States nuclear weapons and demonstrate and sustain production capabilities and capacities.

(C) The United States is committed to maintaining United States nuclear weapons laboratories and protecting the core nuclear weapons competencies therein.

(D) As tritium is essential to the performance of modern nuclear weapons, but decays radioactively at a relatively rapid rate, and the United States now has no meaningful tritium production capacity, the United States is committed to ensuring rapid access to a new production source of tritium within the next decade.

(E) As warhead design flaws or aging problems may occur that a robust stockpile stewardship program cannot solve, the United States reserves the right, consistent with United States law, to resume underground nuclear testing if that is necessary to maintain confidence in the nuclear weapons stockpile. The United States is committed to maintaining the Nevada Test Site at a level in which the United States will be able to resume testing, within one year, following a national decision to do so.

(F) The United States reserves the right to invoke the supreme national interest of the United States to withdraw from any future arms control agreement to limit underground nuclear testing.

CONDITION

(a) CONDITIONS.—The Senate's advice and consent to the ratification of the START II Treaty is subject to the following condition, which shall be binding upon the President:

(1) PRESIDENTIAL CERTIFICATION AND REPORT ON NATIONAL TECHNICAL MEANS.—Within ninety days after the United States deposits instruments of ratification of the START II Treaty, the President shall certify that U.S. National Technical Means are sufficient to ensure effective monitoring of Russian compliance with the provisions of the Treaty

governing the capabilities of strategic missile systems. This certification shall be accompanied by a report to the Senate of the United States indicating how U.S. National Technical Means, including collection, processing and analytic resources, will be marshalled to ensure effective monitoring. Such report may be supplemented by a classified annex, which shall be submitted to the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Armed Services and the Select Committee on Intelligence of the Senate.

The PRESIDING OFFICER. The Chair would note that under the previous order those amendments are now agreed to.

So the amendment (No. 3111) was agreed to.

Mr. LUGAR. I thank the Chair.

Mr. STEVENS. Will the Senator yield?

Mr. LUGAR. I am happy to yield to the Senator.

Mr. STEVENS. Was there a summary of those amendments and a explanation along with the Senator's submission?

Mr. LUGAR. I respond to the distinguished Senator that a summary was not included with the text.

Mr. STEVENS. I ask unanimous consent that we be permitted to insert in the RECORD an explanation of each of the provisions within that amendment.

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

AMENDMENT SUMMARIES

Amendment No. 1: Nothing in START II changes the rights of either party to the Anti-Ballistic Missile (ABM) Treaty.

Amendment No. 2: Adds the condition that the U.S. shall not implement START II reductions until the Treaty has entered into force.

Amendment No. 3: Requires the President to report yearly on symmetrical nuclear weapons reductions.

Amendment No. 4: Calls upon the President to consider whether to seek only those strategic future reductions consistent with U.S. National Security interests.

Amendment No. 5: States the compliance expectations of the Senate and asks for periodic updates from the administration on compliance issues.

Amendment No. 6: States the requirement for Senate advice and consent to any possible future amendments to START II.

Amendment No. 7: Discusses the compatibility of offensive deterrence and defenses against ballistic missiles, and calls upon the United States and Russia to implement the Bush/Yeltsin Joint Statement on a Global Protection System.

Amendment No. 8: Requests that the President suspend licenses for the use of foreign excess ballistic missiles until he submits a report to the Congress on the implications of the licensing approval on the American space launch industry and on non-proliferation efforts.

Amendment No. 9: Declares the United States commitment to ensure the safety, reliability, and performance of its nuclear forces. This includes declaring support for a new production source of tritium and maintaining the capability of resuming underground nuclear testing if there is a national decision to do so.

Amendment No. 10: Reviews Intelligence Committee issues.

Mr. LUGAR. Mr. President, one more point of parliamentary inquiry. Is the status now of the START II Treaty proceedings at a point at which no further amendments are in order and the next stage of activity will be when the Senate is next in executive session and this is called forward, that 6 hours of debate plus potential unlimited time allotted to Senator THURMOND would be in order at that time?

The PRESIDING OFFICER. The Senator is correct, to the Chair's understanding.

Mr. LUGAR. Followed by disposition of the treaty.

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. LUGAR. I thank the Chair.

I ask my distinguished colleague if he has further comment?

Mr. PELL. No, no further suggestions. Just to congratulate you, Mr. Chairman, and Senator STEVENS, on guiding this legislation through. I thank my own staff, Bill Ashworth, very much indeed.

Mr. LUGAR. I join the distinguished Senator in thanking the minority staff. Of course I thank Kenny Myers and Lindon Brooks, who has been an able backup negotiator of this treaty.

In particular, my colleague from Alaska, Senator STEVENS, who, in his cochairmanship of the Arms Control Observer Group, did a remarkable job in pulling this together for four sessions, with many Senators from both sides of the aisle, to think through the implications of this treaty, to refine the language of the managers' amendment that has been submitted and adopted today.

Does Senator STEVENS have further comment?

Mr. STEVENS. No, Mr. President. I do not have. I am grateful for the comments of my two friends. I do have another statement if we are finished with this matter, though.

Mr. LUGAR. Is it relevant to START II?

Mr. STEVENS. No.

Mr. LUGAR. Mr. President, for the moment 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. STEVENS. 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. STEVENS. Let me ask the Chair, is it proper now to make statements on another matter?

The PRESIDING OFFICER. The Chair will inform the Senator the Senate is still in executive session.

LEGISLATIVE SESSION

Mr. STEVENS. I ask unanimous consent the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senate returns to legislative session.

Mr. DORGAN addressed the chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 10 minutes as if in morning business.

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

THE FURLOUGH OF GOVERNMENT WORKERS

Mr. DORGAN. Mr. President, I have always been enormously proud of serving in the U.S. Senate, and am proud today of my ability to be here to represent my constituents and to make judgments on the part of this country in the public sector and on public policy issues. But there are days when one shakes their head and wonders, what on Earth is this institution, or the institution of Congress, doing or thinking? How can we look as foolish as we look sometimes when the mix of different viewpoints in the House and the Senate between conservatives and liberals produces a gridlock that then produces a bizarre Byzantine result.

I am speaking today of the circumstance when about an hour or two ago, I was on the floor asking a question of the Republican whip. I just watched the other body vote for a resolution of adjournment, and they apparently have now left town and are having no further votes. There will be no additional rollcall votes in the Senate.

We have a circumstance where there will be a continuing resolution, or a funding bill, coming over from the House that provides sufficient funding so that veterans checks that have been written and are now sitting in a warehouse somewhere in this metropolitan area, will be able to be delivered—late, however, but, nonetheless, delivered—and a number of other payments that are important will be made despite the fact that the continuing resolution has not been passed to provide funding for all of the Government's activities.

So some things will get taken care of this afternoon, I assume, by a unanimous consent in the Senate to accept the limited funding resolution provided for by the U.S. House. But some things will not be taken care of. Let me describe what is left undone.

Today, there are 270,000 Federal workers who stayed at home. They stayed at home yesterday and the day before. They are prevented from coming to work. The law prevents them from coming to work because there is no funding for them. And, in fact, those who want to come to work are told they cannot come to work. Two hundred and seventy thousand people are at home today who should be working.

The Speaker of the House said they will be paid anyway as they were during previous shutdowns.

In addition to the 270,000 who are not working, you have another 500,000—one-half million—Federal workers who are working. All of these folks, nearly 800,000 people, get only one-half of a

paycheck during their pay period. And if a continuing resolution is not enacted by January 3, they will get no pay during the next pay period because there is not enough money to do that. It has not been authorized by the Congress to do that.

So what you have are nurses who work in veterans homes, prison guards, law enforcement officials, and others, some of whom make very little money, who during this pay period now before Christmas will receive half of a paycheck. And if something is not done within the next week and a half, on January 3 will receive zero.

Some say, ''Well, we will restore that. We will make sure they all get their money.'' Is that much solace to one who works on relatively low income, trying to make the payments for heat, food, rent, and to buy Christmas presents?

I hope those who sink their teeth into their turkey on Christmas day, and who serve in the Congress and who do not allow us to pass a clean continuing resolution in order to put people back to work to get the Government operating again, those folks who eat turkey on Christmas Day who prevented that from happening will think about the families that are disadvantaged by this.

Think about the nurse at the veterans home who only gets half of a paycheck. I hope they will think a little bit about the prison guards who get half of a paycheck and think about the 270,000 people who have had to explain to their neighbors why they are not at work, which the Speaker of the House says they will get paid for anyway.

Sometimes you just do not have the foggiest understanding why someone does something.

How on Earth can anybody believe that any leverage is provided for anyone to say, ''Well, all right, if there is not a balanced budget resolution completed by this evening, Friday night, we will insist that the shutdown remain in effect''?

Ted Koppel asked five Members of the other body the other evening on his program twice, and they could not answer this question: What leverage does it give you to tell 270,000 Federal workers, ''You cannot come to work, you stay home, and we will pay you''? What leverage is that? Is that not saying to the American taxpayers that we are going to penalize you in order to pay for work that is not done, we are going to do that so we have some leverage? Ted Koppel says, ''What leverage do you have?''

The other day I said that it is sort of like having an argument with your uncle. ''All right, I am angry at my uncle. So I will walk across the street and punch my neighbor.''

What on Earth are they talking about, penalizing the American taxpayer by telling 270,000 workers, ''You cannot come to work, you stay home, we insist on it, and we are going to demand that you be paid''?

What is happening is that the House of Representatives has just adjourned, or passed an adjournment resolution. They are leaving. No more votes. This Senate is going to have no more record votes. We have 270,000 people not working, and the Congress is not coming back—probably not next week at all. Maybe the House comes back in the middle of the week.

So is the assumption here that these 270,000 people who are not working are going to continue not working next week, or maybe the start of the week after? Is the assumption that the American taxpayer is going to keep paying them? Is the assumption that those 270,000 people and the other half million people do not matter because they only get a half a paycheck, and they probably will get no paycheck on January 3rd?

Is not the assumption that the Federal workers, the half million people who are working today, do not matter very much and do not matter to anybody here if they only get a half a paycheck? Does it not matter if they have rent payments to make or food to buy or presents for their children? It does not matter, I guess.

The questions I asked an hour or two ago were, are there conditions under which by the end of today somebody might start thinking a little bit and saying, ''Yes, OK, so we have this big fight going on. Let us at least let these people go back to work and make sure that they are working and that we pay them for working. Let us at least do that.''

It does not make much sense to penalize the American taxpayer for our stubbornness or intransigence. I guess it is an easy thing to say that if we cannot reach an agreement, we will penalize the American taxpayer. It hardly makes any sense to me. I guess I do not understand exactly what is at work.

I watched the proceedings of the other body about an hour ago. I saw an enormous amount of anger, people standing on the floor of the House shouting at each other—I mean literally shouting on both sides. I understand. But, you know, this anger, in my judgment, is aimed in the wrong direction. So, Members of Congress are angry? So what do we do? We say to the American people, ''We will get you. What we will do is we will tell 270,000 people not to come to work, and we will still pay them.'' That is quite a way to manifest your anger.

Can you imagine a city council in this country, they are sitting around the table in their small town in the city council chamber and they say, ''Boy, we cannot agree. We are having a heck of a fight here. We just cannot agree. So do you know what we will do? What we are going to do is we are going to tell all of the city workers to stay home. 'Do not come to work.' We want to keep paying them, but say to all city workers, 'We cannot agree, so you sit at home and we will pay you for doing nothing.'' Can you imagine how long the residents of that city would take to tell the city council members to take a hike?

I just hope all of those in Congress who decided to prevent us from passing a clean appropriations bill to put these people back to work and to stop this goofy shutdown, I hope that they will find a disguise of some sort, because, frankly, if the people who decided we are not going to have Government up and operating but we will pay 270,000 people for doing nothing and we are going to tell these lower income paid Federal workers you get a half paycheck and will probably get no paycheck January 3, I hope nobody recognizes them because I think somebody is going to give them a piece of their mind when they get back home.

I suppose some of them will say, well, I hope the piece of their mind that we get would be stand firm for a balanced budget.

Well, so stand firm. Let us all stand firm for a balanced budget. Let us fight for a balanced budget in the right way. Let us balance the budget the right way, protecting priorities.

But should we, because we cannot agree yet on the specific recipe for balancing the budget, decide to continue a Government shutdown? I understand why people are angry with Congress. This is a decision that makes no good sense for anybody. It gives no advantage for Republicans or Democrats or conservatives or liberals. It provides only disadvantage for the American taxpayer and for the Federal workers who are the pawns—270,000 of whom will stay home and still get paid and a half a million of whom will get a half a paycheck despite the fact that they worked the full pay period.

Now, Mr. President, let me ask for one additional minute.

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

Mr. DORGAN. The Senate is still in session today. And I do not know whether the House is yet out of session. They have said they will have no votes. I still hope and I would still ask everyone who serves in this Congress to think a little bit. Just think a little bit. Does this make any sense at all or is this not totally and completely irrational? Is this the way to end the year in 1995? Is this the spirit of charity? Is this the Christmas spirit? Is this the spirit of compromise to say we are going to use Federal workers as the pawns and say to the American taxpayer, you pay the bill?

I tell you, Mr. President, if the House and the Senate adjourn and quit and say here is the condition under which we quit—a Government shutdown—paying people for not working and for those who work deciding they are not going to get the pay for which they worked, the American people have every right to say, what on Earth are you people thinking of? Could you not begin thinking like the rest of the American people and think through this and do the logical, rational thing?

I just hope that by the end of today the leaders and other Members of Congress will step aside and agree to a clean CR to keep this Government up and operating. Let us start doing what the American people expect us to do.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DORGAN. Mr. President, I am tempted to offer unanimous consent for a clean CR, but I shall not do that. I hope that it will be done by someone and not objected to in the next couple of hours, and with that I yield the floor.

Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

Mr. SANTORUM. I ask unanimous consent that I be able to speak for 15 minutes as in morning business.

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

Mr. SANTORUM. Thank you, Mr. President.

THE WELFARE REFORM BILL

Mr. SANTORUM. Mr. President, I would like to make a few comments about the vote today on the welfare reform bill. Several people have talked to me about it and have expressed concern that we did not receive the bipartisan support in this piece of legislation that we had in the original Senate bill. I want to reflect on that for a few moments and discuss how we might be able to bridge the gap and what kind of gap it is that now keeps us apart on the welfare issue.

First, I would like to thank the Members of the Senate on both sides of the aisle who supported the conference report. I think they will be very proud of the vote they cast as a real step forward for moving this country toward a kind of reform in the welfare system that the American public and the people who are now in the welfare system or may find themselves at some point in time in their life to be in need of the welfare system have been asking for for a long time.

My impression of what went on—just from listening to the debate and the comments of Members who eventually voted against the legislation—was that for the most part Members who voted against this legislation, on the other side of the aisle in particular, were people who felt that they had to vote against it and they were sort of looking for a reason why.

You say, what do you mean they had to vote against it? The President came out yesterday morning and said he was going to veto the legislation. I think I understand why the President did that. I am not too sure I think that the President is vetoing this legislation because he substantively disagrees with it on so many counts, but more that I think he sees welfare as being included in these negotiations that are going on right now in the budget package, and to sign a separate welfare bill sort of takes welfare off the table in the bargaining between all the other programs that are being considered in trying to balance the budget.

I think what the President wanted to do—and I think many Members on the other side agreed with it—is they wanted to keep welfare in play in the greater negotiations, and to sign off on one package without having the interaction of the other programs yet to be determined would, in their estimation, be an unwise move. So I will say to them, it is my firm belief that is what is going on here—I will explain that later—that this was more of a tactical move in opposition to this legislation than it really was a substantive move that this legislation somehow did not meet the test of welfare reform as defined by most Members on both sides of the aisle.

It was interesting for me to note that the people who debated the welfare reform bill here on the floor the last day, last night and today, by and large were the 12 people who voted against the legislation when it first came through.

So the principal opponents, at least the most vocal opponents, on the other side of the aisle were all people who voted against the Senate-passed bill, which got 87 votes; and in fact, the only two people that I can recollect who debated the bill this morning who had previously supported the bill did so on very narrow and limited grounds.

In fact, I have had discussions with those Members subsequently—at least one of them—and think some of the grounds on which they base their opposition actually did not square with the facts. I am not saying that the Senators misrepresented the facts. I am not saying that at all.

I think in this case, because this bill was moved over here so quickly, a lot of the factual information that was in the bill did not get out in proper fashion, and there were changes made to the bill in the last couple of days that were simply not disseminated to the other side. I think there was some misunderstanding, particularly in the area of child care funding, and a look at the facts, I think, would satisfy some of the concerns of Members on the other side of the aisle.

I want to go through the points that were made about the welfare bill as reasons for opposing it and try to explain why those concerns may not have been as legitimate as some would have originally suggested. Some, I believe, are legitimate.

I think there was one concern in particular that I know concerned Members on this side of the aisle and, I think, was the result of the two negative votes over here and, I think, concerned many Members and could be a legitimate reason to, in a sense, hang your hat on opposition to this proposal and actually speaks for including welfare in the larger budget package. What I am referring to is the Medicaid portion or the Medicaid reference in the welfare bill.

It was asked by the Governors and others who were negotiating the Medicaid portion of the Balanced Budget Act that we, for purposes of welfare, do not guarantee anyone who is on AFDC, guarantee them coverage under Medicaid automatically. That is current law, that if you qualify for AFDC, mothers and children automatically qualify for Medicaid.

Governors have said that now they are in the process during this budget debate of working out amongst themselves and Members of Congress to give some more flexibility in establishing who must qualify for Medicaid and allowing them the flexibility to make some of their own determinations.

So they asked, for purposes of this bill, do not lock them in quite yet on guaranteeing Medicaid coverage for AFDC recipients when, in fact, they are negotiating that very issue in their Medicaid discussions. So, as a result, because this bill moved ahead of the rest of the package, we left that provision out and said that is to be negotiated with Medicaid, not with welfare.

As a result, many Members seized upon this and said, ''Oh, what we're doing here is unprecedented. It was not in the House bill, it was in the Senate bill. We are cutting off, in the welfare bill, all these people from Medicaid.'' Well, in a sense that is not completely true. But it certainly makes for a very good reason to vote against this bill even though you can make several arguments against that point.

One is the obvious one I think I have already made in detailing what the problem was; that that decision is going to be made later, and, in fact, it may very well say in the Medicaid bill that AFDC recipients are covered. That is a decision that is going to be made later. It is not that we are making the decision here affirmatively; it is a decision that will be made, but this was not the appropriate vehicle to make it. That does not soothe, I know, a lot of people, but it is in a sense an accurate description of what is going on.

The other point is—or several other points—according to the Congressional Budget Office, all of the children who are on AFDC today would otherwise qualify for Medicaid even if the current legislation which just passed here were signed by the President. That is, children, poor children, would qualify under the Medicaid statute, not under the AFDC statute, and therefore would be eligible for Medicaid even if they were not automatically eligible as a result of receiving AFDC. So children would have been covered anyway.

So to say, as some Members said, we are cutting off children by this is not

an accurate description of at least what the Congressional Budget Office interpreted. In fact, the Congressional Budget Office scored this welfare bill as having all the existing children eligible for Medicaid.

For example, the Congressional Budget Office said that approximately half of the women—again, most AFDC recipient parents are women—half of the women on AFDC would automatically—or I should not say automatically—would otherwise qualify for Medicaid because of their status without the automatic qualification under AFDC.

So that leaves a block of about half of the women who currently receive AFDC, who qualify under AFDC, who would not otherwise qualify for Medicaid. That is a legitimate debate, and I think Members cited that. It is a legitimate debate as to whether this is the right approach to take.

My only point was—and I will go back to the first point I made—that is an issue to be decided in the Medicaid debate, not in the welfare debate, and it is in the process of being decided.

So we have that as, I think, the principal stumbling block and the reason that most Members will be able to go back and say this is why this bill was substantively different than the bill that passed the Senate because, if you look at everything else, if you look at all the other provisions of the welfare reform bill and match it up against the welfare reform bill that passed here with 87–87 votes, there is nary a reason for a dissenting vote of anyone who gave assent the first time. In fact, I would suggest that most of the concerns—or many; I should not say most—many of the concerns that were raised on the other side about the potential toughness of the welfare reform bill were solved by the addition, for example, of 1 billion extra dollars in child care.

Some comments were made by Members on the other side that child care funding was cut. The Senator from Massachusetts and I had a discussion about that last night, and I attempted to clarify that. I will do it one more time. The Senate bill that passed last—I guess a few months ago; I do not know exactly the month—had $8 billion for child care, mandatory child care spending for the first 5 years and $2 billion in the sixth and seventh years combined; so a total of 10 billion in mandatory entitlement child care dollars.

Under the conference bill, in the first 5 years, there was $7.8 billion, not $8 billion as in the original bill, but $7.8 billion, $200 million less, in the first 5 years. However, in the next 2 years, instead of having $2 billion for child care, there was $3.2 billion for child care. So in a sense, we took $200 million and shifted it forward to the sixth and seventh year and added an additional billion dollars for child care.

So there is, overall, more money over the 7 years, just $200 million less in the first 5, but we shifted it, we did not lose it; we shifted it to the sixth and seventh year.

Why did we do that? We did it because the Governors asked us to do it. You say, ''Why would the Governors ask for the money further out?'' The reason is because the participation standards—now what is that? That is the percentage of people who go on to welfare who are going to be required to go to work.

Not everyone who goes on welfare is going to be required to go to work. In fact, in the first year, I believe the number is 20 percent of the people who go on welfare, the States will collect only 20 percent of the caseload and say, ''You will be in the time-limited program, the other 80 percent will be in the old welfare program.'' That will phase up 5 percent a year until we reach 50 percent.

When this program is fully phased in, 50 percent of the people who come on to the welfare rolls will be put in a time-limited welfare program. The other 50 percent will be in the existing program, no time limit.

But because it phases in over time and because anyone who is in a time-limited program when you go in—if you are one of the 20 percent next year that goes into the welfare program, under the law as drafted, you get 2 years of AFDC without having to work. So no one will be required to work under this law—since the block grant in this bill does not go into effect until October 1, 1996—so the first person who walks into the door on October 1, 1996 who is now subject to this law, 2 years later is October 1998, that is the first person who has to work under this law. And, again, 20 percent of the caseload will have to do that, and many of those 20 percent, obviously, will have found work or gotten off the program anyway, so it is only a small percentage of the 20 percent.

What am I saying? The reason they want to backload it is because as participation rates increase, the number of people who are going to need day care because of the work requirements will increase in the outyears. So they really do not need day care funding as much next year or the year after or the year after. It is not until the year 2000, 2001, 2002 that the day care funds really are needed in larger amounts. That is why we pushed the money back.

So I think it was somewhat—well, let us just say erroneous for some reason for Members to argue that there were cuts in day care funds when, in fact, we added more money and put it in the years where we believe the money was to be needed.

So the two major criticisms that I heard on the floor, one being the Medicaid issue and the other being the issue with child care, I think, were not necessarily made accurately.

If I can just make a couple more comments about the Medicaid issue. The one other thing I wanted to mention on Medicaid is that there are several States that have gotten Medicaid waivers already to be able to determine eligibility. They have gotten waivers from the Federal Government to enact their own Medicaid plan and to create their own eligibility standards for who qualifies for Medicaid.

All of the States that have done that have actually expanded eligibility. Let me repeat that. States who have actually gotten waivers and have been given the opportunity to redetermine who is eligible or not have actually not cut people from the Medicaid rolls but have actually expanded the Medicaid rolls.

So the concern that somehow or another if we do not require AFDC recipients to be included in Medicaid that States will immediately rush to cut them off is not borne out by the experiences of the States, like Tennessee and others that have gone forward with their own Medicaid waivers.

That is just an additional point that I think should have been noted.

There were a couple other things that were mentioned that I want to discuss. Those are the two major issues.

So you can see from the discussion that we are really not that far apart on the big issues. In fact, I suggest we, in fact, moved in their direction on one of those two issues, and the other one is going to be debated in the Medicaid debate.

The Democratic leader said that there were cuts in the EITC, the earned income tax credit. That is true. There was a cut in the earned income tax credit. When I say cut, we reduced the rate of growth. That program is expanding tremendously, and we cut back somewhat in the growth in that program, but it is not in this bill.

I do not know whether he suggested that it was or that it is coming later, but he did mention in his statement we cut the earned income tax credit. I just wanted to state for the record that the earned income tax credit is not in the welfare bill; it is not in the bill we voted on. I think that just needs to be clarified for the purposes of the record.

The other comment that I heard on the floor was that we changed the SSI provisions to reduce benefits to some children and knock off the SSI rolls other children. Two comments.

With respect to knocking off children who are on SSI right now, SSI being supplemental security income—children who have disabilities qualify for SSI and who are in poor families. They qualify for roughly $458 a month, plus Medicaid, plus food stamps and other services.

What we have done is something that was in the original Senate bill that passed with 87 votes, as far as redetermining who are truly disabled and should be eligible. That provision passed in the Senate with 87 votes. It was included in the Democratic substitute welfare proposal. That exact language was included in the Democratic substitute, both in the House

and the Senate, I might add. The House had the same language. It got the support of every Democratic Senator at one point in time.

So I do not think there is a dispute that these children who came in and got on SSI as a result of what were individual functional assessments, that those children should no longer be covered under SSI. In fact, there was never even an amendment offered to change that standard. So we can put that issue aside.

The other issue is a legitimate one, and that is that we have reduced payments to some children who are still considered disabled under SSI. Let me explain to you how that occurred.

In the Senate bill, all children who qualified for SSI received the full $458 a month. That is an SSI benefit. That is an SSI benefit whether you are an adult or child. SSI was originally created to be a supplemental income program. That is what it is, supplemental security income. It was supposed to be a supplemental security income program for adults who are disabled and, obviously, not able to work. So we provided this money for them to be able to support themselves.

Children have been included in that but get the same amount of money as an adult who, with that money, must support themselves. Obviously, children do not have to support themselves. Many of the families of children who are on SSI are on AFDC and other government support programs. Some of them are working families, working poor, and qualify as poor and, therefore, their children are eligible for SSI. So that is not the sole source of income to support that child, yet they get the same amount of money as an adult who must use that as their sole means of support.

So what we said in looking at how we could compromise with the House—and what the House had done was take children who qualified for SSI and divided them into two categories: The first category being those who needed 24-hour care or care that if they did not get would have been institutionalized. They would continue to receive cash. Everyone else would get no cash. They would still be eligible for SSI, but they would get no cash. What they would get is they would be eligible for amounts of funds that were then going to be block granted to States, and the States could provide services to them to meet the needs of their disability.

Well, there are many Members on this side of the building who had problems with no cash for these less severely disabled children, and we did not like the idea of the block grant. A lot of disability advocates did not like the idea of a block grant. So what we did is—and Senator CHAFEE worked very hard on this, and I gave him credit for that last night when I talked—we fought very hard on this to keep the cash assistance for all disabled children. But we recognized—and this is the concession we gave to the House—that there were varying degrees of disability, and a child with disabilities that did not require additional attention from the parents to be able to stay at home and live at home, obviously, did not need the kind of cash resources like the more severely disabled children. So we created a differentiation between those who need more constant home care from the parent, which would, in a sense, take the parent from the job market and require them to stay at home, and the children who were disabled but do not require that kind of constant attention, and that is therefore not as much of a drain on the parents to provide for them. So we created that very small difference, which is a 25-percent reduction in benefits. They still receive cash assistance, but they only receive 75 percent of the full SSI payment. We think that was a very reasonable compromise. I can understand how some Members would like to see the full 100 percent. But we think that was a reasonable compromise between what the House and the Senate had come up with.

The final point I wanted to make is in the area of child protection. There were comments made about how we are taking foster care and adoption and family protection services and slashing them under this bill. I will state for the RECORD, again, that under the House bill, this area was block granted completely. All of the services provided under that title were block granted and cut by $2.3 billion over the next 7 years. In the Senate bill, we did not have any provision on this issue, except that we cut $1.3 billion from this area to help finance the rest of the bill. We did not deal with any reforms in the area. We simply took some money out of one section of the child protection area; $1.3 billion was the cut here.

In the conference report, we did not cut $2.3 billion, we did not cut $1.3 billion, we cut $400 million. So the bill that Members voted for here—87 Members voted for it—actually cut the area of adoption and foster care and child protection more than the bill that they now objected to as cutting too much. So, again, I question whether all of that information really was sufficiently discussed and debated and gotten to Members on both sides of the aisle before their votes were cast.

The other point I wanted to make is that the entitlements to maintenance payments for adoption and foster care remained entitlements in the conference report. They were not in the House bill, but we negotiated and maintained the direct payments to children for adoption and foster care as an entitlement under this bill, which we think was very important, and was a step in the direction of those who had concerns about the block grant. The area we block granted, I say to Members, is that in the child protection area, 50 percent of all the money spent in that area is spent on administrative overhead expenses. Fifty percent does not get to the children. It is all very overhead-intensive. What we have done is given the States the flexibility, through the block grant, to eliminate a lot of this overhead expense and get a lot more direct services to the children in need. We also allow for agencies like the police and the social service agency to communicate with each other, which is not allowed under current law.

We think we have taken dramatic steps forward in this area in which we have seen some miserable results in recent months, from the Chicago case to this horrible tragedy of this young girl, Alyssa, in New York, to other tragedies which we are all familiar with in our States. So we believe this is an area that is ripe for new developments and changes. We allow for that in this bill.

In conclusion, I want to say that I think the real differences between the Republicans and the Democrats on the welfare issue come down now to more tactical reasons for not supporting this bill than they do substantive reasons. Again, I am not questioning whether or not it is a legitimate reason to oppose the bill. In fact, I say it very may well be a legitimate reason to oppose this bill. All I am suggesting is that those who voted against this conference report examine it for the particulars that are in here, and look at it in terms of not saying that we have to scrap this and start all over again, when, in fact, I think we have substantial agreement here, and that if we can make some modifications in a couple of the areas that I suggested, and that, in fact, we can find a workable compromise that not only will many Members on the other side of the aisle and, hopefully, all our Members on this side, will be able to support enthusiastically, but one that the President could support and one that we can include in the Balanced Budget Act of, hopefully 1995—maybe 1996, the way things are going.

I thank the Senator from Georgia for his indulgence. I know he has been waiting.

I yield the floor.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

THE WELFARE REFORM BILL

Mr. NUNN. Mr. President, I thank the Senator for his remarks. I had voted for the welfare reform bill when it first came through, not because I thought it was perfect, but I thought the system was so badly broken and that we must move in a different direction, even if we have to patch it up as we go.

However, the conference report had excesses and some provisions in it that I felt were simply going beyond the point that I could support. I appreciate the Senator's remarks today, both in explaining the conference report and also laying out some hostile areas, and the need for putting this back together if indeed it is vetoed.

I think it is important for the country that we get a welfare reform bill

signed into law, at least in the next session, and I appreciate very much his leadership in this area.

Mr. NUNN. I ask unanimous consent to proceed as in morning business.

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

BOSNIA

I. MISTAKES OF THE PAST

Mr. NUNN. Mr. President, many mistakes have been made in Yugoslavia, the most tragic by the parties themselves. All of the mistakes made by the international community added together do not even register on the scale compared to what the parties have done to each other.

Nevertheless, we should learn from our mistakes. Such mistakes include premature international recognition of the separate states before any agreement on minority rights or before any basic test for state viability. Another mistake was the United States and European failure—primarily, at the first instance, European failure—to deal decisively with the first Serb aggression. Commitment of a lightly armed U.N. peacekeeping force in the middle of a civil war was another mistake. Dual-key arrangements required for military action with the United Nations in control was certainly a fundamental violation of any kind of a real effective command structure. And the United Nations constantly posed threats and deadlines with no followthrough, thereby steadily losing credibility. I could go on and on.

This is not, however, meant to denigrate in any way the efforts, often heroic, of the U.N. forces and the numerous international organizations that provided humanitarian assistance to the Bosnian people. Tens of thousands of lives were saved.

There are many lessons for Europe, the United Nations, for NATO, and for our own country in this tragedy that has caused so much hardship and cost so many lost lives.

Mr. President, the job now is to learn from the past and also face the reality of the future. United States and NATO forces face many obstacles and risks in Bosnia, but there is also a bright side based on events that have already occurred and also an opportunity for the future.

II. POSITIVE SIDE

Let me start today with the positive side. On the positive side, the NATO allies finally seem to mean business. Just a few examples: French President Chirac led an effort to provide greater combat capability to the U.N. protection force, and he exercised leadership in firming up the allies' commitment. NATO, urged by the Clinton administration, sent a clear and unmistakable signal of its determination with its bombing campaign against Bosnian Serb command, control and communication facilities when they continued to flaunt their own obligations.

President Clinton seized the opportunity presented by the bombing campaign and the Federation ground campaign to launch an intensive diplomatic effort under the effective leadership of Ambassador Richard Holbrooke that resulted in a comprehensive peace agreement between the parties. The Croatian and the Federation ground campaign, together with the peace agreement, greatly improved the clarity of lines separating the parties making a peace enforcement mission more feasible and less dangerous.

Finally, strong leadership by President Clinton and the United States in this area is producing tangible and positive results in NATO. Just a few of those results in NATO, some of which are truly remarkable.

First of all, Germany is providing troops for this first time ''out of area'' NATO operation. Second, French troops will be operating under NATO command and control. France has announced its return to regular participation in the NATO military committee. This is a reversal, Mr. President, of 30 years of French policy. Russia has agreed to place its forces under the operational control of an American general. Russia will consult with NATO on a 16-nation to one-nation basis, but will not have a veto over NATO decisions.

These events have the potential to lead to future developments with Russia that could have a decidedly positive impact on European security in the years ahead. There are also, of course, potential downsides to this arrangement. There will be no substitute for constant high-level vigilance to this Russian military participation, both in Washington and in Moscow, as well as in the field. This one bears very careful and close nurturing and attention.

All NATO nations except Iceland, as well as many other nations, have committed forces to Bosnia. The United States forces will be primarily in the Tuzla area where the roads and terrain are difficult but not as severe as some other areas of Bosnia. The Nordic brigade comprised of Norway, Denmark, Finland, Sweden, and recently joined by Poland, that will be colocated with American forces, have operated in the area for some time. They have heavy equipment. They have not tolerated interference. They have been friendly with the people of the area, and they have been firm. They are helping our advance team immensely with their advice and their knowledge of the area and of the people.

The Turkish brigade will be near American troops, which should help to temper the more extreme elements of the Moslem communities. Turkey is a key NATO ally with strong influence in the moderate Muslim world.

All of our commanders who have testified before our committee or who have spoken to me privately believe that the rules of engagement are clear, they are robust, and they are appropriate. They authorize the use of force, including deadly force, in response to both hostile acts as well as, in the judgment of the commander, hostile intent. These are the same rules of engagement as were utilized in Haiti. Most importantly, the mission and the military task are doable, according to all of our military witnesses.

III. MILITARY MISSION

A. MISSION DEFINITION

The military mission is a subject of considerable importance in how it is defined. General Shalikashvili has defined our military mission as follows: ''In an evenhanded manner, monitor and enforce compliance with the military aspects of the Dayton peace agreement.''

General Shalikashvili has further listed the military tasks of the Dayton agreement as follows: Supervise selective marking of cease-fire line, inter-entity boundary line and zones of separation.

Monitor and, if necessary enforce, withdrawal of forces to their respective territories within agreed periods as follows:

Ensure withdrawal of forces behind zones of separation within 30 days of transfer of authority from UNPROFOR to the Implementation Force;

Ensure redeployment of forces from areas to be transferred from one entity to the other within 45 days of transfer of authority;

Ensure no introduction of forces into transferred areas for an additional 45 days;

Establish and man a 4-kilometer zone of separation—2 kilometers on either side of cease fire/inter-entity boundary line;

Establish liaison with local military and civilian authorities; and

Create a Joint Military Commission and subordinate military commissions to resolve disputes between the Parties.

In order to accomplish these military tasks, the Military Annex to the General Framework Agreement provides that ''the IFOR Commander shall have the authority, without interference or permission of any Party, to do all that the Commander judges necessary and proper, including the use of military force, to protect the IFOR and to carry out the responsibilities'' under the agreement. The peace agreement, thus, gives the NATO Implementation Force well defined responsibilities—basically to separate the parties and create a stable environment—and grants it broad authorities to carry out its mission and to protect itself. In many ways, NATO's clearly defined responsibility with very broad authority and robust capability is the opposite of what the U.N. forces evolved into: broad and ill-defined responsibility with narrow authority and limited capability. The worst kind of combination. General Shalikashvili has testified that the military mission and the military tasks are appropriate and executable.

B. DEFINITION OF SUCCESS AND EXIT STRATEGY

There is a strong correlation between the definition of success when you are using military forces and also the exit strategy. I would like to briefly discuss those.

In discussing the obstacles to the success of the military mission we first must avoid confusing the military mission with the much broader U.S. and international political goals in Bosnia. It is a part of the overall political goals, but it is only one part of the broader goal.

In my view, we should view the military mission as a success if the Implementation Force provides the time and space for the parties, assisted by the international community, to begin a peaceful building process. I use the term ''building'' in both the physical and political sense; that is, both building the democratic processes for a unified nation and reconstructing the economy and the physical infrastructure of the nation.

The military part of the mission is to create the climate and stability required to begin the building process. The civilian part of the mission is to build the political and civil institutions that can endure. In the long run, only the parties themselves can bring about this success.

The building process is separate and distinct from the military mission. It is entirely possible that the military mission will be carried out with great professionalism and accomplish the military goal and still have the civilian building process end in dismal failure. That is what I think we have to recognize.

The success of the military mission will require a great deal of coordination with the Parties' military and civilian representatives and with the High Representative and the participating civilian organizations. The Joint Military Commission and subordinate military commissions at the brigade and battalion level will bring all of these parties together under the chairmanship of the Implementation Force commander and his local commanders. One of the principal uses of these forums is for the IFOR commander—U.S. Admiral Smith—and his subordinate commanders to work with the military commanders of the Federation and the Bosnian Serbs at all levels to convince them that peace is in the best interests of their respective peoples and that the military goal of regaining and holding lost territory is not achievable.

Mr. President, they do not have perfect civilian control in this part of the world. If we are going to really get a peace there that endures, a key part of that will be having the military leaders of each one of the parties, the Bosnian Serbs, the Bosnian Moslems, Bosnian Croats, to recognize that peace is in the interests of the people that they represent. That is a key. Our military forces will play a key role in that kind of understanding. This is very, very important.

Bringing the military leadership of the opposing parties together under U.S. and NATO auspices to begin the slow and tortuous process of building trust and cooperation may be one of the most important NATO challenges and opportunities.

The exit strategy and the definition of a successful military mission flow together, in my view. Separating the parties—providing time and space for the civil building process—creating an environment of peace and stability—and through non-U.S. military means, leaving a reasonable military balance which gives the parties an opportunity to defend their own borders. These are all key components of ''success'' in the broad context and are required for a successful exit of U.S. and NATO forces within approximately 1 year.

IV. RISKS

A. RISKS TO THE MILITARY MISSION

Mr. President, I get a lot of letters, and I know all of my colleagues do, about the risks to the United States military forces. These risks are very much on the minds of all of us as we send our young men and women to this dangerous area of the world.

There are certainly risks involved in this military operation.

There are a number of risks to U.S. military personnel. First, I believe, is accidents, based on all the records of the U.N. Forces. Then landmines, snipers, attacks by extremists, hostage taking, and, finally, one that is overlooked many times; complacency of our military forces when things are going well. This complacency can lead to carelessness and can only be avoided by strong leadership from the unit level right on up.

General Shalikashvili testified that he does not believe that our forces will be subjected to attacks from organized combat units. He believes the greatest risk will come from accidents on the dangerous Bosnian roads. In this regard, it should be noted that the U.N. Protection Force sustained 213 deaths, of which 80 were due to combat and 133 due to other causes.

I am confident that the excellent equipment, training and discipline of our forces should minimize the risks, but there will undoubtedly be American casualties. Potential attackers should be on notice that the forces available to NATO and the robust rules of engagement mean that swift and overpowering responses will take place if NATO forces are attacked or provoked.

Our forces are supposed to be evenhanded, and I am sure they will be. But evenhanded does not mean, nor should it imply, being gentle when they are either attacked or when they detect hostile intent. NATO and the United States must insist that President Izetbegovic of Bosnia, fully meet his commitment to ensure that the mujahedin forces depart Bosnia within 30 days of the signing of the peace agreement. This has been a firm pledge by the Bosnian President.

This will be seen by the United States as well as a number of other parties, including the Bosnian Moslems, Bosnian Croats, as well as the Bosnian Serbs, as an indication of the extent of the Iranian and other outside Islamic fundamentalist influence on the Bosnian Moslems.

It is hard to imagine that the Bosnian Moslem and Croat Federation could hold together if there is a pervasive extreme Islamic fundamentalist influence within the Bosnian Muslim entity.

It is also hard to believe that the Bosnian Serbs, particularly those who are living in the suburbs of Sarajevo, and whose cooperation or at least acquiescence is necessary to the security of the forces of the French contingent in that area, will be reassured if the mujahedin do not depart as scheduled. Although I will not dwell on this today, while we are talking about risk, there is also a risk of renewed conflict in Eastern Slavonia or a flare-up in Kosovo.

B. RISKS RELATING TO ARMING AND TRAINING

There are also risks relating to arming and training, which is a mission that I would like to discuss just for a few minutes.

The Regional Stabilization Annex to the Framework Agreement gives the parties 180 days after the agreement was signed to negotiate limits on the levels of armaments. These negotiations are to be carried out under the auspices of the Organization for Security and Cooperation in Europe (OSCE). I want to emphasize that this is a civilian and not a military task and the NATO Implementation Force is not responsible for this effort. The fact that it is a civilian task does not mean that the United States will not play a leadership role in this effort. On the contrary, the United States should endeavor to play a strong leadership role since a general reduction in the number of arms in former Yugoslavia will reduce the risk to the United States and allied forces participating in the Implementation Force as well as improve the chance for lasting peace.

The U.S. commitment to lead an international effort to arm and train the Federation forces was essential to securing the peace agreement but we should make no mistake that it carries substantial risk. An assessment is already underway to identify the capabilities of the Bosnian Serbs and the Muslim-Croat Federation, to assess what the Federation needs to redress its deficiencies, to plan how those needs will be met, and to commence training, since training may be provided immediately under the Regional Stabilization Annex and the UN Security Council resolution that lifts the arms embargo.

If arming and training is not carried out with care, it could wind up increasing the risk to United States forces in Bosnia and alienating our allies. It will be important to ensure that United

States forces in Bosnia are not involved and that the involvement of active duty United States military personnel is kept to administrative functions. In this regard, I was pleased to note that President Clinton, in his letter of December 12, 1995 to Senator DOLE on this issue, stated that ''I will do nothing that I believe will endanger the safety of American troops on the ground in Bosnia.'' Mr. President, I believe all of us agree with that goal. It will also be important for the Administration to keep our allies informed on the steps we are taking and to take into consideration their comments.

The use of a third country, such as Turkey—a secular Muslim country, to carry out the training seems to be the best choice.

In the case of training, I believe the emphasis should be on small unit training and the maintenance, repair and use of defensive weapons and equipment.

In the case of arming, I believe that whatever arms are provided to the Federation, the emphasis must be on defensive capability. By defensive capability, I mean that the weapons, equipment, and training that are provided are suited to allow the force to defend itself rather than to enable it to conduct offensive operations to gain and hold territory. That is a very important distinction—in the kind of equipment we encourage to be furnished by other countries. In the case or weapons and equipment, it would mean emphasizing counter battery radar, night vision devices, communications equipment, anti-armor, ammunition, light vehicles, and the like rather than providing large numbers of tanks and artillery tubes. There also may be a need to perform some modest military construction to relocate the Federation forces out of the cities and towns in which they are presently located.

There are also risks to the military mission that relate to the accomplishment of the civilian political goals.

C. RISKS TO CIVILIAN/POLITICAL GOALS

It is obvious that the planning for the accomplishment of the military tasks is far ahead of that for the civilian tasks and that there is a serious and growing gap between the two.

NATO planning at the strategic and operational levels benefitted greatly from the planning accomplished over the last year relating to a possible NATO operation to extract the United Nations Protection Force from Bosnia.

Our military people have been going through contingency planning on this situation for some time.

Both planning efforts required a common set of data relating to the all-important logistics effort to insert forces rapidly, to stabilize the security situation, and to extract the force safely once the mission had been carried out. Additionally, NATO has an in-place staff that specializes in such planning and is trained to adapt its plans as more information on the specific military tasks become available, as was the case during the negotiation of the General Framework Agreement and its Annexes.

By comparison, the Organization for Security and Cooperation in Europe and the other organizations that will be involved in the civil political mission have no counterpart planning staffs and have no experience in carrying out many of the tasks they will carry out in Bosnia. For example, the High Representative was only named a little more than a week ago to the London Conference.

The broad international political goal is to preserve Bosnia and Herzegovina as a unified country in a region in which peace and stability endures. Accomplishing that broad goal would require overcoming a number of obstacles that could defy its attainment and the civilian side of this will really have to address many of these obstacles.

Mr. President, all we have to do is look at Haiti to find out that you can have a military mission go extremely well but not have the economic development, the infrastructure development, and even the political development keep up with that. And you can still have a country that is hanging on the bare edge. That is the case in Haiti today, and that will also be the case in Bosnia unless the civilian side begins to catch up with the military side and really understand the obstacle to having stability in this region.

Such obstacles include the history of the region, the ethnic consciousness of significant parts of the population, the residual hatred resulting from the cruel and inhuman behavior of the warring parties, such as ethnic cleansing carried out by but not limited to the Bosnian Serbs, and the tendency of the Bosnian Croats and the Bosnian Serbs to identify with Croatia and Serbia respectively rather than with a unified Bosnia and Herzegovina. Faced with such obstacles, reaching the broad political goals will be extremely difficult. The underlying causes of the conflict cannot be cured by the military mission. And it is important for all of us to understand that.

D. BOSNIA—ONE NATION OR PARTITION

Mr. President, the broad goal is to have one nation called Bosnia. There are other tugs in the direction of partition and those tugs have not ended.

The General Framework Agreement and its 11 Annexes contain a number of provisions that both reinforce and undermine the broad political goal of a united Bosnia.

On the positive side for unity, for example, the following provisions reinforce that goal: the commitment to free and fair elections and the protection of internationally recognized human rights and fundamental freedoms in the agreement; the vesting of responsibility in the Federal Government for foreign policy, foreign trade, customs, immigration, and monetary policy; the establishment of a Parliamentary Assembly, a Presidency, and a Constitutional Court; and the arrangements for international assistance for rehabilitation.

On the other hand the following provisions are contrary to that goal of one Bosnia. On that side of the ledger, the recognition of two semi-autonomous entities, the Croat-Muslim Federation and the Bosnian Serb Republic, within clearly demarcated geographic boundaries, each of whom will have their own army; a Parliamentary Assembly whose legislation can be blocked by two-thirds of the representatives from the Federation or the Serb Republic or, in the case of a proposed decision deemed to be ''destructive of a vital interest of the Bosniac, Croat, or Serb people,'' by a majority of the Bosniac, Croat, or Serb Delegates.

We can understand in this parliamentary body how dicey that proposition is.

A three-member Presidency, consisting of one Bosnian, one Croat, and one Serb, in which a decision may be blocked by declaration of one Member that it is ''destructive of the vital interest of the Entity'' he represents.

E. FRAGILE ASSUMPTIONS

Another very tricky proposition, Mr. President, that I would like to mention before closing today are two fragile assumptions that are very important to the overall peace agreement. These are fragile assumptions, and they are interrelated assumptions.

The first assumption is that the Moslem-Croat Federation, which was formed as a result of a U.S. diplomatic initiative in the February 1994 Washington Agreement, will stay together. One only has to recall that the Muslims and Croats armies were actively fighting each other prior to the Washington Agreement and that, even afterwards, the functioning of the city of Mostar has essentially been stymied for more than a year as a result of the inability of the Moslem and Croat mayors to work together. So that is a very questionable assumption.

The second assumption, pertains to the Sub-Regional Arms Control Annex which contains a ''default'' formula for limits on armaments that kicks in if the Parties cannot agree otherwise within 180 days. They first have the opportunity to negotiate. If they do not negotiate, then this so-called default formula and ratios kick in. The assumption is that it is stabilizing to establish a ratio based on the population of the respective parties.

Under that formula, the Federal Republic of Yugoslavia, commonly referred to as Serbia, has a baseline or a limit of 5. The Republic of Croatia has a limit of 2 compared to 5. And Bosnia and Herzegovina have a limit of 2. So the ratio is 5 Serbia, 2 Croatia, and 2 for the Bosnia and Herzegovina entity. The limit for Bosnia is further divided on the basis of a ratio for the Federation 2 and 1 for the Serb Republic.

Assuming the ratios are met in the default formula—it requires a great leap of faith—but even if they are

reached, unless there has been significant political and economic progress, stability is far from assured.

If the Moslem Croat Federation stays together, the Bosnian Serbs' 2 to 1 disadvantage in arms compared to the Federation could serve as an incentive for them to align more closely with Serbia, to the detriment of the goal of a unified Bosnia.

If, on the other hand, the Federation does not stay together, the Bosnian Moslems will be at a 2 to 1 disadvantage in a potential two-front conflict with the combined strength of the Bosnian Croats and the Bosnian Serbs.

Now, I would say that it is unlikely that the Bosnian Croats and the Bosnian Serbs will join in some kind of unified or coordinated attack against the Bosnian Muslims, but the Bosnian Muslims could in the future easily find themselves in a conflict with both parties. These fragile assumptions, which could go awry very easily, make it even more essential from my perspective that the goal of the arms control builddown, the first effort to build down the weapons, as well as any arm-and-train program, leave all the parties with primarily a defensive capability.

If we start basically building up offensive arms, these ratios and all the complexities are going to be vast.

In spite of these fragile and questionable assumptions, I believe that a builddown process is worth a try. I believe that we must undertake at least the effort.

Finally, it will be imperative for the United States to remain engaged at the highest diplomatic levels to assure that the Organization for Security and Cooperation in Europe and other civilian organizations utilize the time available to them to undertake an intensive and focused effort to accomplish their task.

F. RISKS TO MILITARY MISSION RELATING TO CIVILIAN TASKS

Mr. President, possibly the greatest risk to the military mission is that there will be confusion of the military mission and the much broader U.S. and international political goals—confusion in the Congress and confusion in the country.

This has two aspects. The first is that there will be mission creep on the ground with the U.S. military being expected to assume more and more responsibility for the political or civilian aspects of the framework agreement. These include the task of continuing humanitarian aid, rehabilitation of infrastructure and economic reconstruction, the return of displaced persons and refugees, the holding of free elections, police functions within borders, and the like.

One of the trickiest areas is not about separating the forces. That is a clear military mission. But what happens within an area if you start having murders take place within the borders? Whose job is it to take on the policing of that? Certainly, the civilian mission will be to do what they can to restore the function of the police forces, but in the meantime what does the United States military and what do other NATO militaries do when there is really chaos within the borders?

These are a few of the areas that could very easily lead to mission creep.

The second danger—and this is something I think all of us in the Congress have a keen responsibility to keep in mind in our remarks—relates to public perception of how we define the military mission's success or lack thereof. I noted earlier that the military mission is limited. Assuming the United States military leaves Bosnia in approximately 1 year and the conflict there resumes shortly thereafter, has the military mission been a failure under these circumstances? If the news media and the American public confuse our narrowly defined 1-year military mission with the long-term political goals for a united and stable and peaceful Bosnia, the perception of failure after 1 year is possible and perhaps even probable. So I think it is important for us to define these terms very carefully.

V. RESIDUAL FORCE

Since the plans for carrying out the civilian tasks are far behind the military side and since they are so important to the building process, the best case is that there will be a solid beginning toward accomplishing the civilian tasks during the first year of the military deployment. But it will be far from complete. Because of this, I believe that planning must start now for a residual military force to replace the NATO implementation force at the end of a year to give the parties and the organizations helping them the secure environment and confidence they need to continue the longer-term civilian task which without any doubt is going to take far longer than 1 year.

A residual force should not include United States ground forces, in my view, but could be supported by the United States in those military areas where we have unique capabilities. Such a residual force can be a United Nations peacekeeping force or a coalition of forces from European and other nations that are committed to seeing the building process continued. This will in most likelihood take a number of years. The point is that the planning for a residual force needs to commence as soon as possible.

Finally, as a necessary contingency, the United States should begin to work with our allies to ensure continuing cooperation to contain the conflict if the peace process breaks down, either while our troops are there or after we leave in about a year. NATO's vital interests in my view have never been involved in Bosnia itself—important interests, but not vital. But NATO's vital interests could certainly be involved if there is a spread of this conflict. Strategic planning within NATO must begin now for a long-term containment strategy if that breakdown occurs.

Mr. President, the United Nations deployment to Macedonia in which United States and Nordic forces are participating is a first step, only a first step but at least a first step, toward this broader containment strategy which may be essential in the long run.

Mr. President, I thank my colleagues for their attention, and I thank the Chair for the time. I would at this point yield the floor.

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. 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.

TRIBUTE TO TOM PETTIT

Mr. DOLE. Mr. President, I want to take a moment to pay tribute to a friend and a former NBC correspondent, Tom Pettit, who passed away today in New York. For more than a generation, Tom gave millions of viewers a front-row seat to a world of news and politics. As NBC news vice president Bill Wheatley noted:

> His work was always distinctive: There was never any doubt that it was a Tom Pettit report. Truly, he was among the very best in the profession that he so loved.

Having interviewed every President since Harry Truman, Tom certainly earned his stripes in broadcast journalism. He preserved many moments of history, including the tragic assassination of President John F. Kennedy in Dallas. I know I speak for all of my colleagues in sending our thoughts and prayers to his wife, Patricia, and his children: Debra, Anne, James, and Robert.

JOINT STATEMENT

Mr. DOLE. Mr. President, just for the information of my colleagues, following the meeting today at the White House, we issued a joint statement. I will just read the joint statement.

We have agreed that we will issue statements from now on so we do not have any problem about somebody saying something that might be misinterpreted. And the joint statement reads:

> Today we had good meetings which built on the progress made in yesterday's discussions. Staff will prepare further analysis to clarify options for the budget advisory group, which will then advise the principals on outstanding issues. Following the meeting of the budget advisory group, the principals will meet again next Friday afternoon.

So there will be a meeting with the President and the Vice President, the chief of staff, Leon Panetta, and the leaders of the House and the Senate.

On Thursday of next week and Wednesday of next week, staff and the advisory committees will meet.

So without much elaboration, I will say, in my view, we had a good session, very positive. I felt people wanted to get something done.

We discussed some very difficult issues. The hard decisions have not been made yet, but I guess without being too specific, it is fair to say, at least right now, the attitude of everyone is very positive, and I hope that we can do what the American people want us to do, and that is come to some agreement which will balance the budget over the next 7 years, using Congressional Budget Office numbers.

If we can do that—it may be painstaking, it may interrupt holiday schedules for some, but it will be worth it in the long run. So I certainly want to thank all of my colleagues and members of our staff who have been working this past week and will be working next week in an effort to bring about a balanced budget over the next 7 years.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1996

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to House Joint Resolution 136, a continuing resolution just received from the House; that the joint resolution be read a third time and passed; and that the motion to reconsider be laid upon the table.

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

So the joint resolution (H. J. Res. 136) was read the third time and passed.

PERMITTING FEDERAL EMPLOYEES TO RETURN TO WORK

Mr. DOLE. Mr. President, while we are waiting, I will just say we have been trying to find some way that would permit Federal employees around the country to come back to work without enacting another continuing resolution. It is costing $40 million a day because we are going to pay the Federal employees. It is no fault of their own they are not working. It seems to me—at least I am getting a lot of calls from taxpayers around the country saying, ''Why are you paying people for not working?''

My view is they ought to be able to go back to work, but under the law, they cannot even volunteer to go back to work, because if they volunteer, their supervisor might be in violation of some criminal statute. There is a purpose for all this, because if you do not have any money in the agency, it is pretty hard to say we are going to pay salaries.

But in this case, in fact we agreed to say, it is safe to say, this afternoon—it should have been in that joint communique—the principals agreed those who are furloughed will be paid because it is no fault of their own.

As the Washington Post said in an editorial, they are the victims, they are the pawns in this struggle for a balanced budget, and if you are in the Agriculture Department, we passed that appropriations bill, as the Presiding Officer knows because he is chairman of that Appropriations subcommittee, and they are working and they are getting paid. But if you work for the Interior Department, you are not getting paid because we have not passed a CR—we passed the Interior bill. Unfortunately, the President could have put people back to work, but he vetoed it.

So we have been trying to find some way out of the impasse because there are Federal workers—in fact, I heard this morning on the radio representatives of the Federal employees union saying that it is giving the Federal employees a bad image; that many believe they are out there shopping in the shopping malls knowing they are all going to get paid, and they are just getting more time off.

So I discussed in general the concept with Senator DASCHLE while we were at the White House and have been working with Senator WARNER throughout the day. We believe we have found a way that would permit Federal employees to come back to work and they would be paid on the assurance given by not only the principals in today's meeting, but a letter signed by myself and the Speaker of the House last Thursday directed to Senator WARNER and to Congresswoman MORELLA, Congressman TOM DAVIS and Congressman FRANK WOLF.

Let me read it:

> Section 1342 of title 31, U.S. Code, is amended, (1) by inserting after the first sentence ''for the period December 15, 1995, through February 1, 1996, all officers and employees of the United States Government or the District of Columbia Government shall be deemed to be performing services relating to emergencies involved in the safety of human life or the protection of property and, (2) by striking out the last sentence.

Hopefully by then we will have completed our balanced budget and everybody will be back to work in a normal fashion.

I am going to try to clear this on the Democratic side and send it to the House. I have had a brief discussion with the Speaker, and I am not certain if he has had a chance to analyze this. But this does two things, we are told.

First of all, it permits Federal employees to go back to work without getting somebody in trouble, and, second, it assures they are going to be paid.

So I hope we can clear this before the evening ends. I am not certain the House could take it up today, but they will be back on Wednesday.

I know there is a lot of stress and unrest among Federal employees who are not working, but they will be paid, which means there is a lot of stress and unrest with the general taxpayers who wonder why they are not working if they are going to be paid. So this would permit Federal employees to do what I guess nearly everyone wants to do in the first place.

I wish to thank my colleague from Virginia, Senator WARNER, who has just come to the floor, for his assistance. We are trying to clear this at this point with the Democratic leader. If we cannot do that, at least I will have the bill printed in the RECORD and perhaps we can bring it up again next Wednesday when we are back in session.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. DOLE. I will be happy to yield.

Mr. WARNER. Mr. President, I just wish to thank the distinguished majority leader. Throughout this current series of problems and, indeed, in the last series, I was able to work with him expressing at all opportunity the need for the Federal employees to be treated with fairness and equity and compassion, and that means going back to work.

I just want to thank the leader for what he has done, and I am delighted to be a cosponsor of this particular piece of legislation, which, Mr. President, will enable them to be treated just like all other civil service employees, and I think that is the bare minimum we owe to these fine people who are public servants in every true sense.

Mr. DOLE. I think there is another matter we need to deal with very quickly because there are, I understand, 470,000, almost 500,000 employees who are working who are going to have difficulty being paid. So we need to address that very quickly, and we are working on that.

So as I was saying, as the Senator from Virginia indicated this morning, it is costing $40 million a day. These employees want to work and they cannot work. They cannot volunteer. Somebody is going to be in trouble if they do that. So we have discussed this with the Parliamentarian and legislative counsel, and this brief language would permit them to go back to work and also assure them they would be paid. Those are the two purposes of the resolution.

Mr. WARNER. Mr. President, again, I thank the distinguished leader, and I hope it is accepted.

Mr. DOLE. Mr. President, there is a considerable amount of what we call wrap-up around here. While that is being prepared, 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. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

E. BARRETT PRETTYMAN FEDERAL COURTHOUSE

Mr. WARNER. Mr. President, I am introducing a bill today to name the Federal courthouse—U.S. District Courts and Circuit Court of Appeals for the District of Columbia Circuit—in the Nation's Capital in honor of the late Chief Judge E. Barrett Prettyman.

Following my graduation from the University of Virginia Law School in

1953, I was privileged to serve as his law clerk. He was then a member of the circuit court, and later became Chief Judge of the Circuit Court of Appeals for the District of Columbia.

As one of the Nation's most distinguished jurists, I believe that this building complex should be named for Judge Prettyman in honor of his more than 35 years of service in judicial affairs.

Further, Mr. President, I wish to add that the Environment and Public Works Committee, on which I serve, has recently approved the authorization for design of a D.C. courthouse ''annex'' to be appended to the existing structure. The urgent need for an ''annex'' was brought to my attention by the Honorable Oliver Gasch, U.S. District Judge, speaking on behalf of the jurists, local bar, and others in this judicial district. This ''annex'' is critically needed because of the ever-increasing number of cases here in the Nation's Capital and the ever-growing importance of the Circuit Court of Appeals.

The existing buildings, together with the ''annex,'' will be named for the distinguished former Chief Judge, E. Barrett Prettyman.

He was born in Lexington, VA, home of my alma mater, Washington & Lee University, and he was a resident of six Virginia cities over the course of his lifetime making him both a Virginian and a Washingtonian. He also had connections with the State of Maryland. So he is truly a greater metropolitan area citizen.

After graduating from Randolph-Macon College in Ashland, Virginia, he earned a law degree from Georgetown University.

Mr. President, the recognition of the many accomplishments and contributions of Judge Prettyman to his chosen profession—that is, the law and to his community—are known by many here in the Nation's capital, and all across America.

He served as the Chief Judge of the United States Circuit Court, from 1953 to 1960, and is perhaps best known as the first Chief Judge of the court to take his case for judicial reform to Congress and to the American people.

As the son of the Chaplain of the United States Senate during the Wilson administration, Judge Prettyman had a knowledge of the Congress of the United States. Testifying before Congress on numerous occasions, Judge Prettyman asked the Judiciary Committee to provide funds to authorize two additional judges to relieve the backlog of cases before the Juvenile Court which was then served by only one judge. By allowing for two additional judges to serve the court, Judge Prettyman believed justice would be better served. And, as we know, justice delayed is justice denied.

Called the swing man by observers of the nine-member circuit court of appeals, Judge Prettyman made his mark as much for his decisions as his leadership.

In the centrist role he wielded exceptional influence over the opinions of this court. In what perhaps was his best-known opinion, Judge Prettyman wrote that the State Department has a right to bar entry for U.S. citizens into certain areas, such as Red China. The 1959 ruling by the court in which William Worthy, Jr., a journalist attempted to obtain a passport to visit Red China, he wrote that ''While travel was a right''—Judge Prettyman wrote—''it can be restrained like any other right in foreign affairs, especially in the international posture of today's world of jets, radio, and atomic power. A blustering inquisitor vowing his own freedom to go and do as he pleases can throw the whole international neighborhood into turmoil.''

This decision was ultimately upheld by the Supreme Court of the United States.

His 26 years on the Federal bench demonstrated him to be fair, firm, and thorough. And I might add, Mr. President, he had a great sense of humor.

Always seeking insight from his colleagues, he was well suited to serve as the chairman of the judicial conference composed of all of the Federal judges in the area. In 1960, he noted to as the chairman of this conference that ''more than to any other person or group, the people have a right to look for suggestion as to what needs improvement and how.''

While seeking advice and counsel from his colleagues on new and better ways to serve the judiciary, Judge Prettyman was also highly visible in areas which he felt needed improvement.

He was a strong advocate for providing free legal aid to the indigent, as well as the desirability in appointing an African-American to serve as a juvenile court judge.

I might also add, Mr. President, that I worked with Judge Prettyman to set up a special institute at Georgetown University, which institute was to serve those lawyers who desired to be better trained and better qualified in the representation of indigent defendants. That was a landmark accomplishment by this distinguished jurist.

Judge Prettyman served as an appointee under both the Kennedy and Johnson administrations. Under President Kennedy, Judge Prettyman served as chairman of the panel appointed to inquire into the U–2 incident and aided President Johnson as chairman of a committee studying the feasibility of phasing out veterans administration hospitals.

He was indeed an exceptionally able and scholarly judge.

I can think of no better qualified or more lasting tribute to such a fine, honorable public servant than to name the U.S. courthouse in the Nation's Capital the ''E. Barrett Prettyman Federal Courthouse.''

Mr. President, I also wish to thank his son, a lifetime friend and former law partner of mine, E. Barrett Prettyman, Jr., now a senior partner of Hogan & Hartson. He is an extraordinary man in his own right with great accomplishments, having served three Supreme Court Justices in the course of his career as a law clerk, and known throughout the United States as one of the foremost advocates before the Supreme Court of the United States. I thank him, and members of Judge Prettyman's family for their acquiescence and assistance with this proposed legislative naming.

Mr. President, I thank the Chair. This is a particularly moving moment for me to pay tribute to this great American. And I am hopeful that eventually the Congress will accept this. The pending legislation for the augmentation of the Federal district court is before the House of Representatives, and I anticipate its approval in the very near future. And I also wish to acknowledge the support of Congresswoman ELEANOR HOLMES NORTON with whom I discussed this matter before preparing this speech.

I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

FEDERAL EMPLOYEES WORK AND PAYMENT

Mr. DOLE. I send a bill to the desk with respect to Federal employees on behalf of myself, Senator WARNER, and Senator STEVENS, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1508) to assure that all Federal employees work and are paid.

The bill (S. 1508) was considered, ordered to a third reading, read the third time, and passed, as follows:

S. 1508

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

SEC. . ALL FEDERAL EMPLOYEES DEEMED TO BE ESSENTIAL EMPLOYEES.

(a) IN GENERAL.—Section 1342 of title 31, United States Code, is amended for the period December 15, 1995 through February 1, 1996—

(1) by inserting after the first sentence ''All officers and employees of the United States Government or the District of Columbia government shall be deemed to be performing services relating to emergencies involving the safety of human life or the protection of property.''; and

(2) by striking out the last sentence.

Mr. DOLE. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, let me thank my colleagues, particularly Senator DASCHLE, the Democratic leader. We did discuss it today at the White House. It is not a perfect solution as people will find when they get into it, because if the employee returns to work and there is an expenditure involved they may not be able to carry out their normal duties. But at least I think from the standpoint of self-esteem, whatever, the Federal employees can come back to work and if they are paid, that would be satisfactory to them and to others who object to Federal employees being furloughed and then being paid. When they come back, they will not have a problem because they will at least be reporting for work and they will be at work and they will be paid.

It seems to me that in fairness to the Federal employees, this is not—as I said earlier, they are sort of in the middle. They are sort of the pawns in this exercise. I hope the House will take this and consider it carefully. Maybe they can improve upon it. They will be back on Tuesday. And I thank my colleagues on both sides for clearing this legislation.

Mr. FORD addressed the Chair.

Mr. DOLE. I will be happy to yield.

I yield the floor.

Mr. FORD. One item we tried to add to the continuing resolution earlier today was a clean CR so that we would not have any question.

Mr. DOLE. Right.

Mr. FORD. And the distinguished majority leader said in the Chamber yesterday he did not approve of closing Government down. And I appreciate what he is trying to do here. I think this needs some work on it.

Mr. DOLE. Right.

Mr. FORD. I believe the majority leader agrees with that, because if the others are not being paid, how does that Federal employee perform the service that he is there voluntarily doing until such time as a continuing resolution is passed for them to be paid?

So I thank him for trying here, but a clean CR would have been much better than what we are trying to do. We are monkeying with the statutory provisions now, and I am not sure that we are doing everything that we ought to do. A clean CR would have accomplished the end result, and I think it is unfortunate that we are furloughing Federal employees by statute and then paying them for not working by continuing resolution at the rate of $40 million a day.

I yield the floor.

Mr. WARNER. Mr. President, I say to my distinguished colleague, this is a clear effort by the distinguished majority leader and, indeed, with the consent of the distinguished minority leader to take this process a step further.

Mr. FORD. I understand that.

Mr. WARNER. Let us make it clear that this is a step forward, and it puts all Federal civil servants in one category and not two classes, so to speak.

Mr. FORD. I understand that, I say to my friend. And I say to him, a clean CR would have taken care of everything, and now we send what we think is compassionate in our clean CR to the House and they take out Medicaid and send it back to us and recess.

These sorts of things just do not ring well outside the beltway.

Mr. WARNER. Mr. President, the Senate included the Medicaid provision and the House seems to think that there are other sources of funding available. A signature pen on a lot of these bills would have obviated many of the problems. So I do not suggest at this time, this late at night we ought to reopen what has been thoroughly debated this week.

Mr. FORD. I understand.

Mr. WARNER. This is a substantive, concrete step forward by the distinguished majority leader, and I am privileged to have been the cosponsor of this legislation.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I do not argue with my friend from Virginia at all. I have had a call from my State as it relates to the Medicaid payment. They are very concerned about it. That is a quarterly payment. It ends this month. The January, February, and March quarter for Medicaid is vitally important to them. And then when we have the, I think, good judgment to include that in the continuing resolution and the House said there are other means of paying it, well, if there are other means of paying it, let us not fuss at the Secretary of the Treasury trying to keep the Government open and keep it afloat with money when he finds other ways to make ends meet around here.

So I just wanted to make the point, and I do not want to offend my friend from Virginia. I understand what the Senate is trying to do and I applaud Senator DOLE for saying he does not want to shut the Government down. So the blame now is where it ought to be. The blame now is where it ought to be, not on the Senate.

BUDGET NEGOTIATIONS

Mr. HEFLIN. Mr. President, these budget proposals now being negotiated will directly affect virtually every segment of the Government and every citizen of this country.

I am strongly in support of deficit reduction and favor the elimination of the national debt over a period of time. I have long supported a balanced budget amendment to the Constitution. I supported the 1993 reconciliation bill which has already led to significant reductions in our annual deficits. But as with any omnibus legislation of this type, there is a right and wrong way to pursue the same goal.

In our endeavor to achieve reductions in deficit spending, our priorities should be to reach an agreement on a 7-year budget and eliminating the Federal deficit. I think this is the wrong time for tax cuts. Eliminating tax cuts from the equation at this time will enable us to reach an agreement on the budget, and overcome this political impasse. Consideration on the proposed tax cuts should be postponed for 2 years to determine if deficit targets are being met, and in order to allow intensive study and hearings to determine what taxes should be reduced and how much taxes can be cut without detouring off the road toward a balanced budget.

Furthermore, focusing our attention to balancing the budget and reducing the Federal deficit, while postponing consideration of tax cuts, will allow hundreds of thousands of Federal workers to return to work and return a sense of financial stability to our country.

I have several major concerns surrounding the proposals, but the most disturbing are the cuts in Medicare and Medicaid. The Republican plan would cut Medicare growth by $270 billion over 7 years. It mandated a major restructuring of the program to supposedly give Medicare enrollees a wide range of options to join private health plans. However, I am concerned that instead of options, senior citizens would be faced with fewer alternatives, and forced into certain plans because they have no choice.

This direction would ultimately cause senior citizens to be charged more for health care while receiving less in Medicare. A great portion of the savings in Medicare would result by raising the part B premium. The premiums that our senior citizens pay would rise from the $46.10 per month to nearly $90.00 by the year 2002.

I have reservations and misgivings with regard to any Medicare reform that threatens the access to, and quality of, health care for senior citizens. I am fearful that the Republican plan would cut inpatient hospital service, home health care services, extended care services, hospice care, physicians services, outpatient hospital services, diagnostic tests, and other important services to our senior citizens.

In addition to a reduction in services, the following immediate burdens would be placed on our senior citizens: For fiscal year 1996, the monthly premium would rise to $53.70. Participants in the part B program would be required to pay the first $150.00 of expenses out-of-pocket rather than the current $100 deductible. These combinations with the proposal to raise the eligibility age to 67 leads me to believe that seniors are being singled out to bear the brunt of budget cuts.

These extreme cuts to Medicare also threaten health care for millions of people of all ages living in rural America. Since rural hospitals rely on Medicare for a significant proportion of their revenue, they will be particularly hard hit. Some will be forced to close altogether. Hospitals in rural areas are

few and far between. A hospital closing affects all rural residents in the vicinity, not just seniors on Medicare. Under the GOP plan, these Americans will be forced to drive further to the nearest hospital, putting lives at risk.

Not only do these proposals cut Medicare, but Medicaid is also being reduced over the next 7 years. For the past 30 years, the Medicaid Program has been America's health and long-term care safety net. The Republican proposal was to repeal Medicaid, slash its Federal funding over the next 7 years, and to turn remaining Federal funds over to the States in the form of a block grant. In a State like Alabama, which is habitually faced with budget proration, the effects of such additional burdens would be huge and devastating.

The bottom line is this—these Medicaid cuts are simply too much, too soon. Our State will not be able to cope without hurting people severely.

Mr. President, as I stated before, our primary objective must be to first focus on passing a budget that reduces the Federal deficit without putting Americans who rely on Medicare and Medicaid at risk, and then after 2 years, turn our attention to the issue of reducing taxes.

PASSAGE OF THE SOURCE TAX BILL

Mr. REID. Mr. President, today, I am extremely pleased to announce that the source tax bill has again passed both houses. As many of you know, this legislation was passed in the 102d and 103d Congresses, and again in the 104th Congress as an amendment to the budget bill, only to be struck because of the so called Byrd rule. I have been working on this issue virtually since I came to Congress.

There are many people who have been essential to the bill's passage, and I wish to acknowledge some of them now. This issue was brought to my attention by a Navadan named Bill Hoffman. He told me about the unjust cases of retirees being taxed by States they no longer were living in. Many of these stories were very tragic, because the retiree relied completely on their pension incomes to survive.

Bill and his wife Joanne heard so many of these tragic stories that eventually they started an organization known as Retirees to Eliminate State Income Source Tax [RESIST]. RESIST was founded in July 1988 in Carson City, NV. In less than 4 years, it had grown in membership to tens of thousands of members. It includes members of every State of the Union. RESIST is truly a nonprofit, grass roots organization, and I congratulate and thank Bill and Joanne today for their tireless efforts. Without their help the source tax bill would not have made it to this stage today.

I would also like to extend my sincere thanks to Chairman ROTH and Senator MOYNIHAN, their staff, and especially the Finance Committee staff, for all of their help getting the source tax bill out of committee and to the floor. With everything that has been going on in recent weeks, they made this bill a priority and I am very grateful for their hard work.

I also extend my thanks to Senator BRYAN and Congresswoman BARBARA VUCANOVICH and her staff. The Congresswoman has also been working on this bill for a very long time, and my colleague, Senator BRYAN, has been continually supportive and essential in the passage of this bill.

Currently, retirees may be forced to pay taxes to States where they do not reside, and from which they receive no benefits. This is truly an unfair practice, especially for those retirees with relatively low incomes. This bill prohibits States from taxing the retirement income of nonresidents. It ends taxation without representation. It will protect all income received from pension plans recognized as qualified under the Internal Revenue Code. It will also exempt income received under certain nonqualified deferred compensation plans.

Often times, the pension income retirees receive is the only income they have on which to live. I have heard many stories of the devastating effects of taxing these pensions. One story, which I have told on this floor before, is of an older woman from Fallon, NV, who had an annual income of between $12,000 and $13,000 a year. One day she receives a notice from California saying she owes taxes on her pension income from California, plus the penalties and interest on those taxes.

The California Franchise Board had gone back to 1978 and calculated her tax debt to be about $6,000. That is half of her annual income. This story, as unfair and unequitable as it sounds, is unfortunately not unique. That is why this legislation is such a big victory for all retirees in this country.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, the skyrocketing Federal debt is now slightly in excess of $11 billion shy of $5 trillion.

As of the close of business Thursday, December 21, the Federal debt—down to the penny—stood at exactly $4,989,393,165,359.35 or $18,939.82 on a per capita basis for every man, woman, and child.

GOVERNMENT ''SHUTDOWN''

Mr. SIMPSON. Mr. President, as this unprecedented Government ''shutdown'' continues, I trust we will not fail to consider its impact in terms of how it affects so many individuals.

In my home State of Wyoming—a ''public lands'' State—the closure of national treasures such as Yellowstone National Park inflicts pain and frustration on many fronts. This closure, and the shutdown of related facilities and activities in my State, is a ''hammer blow'' to the recreation industry. It is an extreme disappointment to those who have long planned outdoor recreational vacations in that pristine winter environment. It also has a devastating economic impact on businesses and individuals throughout the region.

All across America, people's lives are being harshly affected by this action and it is all too easy—in our effort to view this problem on a regional, national, or even philosophical scale—to forget the needs and desires of the many individuals who sent us here to Washington not to bicker things to death, but to try to resolve them.

Let me cite here another example of the many affects of the shutdown of key services and facilities. I am deeply honored to serve as a Regent of the Smithsonian Institution. It is shut down. People from around our Nation—and from all around the world—as a part of this holiday season, have gathered their families to visit the Anacostia Museum, the Arts and Industries Building, the Cooper-Hewitt National Design Museum in New York, the Freer Gallery of Art, the Hirshorn Museum and Sculpture Garden, the National Air and Space Museum, the National Museum of African Art, and National Museum of American Art, the National Museum of American History, the National Museum of the American Indian, the National Museum of Natural History, the National Portrait Gallery, the National Postal Museum, the National Zoological Park, the Renwick Gallery, the Arthur Sackler Gallery, the Smithsonian ''Castle,'' the National Zoo, and a host of research facilities. But they won't. They can't. These facilities are not open to the taxpaying public. Their treasures are not to be viewed. The people who so wish to visit them over the holidays must be wondering wide-eyed, ''What on earth is going on!?''

The museums of the Smithsonian report more than 25 million visitors annually. This great treasure of an institution is about to celebrate its 150th anniversary. And yet it is closed.

Last December more than 1 million people visited the Smithsonian museums and galleries.

In past years, visitorship in the last week of December has been double the week before. This year, most likely, it will not be.

The Smithsonian's retail shops and restaurants netted $2.6 million for the Institution last December—$440,000 in the final week alone, not counting restaurant proceeds. This is traditionally one of the most productive months for these operations of the Smithsonian. Until this year.

Another beneficiary of the Smithsonian's ''draw'' is the District of Columbia—itself in the midst of a major financial crisis. The Smithsonian's closure will certainly result in a parallel reduction of income for the District, as people learn there is no reason—and no way— to visit.

In the case of Yellowstone Park, our three-member Wyoming delegation is working with our fine Governor, Jim Geringer, and with the Department of Interior in a sincere effort to craft an arrangement whereby Yellowstone can be reopened. It is not yet known whether that can yet happen, but if that is the case, the impact of this regrettable ''shutdown'' can be, at least to that certain degree, minimized—1997 will be Yellowstone's 125th anniversary.

The Smithsonian will be celebrating a birthday too. I trust that later today we will be able to call up and pass H.R. 2627, the House passed legislation authorizing the minting of a commemorative coin celebrating the Smithsonian's 150 years of existence. This legislation is being presently held at the desk, has been ''cleared'' on our side of the aisle and, I believe, will soon be ''cleared'' on the other side.

Swift passage of this legislation will be a clear and bright signal of our concern for this wonderful institution. Sales of this commemorative coin will help to minimize the financial damage of this unfortunate shutdown to the Smithsonian.

And beyond all that, I trust that in this holiday season we might be especially mindful of our duties and responsibilities to our Nation, our States, and our dear friends, family and neighbors as we deal with the vexing issues that divide us. Perhaps those eternal concepts of integrity, common purpose, trust, fair compromise and statesmanship can again carry us through this difficulty, helping us to responsibly agree as to the path that should guide us and so many future generations of Americans.

Mr. SIMPSON. Mr. President, I rise to speak about this crucial yet potentially devastating issue of raising the debt ceiling. It's certainly obvious why raising the debt ceiling is so crucial—the Government must meet its obligations.

However, I do find this whole exercise a devastating testament to the continuing excesses of spending.

Last year, I served on the bipartisan Commission on Entitlement and Tax Reform, which was guided through the deep swamps of entitlement spending by two remarkable and courageous men—Senator BOB KERREY, who served as our able chairman, and our former colleague, Senator Jack Danforth, who served as vice chairman.

From June through December, the Commission held a series of public meetings in which we looked for any and all ways to slow down the incredible pace at which entitlement spending is growing. Along the way, the Commission approved—by a vote of 30 to 1—an interim report which spelled out some highly sobering truths about Federal spending.

Perhaps the single most important finding in the interim report was that entitlement spending and interest on the debt together accounted for almost 62 percent of all Federal expenditures in 1993. Furthermore, according to the Congressional Budget Office, this spending will consume fully 72 percent of the Federal budget by the year 2003 if the present trends continue. These are expenditures that occur automatically without Members of Congress casting so much as a single vote. This ought to serve as a ''wake-up call'' to all of us that we are headed on a course to disaster unless we act affirmatively to change course.

By the year 2012—less than 20 years away—entitlements and interest on the mounting debt will together consume all tax revenues collected by the Federal Government. We stand to have no money left over for national defense, education, national parks—pick your program.

Unfortunately, the Commission concluded its business in December without reaching an agreement on specific recommendations for bringing entitlement spending under control. That was most disappointing to me. I offered my own solution, as did the Co-Chairs, Senators KERREY and Danforth, but the majority of the Commission would not endorse the necessary measures.

However, 24 of the Commission's 32 members joined in writing a letter to President Clinton, emphasizing the need for ''immediate action'' and outlining various policy options—some of which Senator KERREY and I have introduced in a retirement reform package to shore up the Social Security Program.

Each of us has an obligation—not only to our constituents, but to ourselves and our children and grandchildren—to confront these issues head-on. Whatever outrage and hostility we may encounter from today's defenders of the ''status quo''—and there will be plenty of it, a world of it—it will pale in comparison to the richly deserved scorn we will receive from future generations if we fail to have the courage to act on the impending entitlements crisis.

So as we act on the raising of the debt ceiling, let us remember what this means to our children and grandchildren who will be billed for this debt. That's why I supported the inclusion of a ''generational accounting'' chapter in the President's budget. We need to be reminded of what this debt means to future generations, and why defenders of the status quo who oppose our budget-balancing efforts should be called to account.

MARVIN STONE

Mr. LEAHY. Mr. President, Marvin L. Stone, the chairman and president of the International Media Fund, has issued a final report on a 5-year effort he headed to assist emerging journalists in the former Soviet Union in identifying their new role as skeptics, rather than employees, of the state.

Mr. Stone and volunteers from the U.S. newspapers and media have taught, trained, and conducted workshops to give a boost to men and women who were struggling to nurture new independent media in the post-Communist countries of Central and Eastern Europe.

It was not an easy task. Mr. Stone reports that IMF encountered a bloated, entrenched, corrupting bureaucracy in the wake of the Communist collapse. And this bureaucracy, Stone adds, continues to fight a rear guard attempt at redemption—and a return to power.

The guiding principle brought to Central and Eastern Europe by Mr. Stone is the first amendment, a beacon that has kept America on course for more than 200 years. We can only hope that at some future date, it will be in the preamble of every constitution adopted by the countries of the old Eastern bloc.

Mr. President, I ask unanimous consent that the message from Chairman Stone be printed in the CONGRESSIONAL RECORD so that other Americans may learn of the work of this native Vermonter and the important contribution of IMF to sustain democracy in the post-cold-war world.

I have relied on his advice and his dedication to public service for a generation. All Americans owe him thanks for all he does.

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

MESSAGE FROM THE CHAIRMAN

(By Marvin L. Stone)

Five years ago a few of us started a three-year project whose goal was both simple and straightforward: to give a boost to men and women who were struggling to nurture new independent media in the post-Communist countries of Central and Eastern Europe.

It may cross the mind that we overstayed our leave by two years. The fact is that we, and others in the field, underestimated how difficult was the challenge. The Communists left behind a bloated, entrenched, corrupting bureaucracy. Even now it is obvious that these same apparatchicks are fighting a rear guard attempt at redemption—and a return to power.

So, while we are wrapping up our five years before the job is finished, we are eager to share our experiences with others who will continue what we have started. Perhaps the report on these pages will be of help.

Largely, ours is a story of going in cold to work with a skeptical bunch of journalists in countries as different as Estonia is from Albania, as Poland is from Hungary.

''Why are you here?'' was always question Number One.

It soon became known that although the International Media Fund was financed largely by U.S. government dollars, it had a fiercely independent Board of Directors and an army of volunteer American editors, publishers, broadcasters and academics willing to join in our effort. From the start is was understood that the U.S. government would not interfere with policy decisions of the Board.

Surveys by our own staff soon indicated what we had already sensed: that it was not going to be possible to try to build the new media from the top down. The ideological roots of anyone over 40 were too deeply implanted. So we decided to build from the bottom up. Training was aimed at younger newcomers starting to work in the field. We invited local universities to let us help train

their youngsters, the opinion-molders of tomorrow. And we also helped establish journalism resource centers to work with college-age students and professionals—and, yes, wannabees off the street. At the same time, we did not neglect business workshops, to help the new independent newspapers and broadcast stations survive in the competitive marketplaces of ideas and economics.

We've tried to put some numbers together (including our work over the last two years in Russia).

By our reckoning:

We conducted 29 workshops for about 1,300 broadcasters.

We arranged 14 special broadcast survey and consultation trips.

We conducted 13 business workshops for some 650 newspaper executives.

We held 22 journalism and business workshops, jointly held for about 1,000 broadcast and newspaper participants.

We established 14 university radio and television training facilities or stations.

We helped start 16 university student publications.

We worked with 19 Central and Eastern European universities.

And those figures do not include the participants at the great many workshops and training courses held at the six journalism resources centers supported by the Fund, or the training equipment supplied by the Fund to those centers, or the participation by Fund representatives as speakers or discussion leaders in numerous media conferences arranged by others in the U.S. and Europe.

Our donations of technical equipment is equally impressive. In fact, the Media Fund is leaving behind a substantial presence—giant printing presses, computer units, radio stations, television companies, journalism centers and university courses, none of which existed five years ago.

But beyond a check list is something more important. Our hundred or so American volunteer professionals made a lasting impression whenever they ventured—from Vladivostok in the east to Prague in the west, from Tallinn in the north to Tirana in the south, with Warsaw and Bratislva and Bucharest and other cities in between. And our own small staff, of course, made all this possible—a vigorous start to a job yet to be completed. We are leaving the scene early only because our primary source of funding no longer allows us the freedom and flexibility to carry out the mission for which we were created.

The labor of these five years is our legacy from those of us who have lived in a land with a free press to those journalist sin other lands who wish to enshrine democracy in the future.

THE 30TH ANNIVERSARY OF JUDGE COFFIN'S APPOINTMENT TO THE FEDERAL COURT OF APPEALS

Mr. COHEN Mr. President, 30 years ago, President Johnson wisely acceded to Senator Edmund Muskie, urging that Frank Coffin be nominated to fill a vacancy on the U.S. Court of Appeals for the First Circuit. Soon afterwards the President sent Senator Muskie a photograph of the two of them inscribed ''Dear Ed, Come let us reason together—L.B.J.'' This is the very message that Judge Coffin has been delivering to colleagues on the bench, advocates at the bar, and scholars across the country—''come, let us reason together.'' And for three decades now, jurists, lawyers, and academics have responded to this invitation to engage in a dialog about the law with the learned barrister from Lewiston.

Judge Coffin came to the law in a more simple time, before the age of mega-firms, multimillion-dollar verdicts, and television cameras in the courtroom. He hung out his shingle in Lewiston and practiced law the way many lawyers probably wish they could today, in a one-man firm servicing the day-to-day legal needs of his individual clients. His relationship with a fellow Bates College graduate, Ed Muskie, brought him into politics, and then, after almost a decade of service in Congress and the executive branch, he joined the bench.

From his vantage point on the first circuit, he has witnessed a revolution in the law, from the activist period of the Warren and Burger courts, to the new formalism of today's majority. Yet he has remained a pragmatist, examining the nuances of each set of facts, identifying the competing interests at stake, and then drafting an option that candidly expresses the reasons for the court's ultimate judgment. Judge Coffin's concern has been with legal craftsmanship, not trendy theorizing. The careful balancing of competing interests ''is not jurisprudential theory,'' he has written, ''but, done well, it is a disciplined process, a process with demanding standards of specificity, sensitivity, and candor.''

He is a product of the age of civility. Advocates who have appeared before the court, often in the harshest of disputes, aptly characterize him as ''a real gentleman, kind and decent, smart as a whip, formal and polite, a great judge.'' ''He has the kind of demeanor,'' one attorney wrote, ''where everyone comes out of court feeling good, even the eventual losers.''

He has dedicated the lion's share of his career to public life and believes strongly in the virtues of public service. ''I do worry about young people today,'' he has said, ''going into the most lucrative professions where they earn immense amounts of money rather than working in public service, which needs good people more than ever.''

For 30 years, the people of Maine, litigants before the first circuit, and the legal profession in general have benefited from the service of a good person—Frank Coffin. Lawyer, politician, jurist, scholar, he continues to contribute to the quality of our national dialog.

U.S. INTERNATIONAL AVIATION POLICY

Mr. PRESSLER. Mr. President, I rise today to discuss a very important development in U.S. international aviation policy that occurred over the past year. I do not refer to any particular bilateral aviation agreement, although the number of new international air service opportunities created in 1995 was impressive and unprecedented. Instead, I wish to highlight the critical lesson we learned during the year and, hopefully, will continue to apply.

Simply put, the best way for the United States to secure the strongest possible international aviation agreements is for our negotiators to make decisions based on economic analysis with the goal of maximizing benefits for the U.S. economy. In other words, international aviation decisions should turn on what is best for our country, not which carriers can generate the most political support. In 1995, Transportation Secretary Peña did an excellent job in this regard and the results speak for themselves. U.S. passenger and cargo carriers are capitalizing on a plethora of new international opportunities, while the increased competition brings consumers lower air fares, reduced shipping costs, and greater choices.

This new focus on economic analysis, which I have advocated and enthusiastically support, is beneficial in several other regards. First, it has the practical effect of elevating U.S. international aviation policy to the status of a national trade issue. Second, it clearly defines the criteria the United States applies in assessing international aviation agreements and, by doing so, gives foreign nations a clearer understanding of what will and will not be acceptable to our negotiators. Finally, it prevents foreign nations from exploiting parochial disagreements between our carriers.

Looking ahead to 1996, it is imperative that sound economic analysis continues to be the guiding principle in our international aviation negotiations. We face a number of significant challenges, most notably aviation policy with Japan and the United Kingdom. Also, we have a golden opportunity to obtain an open skies agreement with Germany which would be a catalyst for further liberalization of air service opportunities throughout Europe. Next year is shaping up to be a very important year for U.S. international aviation policy.

Mr. President, let me emphasize that I believe the best bilateral aviation agreement for all parties involved is one which is open and permits market forces to determine what air service is provided in particular markets. Open skies agreements ensure consumers pay a competitive air fare, maximize consumer choice, and promote greater efficiencies for all carriers. Having made that important point, let me briefly turn to our relations with our three most important aviation trading partners overseas: Japan, the United Kingdom, and Germany.

As I have said in this body before, the major impediment to liberalizing aviation relations with the Government of Japan is the high operating costs of Japanese carriers. Due in large part to Japan's tightly regulated airline industry, Japanese carriers have operating costs significantly higher than United

States competitors. Until the Government of Japan permits its carriers to become more competitive, there will be enormous pressure within Japan to continue to protect the Japanese air service market.

The Government of Japan, along with other Asia-Pacific Economic Cooperation [APEC] members including the United States, recently committed to work toward the goal of free and open trade between all member nations. The so-called Bogor Declaration has the potential to have a major impact on United States-Japan aviation relations. Time will tell.

One thing, however, is certain in United States-Japan aviation relations. The continued refusal of the Government of Japan to abide by the terms of United States-Japan bilateral aviation agreement concerning beyond rights guaranteed to several of our carriers will undoubtedly complicate aviation relations between our two countries.

Currently, the Government of Japan is refusing to honor United Airlines' right to provide service between Osaka and Seoul, Korea. Also, Federal Express Corporation is being wrongfully denied the right to provide service between Japan and China. In August, this body unanimously passed a resolution I sponsored calling on the Government of Japan to respect the beyond rights of our so-called 1952 carriers. Apparently that message has not yet been heard.

Why have beyond rights become such a point of contention between the United States and Japan? From a long-term perspective, I suspect it has something to do with the fact that passenger and cargo service opportunities in the Asia-Pacific market beyond Japan are booming. For example, the International Air Transport Association [IATA] estimates by the year 2010 there will be around 288 million international passengers traveling within the intra-Asian air service market alone. Beyond rights from Japan are absolutely essential if U.S. carriers are to fully participate in the booming Asia-Pacific market.

Turning to aviation relations with the United Kingdom, I continue to be very concerned about the extremely restrictive United States-United Kingdom bilateral aviation agreement. Of all our international aviation agreements, I believe the most restrictive agreement—and therefore our most anticonsumer bilateral—is the so-called Bermuda II agreement with the United Kingdom. Ironically, in areas other than aviation, our trade relations with the British are generally based on free market principles.

How lopsided is the United States-United Kingdom bilateral aviation agreement? For starters, recent statistics indicate approximately 58 percent of the passenger traffic between the United States and the United Kingdom is carried on British carriers. Due to capacity controls and other restrictions, our carriers are forced to settle for 42 percent of that traffic.

Moreover, according to a recent report prepared by the Commission of European Communities [EC], between 1984 and 1994 British carriers improved their market share vis-a-vis United States carriers by 21 percent. During the same period, a majority of carriers from other European Community countries lost market share. These statistics are particularly remarkable when one considers the fact that operating costs of European carriers generally are higher than those of U.S. carriers. Clearly, market factors are not controlling the distribution of air service opportunities between the United States and Britain.

Mr. President, the principal problem in United States-United Kingdom international aviation relations continues to be access for our passenger carriers to London's Heathrow Airport. Access to Heathrow is particularly important since it is arguably the most important gateway airport in the world. It offers connecting service opportunities worldwide. In fact, approximately one-third of all passengers traveling to Heathrow connect to flights elsewhere.

So why is access to Heathrow such a sticking point? The British argue the sole explanation is airport congestion. This may be part of the problem but, as I explained to this body several months ago, the British could create significant new take-off and landing opportunities at Heathrow simply by switching their runway operations to a more efficient operating mode. Perhaps another factor is yields on flights to Heathrow are generally 15 percent higher than those to London Gatwick Airport. Heathrow is the hub of British Airways, the most profitable airline in the world.

Since October, phase 2 negotiations with the British have been suspended. I believe, however, we owe it to consumers on both sides of the Atlantic to continue to press for further liberalization of the United States-United Kingdom bilateral aviation agreement. In that regard, I recently wrote Sir Colin Marshall, the chairman of British Airways, in response to his call for a ''bigger, bolder and braver approach'' to liberalizing air service opportunities between our two countries. I hope his enthusiasm is shared by the British Government.

I ask unanimous consent that a copy of my correspondence to Sir Colin Marshall to which I have referred be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. PRESSLER. Mr. President, in contrast to the reluctance of the British to liberalize air service opportunities between our countries, a very important opportunity has presented itself in Germany. Based on a recent meeting with German Transport Minister Matthias Wissmann, I believe the German Government is enthusiastic about promptly securing an open skies agreement with the United States. For this reason, I recently wrote Secretary Peña and Secretary Christopher urging them to intensify our negotiating efforts with Germany. I ask unanimous consent that a copy of that correspondence be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. PRESSLER. What would an open skies agreement with Germany mean for United States carriers? Such an agreement would produce significant direct and indirect benefits for our carriers. Let me explain.

In terms of direct benefits, an open skies agreement with Germany would immediately produce new air service opportunities for our carriers between the United States and Germany. Equally important, German airports would provide well-situated gateway opportunities for our carriers to serve points beyond Germany such as the Middle East and the booming Asia-Pacific market. In that regard, the Germans recently have expanded airport capacity in Frankfurt and Munich, and a new international airport is planned in Berlin-Brandenburg.

The potential of Germany as a gateway to the Asia-Pacific market is particularly intriguing. IATA estimates that by the year 2010, 10 percent of all international passengers traveling to the Asia-Pacific region annually will originate in Europe. Significantly, that is the same percentage of Asia-Pacific passengers IATA estimates will originate in North America.

With respect to indirect benefits, an open skies agreement with Germany would be an important catalyst for further liberalization of air service opportunities throughout Europe. To put this point in perspective, an open skies agreement with Germany—in combination with liberalized air service agreements we already secured with the Netherlands in 1992 and with nine other European countries earlier this year—would mean nearly half of all passengers traveling between the United States and Europe would be flying to or from European countries with open skies regimes.

Under such a scenario, tremendous competitive pressure would be brought to bear on European countries with whom we do not have liberalized aviation relations. The recent European Commission report on EC/U.S. aviation relations supports my assessment of the competitive impact of an open skies agreement with Germany. In its report, the EC astutely concluded that as a result of our successful initiatives to secure open skies agreements with some European countries, other European countries which resist liberalization ''will either have to follow the open skies policy, or risk being left behind in the competition and in market share.''

Mr. President, I believe the competitive impact of an open skies agreement with Germany would be particularly acute in the United Kingdom and France. As a result, such an agreement would have the significant collateral benefit of strengthening our hand in negotiations with both the British and the French. Let there be no mistake, both British and French airports are today competing with other European airports for international travelers and statistics clearly show the trend favors countries with an open skies policy.

For instance, between 1992 and 1994, total passenger traffic between the United States and the Netherlands grew an astounding 56 percent. During the same period, total passenger traffic between the United States and the United Kingdom grew just 7.5 percent. What does this illustrate? It demonstrates that Amsterdam's Schiphol Airport is drawing passenger traffic originating in the United States away from United Kingdom airports, particularly Heathrow. The significance of this point is not fully appreciated until it is understood that currently passengers connecting onto British carriers at Heathrow alone account for more than 1 billion pounds a year in export earnings for the United Kingdom.

Since this is such a critical point, let me share another example of market forces driving passengers to European countries that have an open skies agreement with the United States. Between 1992 and 1994, the number of passengers traveling from Germany to the United States was more or less stable. During that same period, the number of German passengers choosing to travel to the United States via Amsterdam's Schiphol Airport increased approximately 80 percent.

The potential direct and indirect benefits of an open skies agreement with Germany are tremendous. As I have said, I believe Secretary Peña and Secretary Christopher should aggressively pursue this opportunity.

Mr. President, let me conclude by saying that the international aviation challenges we face in 1996 make it imperative that our negotiators continue to make decisions based on economic analysis with the goal of maximizing benefits for the United States economy. This was a successful formula in our 1995 international aviation negotiations. In 1996, it is critical we build on the lesson we learned over the past year.

EXHIBIT 1

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,

Washington, DC, November 21, 1995.

Sir. COLIN MARSHALL,

Chairman, British Airways, Berkeley Square House, 6th Floor, London, England.

DEAR SIR COLIN: With great interest I read your speech on United States/United Kingdom aviation relations delivered to the Wings Club in New York last week. Your call for a ''bigger, bolder and braver approach'' to liberalizing air service opportunities between our countries peaked the interest of many on this side of the Atlantic.

I agree with you that no two nations are better suited to have a fully liberalized transatlantic air service market than the United States and the United Kingdom. To the extent nations worldwide have embraced the Bermuda I and Bermuda II agreements as a model for restricting air service opportunities in their markets, such an initiative would undoubtedly serve as a shining example for open aviation markets globally. As you correctly observed, consumers benefit most when markets are open and competition is robust.

I hope we can continue the dialogue we started in London in July on how this vision can come to pass. In the meantime, please contact me or Michael Korens of my staff if I can be of assistance.

Sincerely,

LARRY PRESSLER,
Chairman.

EXHIBIT 2

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,

Washington, DC, December 1, 1995.

Hon. FEDERICO PEÑA,

Secretary, Department of Transportation, 400 Seventh Street, SW, Washington, DC.

DEAR SECRETARY PEÑA: As Chairman of the Senate Committee on Commerce, Science, and Transportation, I am writing to urge you to intensify your efforts to obtain an open skies aviation agreement with the Federal Republic of Germany. I am aware that some progress has been made in this regard. I believe, however, the importance of this initiative calls for renewed vigor on the part of both the Department of Transportation and the Department of State.

In addition to immediately creating additional new opportunities for our carriers in Germany, such an agreement would be enormously beneficial to our national interest in liberalizing air service markets throughout Europe. Simply put, an open skies agreement with Germany would bring considerable competitive pressure to bear on all European countries which currently restrict air service opportunities to our carriers.

For instance, I believe an open skies agreement with Germany would contribute significantly to our efforts to liberalize our air service relationship with the United Kingdom. Moreover, such an agreement would provide invaluable leverage in securing a bilateral aviation agreement with France.

Mr. Secretary, I am aware that you share my vision of an open skies agreement with Germany. As your efforts in that regard intensify, please contact me if I can be of assistance.

Sincerely,

LARRY PRESSLER,
Chairman.

NOTICE OF ADOPTION OF PROCEDURAL RULES

Mr. THURMOND. Mr. President, pursuant to Section 303 of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a Notice of Adoption of Procedural Rules, together with a copy of the adopted rules, was submitted by the Office of Compliance, U.S. Congress. These rules, first published in the RECORD of November 14, 1995, govern the procedures for consideration and resolution of alleged violation of the laws made applicable under Part A of Title II of the Congressional Accountability Act. (P.L. 104–1).

The Congressional Accountability Act specifies that the Notice and rules be printed in the Congressional RECORD, therefore I ask unanimous consent that the notice and adopted rules be printed in the RECORD.

Furthermore, the Office of Compliance has available, for review, a ''red-lined'' copy of the proposed rules which were published in the Congressional RECORD on November 14, 1995. This ''red-lined'' copy, along with the final rules, will enable interested parties to note the changes that were made.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: PROCEDURAL RULES

NOTICE OF ADOPTION OF PROCEDURAL RULES

Summary: Section 303 of the Congressional Accountability Act directs the Executive Director of the Office of Compliance to adopt rules governing the procedures of the office. After considering comments to the Notice of Proposed Rulemaking published November 14, 1995 in the Congressional Record, the Executive Director has adopted and is publishing rules to govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Part A of Title II of the Congressional Accountability Act (P.L. 104–1). Pursuant to Section 303(a) the rules have been approved by the Board of Directors, Office of Compliance.

For Further Information Contact: Executive Director, Office of Compliance, Room LA–200, 110 Second Street, S.E., Washington, DC 20540–1999. Telephone (202) 252–3100.

Background and summary

The Congressional Accountability Act of 1995 (''CAA''), PL 104–1, was enacted into law on January 23, 1995. 2 U.S.C. §1301 et. seq. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 301 of the CAA establishes the Office of Compliance as an independent office within that branch. Section 303 of the CAA directs that the Executive Director, the chief operating officer of the Office of Compliance, shall, subject to the approval of the Board, adopt rules governing the procedures for the Office of Compliance, including the procedures of Hearing Officers. The rules that follow establish the procedures by which the Office of Compliance will provide for the consideration and resolution of alleged violations of the laws made applicable under Part A of Title II of the CAA. The rules include procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States. The rules also address the procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance.

To obtain input from interested persons on the content of these rules the Executive Director published for comment a Notice of Proposed Rulemaking in the Congressional Record on November 14, 1995 (141 Cong. R. S17012 (daily ed., November 14, 1995) (''NPR'')), inviting comments regarding the proposed rules. Seven comments were received in response to the proposed rules.

Comments were received from Members of Congress, employing offices and a management employee of the Architect of the Capitol expressing his personal view. After full consideration of the comments received, the Executive Director has, with the approval of the Board, adopted these procedural rules.

Summary and board's consideration of comments

Confidentiality and Sanctions

Summary of comments: Several commenters questioned whether the CAA empowers the Board, Hearing Officers, or the Office to impose sanctions for breaches of confidentiality. They also stated that, assuming sanctions can be imposed, the rules should provide more details as to what conduct may be sanctioned, what the sanctions will be, and how those sanctions will be imposed. One commenter noted that identifying possible sanctions will help forestall any due process challenges in the context of breaches of confidentiality.

Response: Section 1.07 sets forth the standard for imposing sanctions against individuals or employing offices that violate the confidentiality provisions of section 416 of the CAA. The form and procedures governing the imposition of sanctions are modeled after Rule 37(b) of the Federal Rules of Civil Procedure.

Section 1.07 makes clear that the confidentiality provisions prohibit any disclosure of information discussed or exchanged in the course of counseling under Section 402, mediation under Section 403 and Board hearings and deliberations under Sections 405 and 406 of the CAA. Section 1.07 of the rules only prohibits the use of information (including documents) which was obtained by the individual during the counseling, mediation or other proceedings. However, employees, employing offices and individuals that participate in counseling, mediation or other confidential proceedings are not prohibited by these rules from discussing or disclosing information that was obtained by that person outside the confidential proceedings. The Board believes that a confidentiality rule of this breadth appropriately balances the statutory mandates for confidentiality and the statutory mandate to have open and effective counseling, mediation, hearings and Board proceedings. Finally, this section makes clear that communications necessary for the pursuit or defense of claims under the CAA (communications with lawyers or other representatives) are not prohibited, even if such communications involve disclosure of the contents of confidential proceedings. The Board believes that these provisions adequately address the concerns expressed by some commenters that the confidentiality provisions not unduly limit the ability of employees and employing offices to engage in communications which the law should encourage and not discourage parties from utilizing the procedures of the CAA.

It is the intent of the Board that Section 1.07 and the confidentiality provisions apply to non-party participants such as witnesses and representatives. Such persons have voluntarily submitted to the jurisdiction of the Office of Compliance by participating in the proceedings, or are subject to the Office's jurisdiction by virtue of the subpoena power. Section 1.07 is part of the general authority of the Office of Compliance to set the rules and procedures of the Office, including the procedures of hearing officers, under Section 303(a) of the CAA. Section 1.07 is reasonably necessary to preserve the confidentiality of counseling, mediation and Board proceedings mandated by section 416 of the CAA.

Section 1.07 does not authorize sanctions against personnel of the Office of Compliance, as suggested by a commenter. Although the Board agrees that the confidentiality provisions apply to personnel of the Office of Compliance, the Board believes that violations by Office personnel can be adequately addressed as a disciplinary matter within the Office, not under Section 1.07.

Filings by Facsimile Transmission (FAX)

Summary of Comments: On the filing of documents by FAX, two commenters suggested that Sections 1.03 and 2.03 of the proposed rules should clearly state that a request for counseling can be filed by FAX. One commenter stated that the rules should allow ''all documents'' to be filed by FAX. Another commenter suggested that the rules expressly provide that, in order to expedite the pre-hearing and hearing processes, documents may be filed with a Hearing Officer by FAX.

Response: The language of Section 1.03(a) has been clarified to expressly provide that a formal request for counseling may be filed by FAX and a provision has been added to allow the Board or a Hearing Officer, in their discretion, to order documents to be filed by FAX. Generally, allowing all documents to be filed by FAX might impose undue burdens on the receivers of FAX submissions and interfere with the Office of Compliance's orderly handling of documents. Accordingly, the proposed rule has not been modified to allow for such filing.

Withdrawals of Requests for Counseling

Summary of Comments: Several commenters suggested that Section 2.03(k) of the proposed rules should limit an employee's right to reinstate counseling to situations in which the request for reinstatement of counseling is made within the 180-day period established by Section 402 of the CAA. One commenter also expressed concern about the prospect of covered employees extending their claims indefinitely by repeatedly withdrawing from counseling and then reinstating the counseling request until the 30-day limit is reached. Another commenter indicated that the 30-day statutory limit on the counseling period requires the 30 days to be consecutive with no hiatus.

Response: The revised rule permits a covered employee, who has begun counseling, to withdraw from counseling with a single opportunity to reinstate counseling so long as that reinstatement request occurs within 180 days after the alleged violation and the counseling period does not exceed a total of 30 days. This addresses the commenter's concerns regarding the timeliness of counseling and the possibility of extended processing of claims. Because the Board is of the view that allowing an aggregate of 30 days of counseling conducted during two separate time frames is permissible under the CAA, the proposed rule has not been further modified.

Grievance Procedures of the Architect of the Capitol or the Capitol Police

Summary of Comments: Commenters asked for clarification in Section 2.03(m) of the term ''grievance procedures of the Architect of the Capitol or the Capitol Police'' under Section 401 of the CAA. One commenter suggested that Section 203(m) also provide for the Executive Director to recommend to any covered employees that they use grievance procedures which may be instituted in the future in any other employing offices.

Response: The adopted and approved rule defines the term ''grievance procedures'' to include any internal procedure of the Architect of the Capitol or the Capitol Police that is capable of resolving the issue about which the employee of the Architect of the Capitol or the Capitol Police has sought counseling.

Section 2.03(m) of the proposed rules exists by virtue of Section 401 of the CAA and reflects the statutory authorization to toll the statutory counseling and mediation periods if an employee of the Architect of the Capitol or the Capitol Police accepts the recommendation of the Executive Director. The CAA expressly authorizes such tolling of the statutory time periods only with regard to an employee of the Architect of the Capitol or the Capitol Police, and does not permit tolling in other circumstances.

Discoverable Information

Summary of Comments: One commenter stated that Section 6.01 should not limit discovery to ''relevant'' information. Instead, the commenter suggested that, consistent with Rule 26(b)(1) of the Federal Rules of Civil Procedure, a hearing officer should allow discovery of any information ''reasonably calculated to lead to the discovery of admissible evidence.'' Another commenter requested that the rules specifically provide for discovery of requests for counseling and requests for mediation.

Response: The comments have been considered and the rule that has been adopted reflects the discovery standard of Rule 26(b)(1) of the Federal Rules of Civil Procedure. The rule does not, however, provide for the discovery of requests for counseling or mediation because that change in the rule is not necessary and could chill employees in their resort to counseling and mediation and hamper the effectiveness of those processes. To the extent that the commenter believes discovery is necessary to determine whether the applicable statutory requirements for filing a complaint have been met, the Office intends to include sufficient information in the notice of the end of the mediation period to allow such a determination by the employing office to be made.

Disqualification of Hearing Officers

Summary: Two commenters stated that Section 7.03 should provide that the denial of a motion to disqualify a Hearing Officer may be appealed directly to the Board, without review by the Executive Director.

Response: The Board has approved a rule that eliminates the requirement that the Executive Director review motions to disqualify a Hearing Officer and provides for Board review of the denial of a motion to disqualify during the appeal to the Board, if any, of the Hearing Officer's decision on the merits.

Admissibility of Evidence

Summary of Comments: Two commenters suggested that the procedural rules should not require a Hearing Officer to apply the Federal Rules of Evidence. One commenter was concerned that the reliance on the Federal Rules of Evidence would require a covered employee to retain an attorney. Another commenter stated that the rules should merely state that the Hearing Officer shall apply the provisions of the Administrative Procedure Act (Sec. 554 through 557 of the Title 5, U.S. Code) (APA), specifically Sec. 556(d) of Title 5, in hearing a case because Section 405(d)(3) of the CAA instructs that the hearing shall be conducted, ''to the greatest extent practicable, in accordance with the principles and procedures'' of those sections of the APA. This commenter asserts that the Federal Rules of Evidence set a ''more restrictive'' standard than that found in the APA and may limit the development of the hearing record.

Response: Section 7.09 of the rules has not been modified. The Federal Rules of Evidence clarify and more fully develop the APA provisions regarding evidentiary rulings. They are complementary, not contradictory, to the APA. In addition, the procedural rules require that the Federal Rules of Evidence be applied ''to the greatest extent practicable.'' Accordingly, a Hearing Officer, in his or her discretion, may adapt, or

depart from, these rules as warranted. Moreover, as the Federal Rules of Evidence are applicable in the federal courts, the adopted rule provides the collateral benefit of affording some uniformity between the administrative hearing process of the Office of Compliance and civil actions filed in the district courts under Section 408 of the CAA.

Informal Resolution of Disputes

Summary of Comments: Three comments were received with respect to Section 9.03(b) of the proposed rules. Two commenters questioned whether the informal resolution of disputes is permitted under the CAA in light of the requirements of Section 414. Another commenter stated that the proposed rule should be revised because resolution of disputes cannot exist without a mandatory waiver of a covered employees rights or the commitment by the employing office to an enforceable obligation.

Response: Section 9.03 of the rules has been reorganized to clarify its intent and meaning. Before a complaint is filed, an employee and an employing office may agree upon a mutually satisfactory arrangement, thereby resolving the dispute without a waiver by the employee or a commitment by the employing office to an enforceable obligation. The Board has considered the comments but is not persuaded that all early, mutually satisfactory resolutions of disputes between parties must be reduced to writing and approved by the Executive Director under Section 414 of the CAA. Section 9.03 of the rules recognizes that the policy underlying the CAA favors the early resolution of disputes and permits a covered employee for whom counseling and mediation has been successful to withdraw from the dispute resolution process without the requirement that such resolution be reduced to writing and submitted to the Executive Director for approval.

Attorney's fees and costs

Summary of Comments: One commenter suggested that Section 9.01(a) of the proposed rules be modified to prevent requests for attorney's fees during the pendency of an appeal of the Hearing Officer's decision. In this commenter's view, such requests would be ''premature'' because the Board could reverse a Hearing Officer's decision in the complainants favor, making an award of fees inappropriate.

Response: The Board has considered this comment in the context of the applicable provisions of the CAA. Under Section 225(a), if a covered employee is a ''prevailing party,'' the Hearing Officer, Board, or court, as the case may be, may award attorney's fees, expert fees, and any other costs as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964. Similarly, Section 405(g) provides that the Hearing Officer shall order, at the time of the final decision, ''such remedies as are appropriate pursuant to title II'' of the CAA, which includes attorney's fees, if appropriate. These statutory sections contemplate that the Hearing Officer would make an attorney's fee award, if appropriate, without awaiting a decision disposing of the case on appeal.

In actions involving private sector parties, an award of attorney's fees and costs is not delayed ordinarily by an appeal of the decision on the merits. See generally Fed. R. Civ. P., 58, Fed. R. App. Proc., 4(a)(4). The Board has considered the comment and does not find any compelling reason to delay the Hearing Officer's decision on fees and costs simply because the decision on the merits is pending on appeal. Therefore, Section 9.01 of the procedural rules has not been modified.

Class Actions

Summary of Comments: One commenter questioned whether the proposed rules were intended to prohibit class actions and requested that the rules specifically set forth procedures governing class actions.

Response: The procedural rules that have been adopted do not purport to address whether and in what circumstances, if any, employees may pursue class claims. The issue is one that involves substantive legal questions that are not appropriately addressed in these procedural rules.

Additional Comments

Commenters suggested various technical and ministerial changes in the proposed rules which improved their clarity and effectiveness and were consistent with the policy underlying the particular provisions. Those changes have been made and are included in the published rules, which are ''red-lined'' to indicate all changes made.

Several other suggestions, such as what information the Office will include in certain notifications and how it will handle telephonic requests for counseling, will be and are best handled as part of the Office's internal operational process rather than codified in the procedural rules. Similarly, requests that the Senate Chief Counsel for Employment or the House Office of General Counsel receive certain notifications during the dispute-resolution process are best handled by House and Senate internal procedures rather than in the Office's procedural rules, particularly because the confidentiality provisions of the CAA preclude the Office from disclosing the existence of a particular proceeding to individuals other than the parties or their designated representatives. However, to the extent that the commenters sought such notification in order to file an amicus curiae brief, it should be noted that the Board may, in certain cases, solicit such briefs. In those cases the Board will employ appropriate safeguards to ensure that the identity of the participants in any proceeding is not disclosed.

Finally, commenters suggested other additions or modifications to the procedural rules such as not allowing additional time for filings when documents are served by mail, permitting more time for the filing of responses, the imposition of more formal and detailed discovery procedures, the holding of pre-hearing conference at a later date than that proposed, a requirement that parties file pre-hearing memoranda and limitations on a party's ability to object to testimony or the calling of a witness. The Board is of the view that the Office's procedures should be neither cumbersome nor onerous for the parties who wish to participate in the CAA's administrative dispute resolution process and that the short time frames under the CAA, particularly the 60-day period between complaint and hearing, should be fully available for the preparation and processing of claims. It is the Board's considered judgment that to incorporate the foregoing or similar suggestions in the procedural rules would have the undesired effect of discouraging the use of the administrative process and, thereby, encouraging the use of the federal civil process.

PART I—OFFICE OF COMPLIANCE RULES OF PROCEDURE

Subpart A—General Provisions

§1.01 Scope and Policy
§1.02 Definitions
§1.03 Filing and Computation of Time
§1.04 Availability of Official Information
§1.05 Designation of Representative
§1.06 Maintenance of Confidentiality
§1.07 Breach of Confidentiality Provisions

§1.01 Scope and policy

These rules of the Office of Compliance govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Part A of title II of the Congressional Accountability Act of 1995. The rules include procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States. The rules also address the procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance. It is the policy of the Office that these rules shall be applied with due regard to the rights of all parties and in a manner that expedites the resolution of disputes.

§1.02 Definitions

Except as otherwise specifically provided in these rules, for purposes of this Part;

(a) Act. The term ''Act'' means the Congressional Accountability Act of 1995;

(b) Covered Employee. The term ''covered employee'' means any employee of

(1) the House of Representatives;

(2) the Senate;

(3) The Capitol Guide Service;

(4) the Capitol Police;

(5) the Congressional Budget Office;

(6) the Office of the Architect of the Capitol;

(7) the Office of the Attending Physician;

(8) the Office of Compliance; or

(9) the Office of Technology Assessment.

(c) Employee. The term ''employee'' includes an applicant for employment and a former employee.

(d) Employee of the Office of the Architect of the Capitol. The term ''employee of the Office of the Architect of the Capitol'' includes any employee of the Office of the Architect of the Capitol, the Botanic Garden or the Senate Restaurants.

(e) Employee of the Capitol Police. The term ''employee of the Capitol Police'' includes civilian employees and any member or officer of the Capitol Police.

(f) Employee of the House of Representatives. The term ''employee of the House of Representatives'' includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) of paragraph (b) above.

(g) Employee of the Senate. The term ''employee of the Senate'' includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) of paragraph (b) above.

(h) Employing Office. The term ''employing office'' means:

(1) the personal office of a Member of the House of Representatives or a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(i) Party. The term ''party'' means the employee or the employing office.

(j) Office. The term ''Office'' means the Office of Compliance.

(k) Board. The term ''Board'' means the Board of Directors of the Office of Compliance.

(l) Chair. The term ''Chair'' means the Chair of the Board of Directors of the Office of Compliance.

(m) Executive Director. The term ''Executive Director'' means the Executive Director of the Office of Compliance.

(n) General Counsel. The term ''General Counsel'' means the General Counsel of the Office of Compliance.

(o) Hearing Officer. The term ''Hearing Officer'' means any individual designated by the Executive Director to preside over a hearing conducted on matters within the Office's jurisdiction.

§ 1.03 Filing and computation of time

(a) Method of Filing. Documents may be filed in person or by mail, including express, overnight and other expedited delivery. Requests for counseling under Section 2.03, requests for mediation under Section 2.04 and complaints under Section 2.06 of these rules may also be filed by facsimile (FAX) transmission. In addition, the Board or a Hearing Officer may order other documents to be filed by FAX. The original copies of documents filed by FAX must also be mailed to the Office no later than the day following FAX transmission. The filing of all documents is subject to the limitations set forth below.

(1) In Person. A document shall be deemed timely filed if it is hand delivered to the Office in: Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540-1999, before 5:00 p.m. Eastern Time on the last day of the applicable time period.

(2) Mailing. (i) If mailed, including express, overnight and other expedited delivery, a request for mediation or a complaint is deemed filed on the date of its receipt in the Office.

(ii) A document, other than a request for mediation or a complaint, is deemed filed on the date of its postmark or proof of mailing to the Office. Parties, including those using franked mail, are responsible for ensuring that any mailed document bears a postmark date or other proof of the actual date of mailing. In the absence of a legible postmark a document will be deemed timely if it is received by the Office at Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540-1999, by mail within five (5) days of the expiration of the applicable filing period.

(3) Faxing documents. Documents transmitted by FAX machine will be deemed filed on the date received at the Office at 202-252-3115. A FAX filing will be timely only if the Office receives the document no later than 5:00 PM Eastern Time on the last day of the applicable filing period. Any party using a FAX machine to file a document bears the responsibility for ensuring both that the document is timely and accurately transmitted and confirming that the Office has received a facsimile of the document. The party or individual filing the document may rely on its FAX status report sheet to show that it filed the document in a timely manner, provided that the status report indicates the date of the FAX, the receiver's FAX number, the number of pages included in the FAX, and that transmission was completed.

(b) Computation of Time. All time periods in these rules that are stated in terms of days are calendar days unless otherwise noted. However, when the period of time prescribed is five (5) days or less, intermediate Saturdays, Sundays and Federal government holidays shall be excluded in the computation. To compute the number of days for taking any action required or permitted under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing or service shall be included in the computation. When the last day falls on a Saturday, Sunday, or federal government holiday, the last day for taking the action shall be the next regular federal government workday.

(c) Time Allowances for Mailing of Official Notices. Whenever a person or party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her and the notice or document is served by regular, first-class mail, five (5) days shall be added to the prescribed period. Only two (2) days shall be added if a document is served by express mail or other form of expedited delivery. When documents are served by certified mail, return receipt requested, the prescribed period shall be calculated from the date of receipt as evidenced by the return receipt.

§ 1.04 Availability of official information

(a) Policy. It is the policy of the Board, the Office and the General Counsel, except as otherwise ordered by the Board, to make available for public inspection and copying final decisions and orders of the Board and the Office, as specified and described in paragraph (d) below.

(b) Availability. Any person may examine and copy items described in paragraph (a) above at the Office of Compliance, Adams Building, Room LA200, 110 Second Street, S.E., Washington, D.C. 20540-1999, under conditions prescribed by the Office, including requiring payment for copying costs, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Office. As ordered by the Board, the Office may withhold or place under seal identifying details or other necessary matters, and, in each case, the reason for the withholding or sealing shall be stated in writing.

(c) Copies of forms. Copies of blank forms prescribed by the Office for the filing of complaints and other actions or requests may be obtained from the Office.

(d) Final decisions. Pursuant to Section 416(f) of the Act, a final decision entered by a Hearing Officer or by the Board under Section 405(g) or 406(e) of the Act, which is in favor of the complaining covered employee or reverses a Hearing Officer's decision in favor of a complaining covered employee or reverses a Hearing Officer's decision in favor of a complaining covered employee shall be made public, except as otherwise ordered by the Board.

(e) Release of records for judicial action. The records of Hearing Officers and the Board may be made public if required for the purpose of judicial review under Section 407 of the Act.

(f) Access by committees of Congress. At the discretion of the Executive Director, the Executive Director may provide to the Committee on Standards of Official Conduct of the House of Representatives and the Select Committee on Ethics of the Senate access to the records of the hearings and decisions of the Hearing Officers and the Board, including all written and oral testimony in the possession of the Office. The identifying information in these records may be redacted at the discretion of the Executive Director. The Executive Director shall not provide such access until the Executive Director has consulted with the individual filing the complaint at issue, and until a final decision has been entered under Section 405(g) or 406(e) of the Act.

§ 1.05 Designation of representative

(a) An employee, a witness, or an employing office wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney.

(b) Service where there is a representative. All service of documents shall be directed to the representative, unless the represented individual or employing office specifies otherwise and until such time as that individual or employing office notifies the Executive Director of an amendment or revocation of the designation of representative. Where a designation of representative is in effect, all time limitations for receipt of materials by the represented individual shall be computed in the same manner as for unrepresented individuals with service of the documents, however, directed to the representative, as provided.

§ 1.06 Maintenance of confidentiality

(a) Policy. In accord with Section 416 of the Act, it is the policy of the Office to maintain, to the fullest extent possible, the confidentiality of the proceedings and of the participants in proceedings conducted under Sections 402, 403, 405 and 406 of the Act and these rules.

(b) At the time that any individual, employing office or party, including a designated representative, becomes a participant in counseling under Section 402, mediation under Section 403, the complaint and hearing process under Section 405, or an appeal to the Board under Section 406 of the Act, or any related proceeding, the Office will advise the participant of the confidentiality requirements of Section 416 of the Act and these rules and that sanctions may be imposed for a violation of those requirements.

§ 1.07 Breach of confidentiality provisions

(a) In general. Section 416(a) of the CAA provides that counseling under section 402 shall be strictly confidential, except that the Office and a covered employee may agree to notify the employing office of the allegations. Section 416(b) provides that all mediation shall be strictly confidential. Section 416(c) provides that all proceedings and deliberations of Hearing Officers and the Board, including any related records shall be confidential, except for release of records necessary for judicial actions, access by certain committees of Congress, and publication of certain final decisions. See also Sections 1.06 and 2.10 of these rules.

(b) Prohibition. Unless specifically authorized by the provisions of the CAA or by order of the Board, the Hearing Officer or a court, or by the procedural rules of the Office, no participant in counseling, mediation or other proceedings made confidential under section 416 of the CAA (confidential proceedings) may disclose the contents or records of those proceedings to any person or entity.

(c) Participant. For the purposes of this rule, participant means any individual, employing office or party, including a designated representative, that becomes a participant in counseling under Section 402, mediation under Section 403, the complaint and hearing process under Section 405, or an appeal to the Board under Section 406 of the Act, or any related proceeding which is expressly or by necessity deemed confidential under the Act or these rules.

(d) Contents or records of confidential proceedings. For the purpose of this rule, the contents or records of counseling, mediation or other proceeding includes the information disclosed by participants to the proceedings, and records disclosed by either the opposing party, witnesses or the Office. Notwithstanding these rules, a participant is free to disclose facts and other information obtained from any source outside of the confidential proceedings. For example, information forming the basis for the allegation of a complaining employee may be disclosed by that

employee, provided that the information contained in those allegations was not obtained in a confidential proceeding. However, the employing office or representatives other than the complaining party's representative (or, in some cases, the Office) may not disclose that information. Nothing in these rules prohibit a bona fide representative of a party under Section 1.05 from engaging in communications with that party for the purpose of participation in the proceedings, provided that such disclosure is not made in the presence of individuals not reasonably necessary to the representative's representation of that party.

(e) Violation of confidentiality. Any complaint regarding a violation of the confidentiality provisions must be made to the Executive Director no later than 30 days after the date of the alleged violation. Such complaints may be referred by the Executive Director to a Hearing Officer. The Hearing Officer is also authorized to initiate proceedings on his or her own initiative, or at the direction of the Board, if the alleged violation occurred in the context of Board proceedings. Upon a finding of a violation of the confidentiality provisions, the Hearing Officer, after notice and hearing, may impose an appropriate sanction, which may include any of the sanctions listed in section 7.02 of these rules, as well as any of the following:

(i) An order that the matters regarding which the violation occurred or any other designated facts shall be taken to be established against the violating party for the purposes of the action in accordance with the claim of the other party;

(ii) An order refusing to allow the violating party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rending a judgment by default against the violating party;

(iv) In lieu of any of the foregoing orders or in addition thereto, the Hearing Officer shall require the party violating the confidentiality provisions or the representative advising him, or both, to pay, at such time as ordered by the Hearing Officer, the reasonable expenses, including attorney fees, caused by the violation, unless the Hearing Officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal of the final decision of the Hearing Officer under section 406 of the Act.

No sanctions may be imposed under this section except for good cause and the particulars of which must be stated in the sanction order.

Subpart B—Procedures Applicable to Consideration of Alleged Violations of Part A of Title II of the Congressional Accountability Act of 1995

§2.01 Matters Covered by Subpart B
§2.02 Requests for Advice and Information
§2.03 Counseling
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§2.01 Matters covered by subpart B

(a) These rules govern the processing of any allegation that Sections 201 through 206 of the Act have been violated and any allegation of intimidation or reprisal prohibited under Section 207 of the Act. Sections 201 through 206 apply to covered employees and employing offices certain rights and protections of the following laws:

(1) The Fair Labor Standards Act of 1938.

(2) Title VII of the Civil Rights Act of 1964.

(3) Title I of the Americans with Disabilities Act of 1990.

(4) The Age Discrimination in Employment Act of 1967.

(5) The Family and Medical Leave Act of 1993.

(6) The Employee Polygraph Protection Act of 1988.

(7) The Worker Adjustment and Retraining Notification Act.

(8) The Rehabilitation Act of 1973.

(9) Chapter 43 (relating to veterans' employment and reemployment) of title 38, United States Code.

(b) This subpart applies to the covered employees and employing offices as defined in Section 1.02(b) and (h) of these rules and any activities within the coverage of Section 201 through 206 and 207 of the Act and referenced above in Section 2.01(a) of these rules.

§2.02 Requests for advice and information

At any time, an employee or an employing office may seek from the Office informal advice and information on the procedures of the Office and under the Act and information on the protections, rights and responsibilities under the Act and these rules. The Office will maintain the confidentiality of requests for such advice or information.

§2.03 Counseling

(a) Initiating a proceeding; formal request for counseling. In order to initiate a proceeding under these rules, an employee shall formally request counseling from the Office regarding an alleged violation of the Act, as referred to in Section 2.01(a), above. All formal requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under Section 2.03(e)(2), below.

(b) Who may request counseling. A covered employee who believes that he or she has been or is the subject of a violation of the Act as referred to in Section 2.01(a) may formally request counseling.

(c) When, how and where to request counseling. A formal request for counseling:

(1) Shall be made not later than 180 days after the date of the alleged violation of the Act;

(2) May be made to the Office in person, by telephone, or by written request;

(3) Shall be directed to: Office of Compliance, Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540-1999; telephone: (202) 252-3100; FAX (202) 252-3115; TDD (202) 426-1912.

(d) Purpose of counseling period. The purpose of the counseling period shall be: to discuss the employee's concerns and elicit information regarding the matter(s) which the employee believes constitute a violation(s) of the Act; to advise the employee of his or her rights and responsibilities under the Act and the procedures of the Office under these rules; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.

(e) Confidentiality and waiver. (1) Absent a waiver under paragraph 2, below, all counseling shall be strictly confidential. Nothing in these rules shall prevent a counselor from consulting with personnel within the Office concerning a matter in counseling, except that, when the person being counseled is an employee of the Office, the counselor shall not consult with any individual within the Office who might be a party or witness without the consent of the person requesting counseling. Nothing contained in these rules shall prevent the Executive Director from reporting statistical information to the Senate and House of Representatives, so long as that statistical information does not reveal the identity of the employees involved or of employing offices that are the subject of a request for counseling.

(2) The employee and the Office may agree to waive confidentiality of the counseling process for the limited purpose of contacting the employing office to obtain information to be used in counseling the employee or to attempt a resolution of any disputed matter(s). Such a limited waiver must be written on the form supplied by the Office and signed by both the counselor and the employee.

(f) Role of counselor in informing employee of his or her rights and responsibilities. The counselor will provide the employee with appropriate information concerning rights and responsibilities under the Act and these rules.

(g) Role of counselor in defining concerns. The counselor may:

(1) obtain the name, home and office mailing addresses, and home and office telephone numbers of the person being counseled;

(2) obtain the name and title of the person(s) whom the employee claims has engaged in a violation of the Act and the employing office in which this person(s) works;

(3) obtain a detailed description of the action(s) at issue, including all relevant dates, and the covered employees reason(s) for believing that a violation may have occurred;

(4) inquire as to the relief sought by the covered employee;

(5) obtain the name, address and telephone number of the employees representative, if any, and whether the representative is an attorney.

(h) Role of counselor in attempting informal resolution. In order to attempt to resolve the matter brought to the attention of the counselor, the counselor must obtain a waiver of confidentiality pursuant to Section 2.03(e)(2) of this chapter. If the employee executes such a waiver, the counselor may:

(1) conduct a limited inquiry for the purpose of obtaining any information necessary to attempt an informal resolution or formal settlement;

(2) reduce to writing any formal settlement achieved and secure the signatures of the employee, his or her representative, if any, and a member of the employing office who is authorized to enter into a settlement on the employing office's behalf; and, pursuant to Section 414 of the Act and Section 9.03 of these rules, seek the approval of the Executive Director. Nothing in this subsection, however, precludes the employee, the employing office or their representatives from reducing to writing any formal settlement.

(i) Counselor not a representative. The counselor shall inform the person being counseled that the counselor does not represent either the employing office or the employee. The counselor provides information and may act as a third-party intermediary with the goals of increasing the individual's understanding of his or her rights and responsibilities under the Act and of promoting the early resolution of the matter.

(j) Duration of counseling period. The period for counseling shall be 30 days, beginning on the date that the request for counseling is received by the Office unless the employee and the Office agree to reduce the period.

(k) Duty to proceed. An employee who initiates a proceeding under this part shall be responsible at all times for proceeding, regardless of whether he or she has designated a representative. An employee, however, may withdraw from counseling once without

prejudice to the employee's right to reinstate counseling regarding the same matter, provided that the request to reinstate counseling is received in the Office not later than 180 days after the date of the alleged violation of the Act and that counseling on a single matter will not last longer than a total of 30 days.

(l) Conclusion of the counseling period and notice. The Executive Director shall notify the employee in writing of the end of the counseling period, by certified mail, return receipt requested. The Executive Director, as part of the notification of the end of the counseling period, shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the Office a request for mediation within 15 days after receipt by the employee of the notice of the end of the counseling period.

(m) Employees of the Office of the Architect of the Capitol and Capitol Police.

(1) Where an employee of the Office of the Architect of the Capitol or of the Capitol Police requests counseling under the Act and these rules, the Executive Director may recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police. The term grievance procedures refers to internal procedures of the Architect of the Capitol and the Capitol Police that can provide a resolution of the matter(s) about which counseling was requested. Pursuant to Section 401 of the Act and by agreement with the Architect of the Capitol and the Capitol Police Board, when the Executive Director makes such a recommendation, the following procedures shall apply:

(i) The Executive Director shall recommend to the employee that the employee use the grievance procedures of the Architect or of the Capitol Police Board, as appropriate, for a period generally up to 90 days, unless the Executive Director determines a longer period is appropriate for resolution of the employee's complaint through the grievance procedures of the Architect or the Capitol Police Board;

(ii) After having contacted the Office and having utilized the grievance procedures of the Architect or to the Capitol Police Board, the employee may notify the Office that he or she wishes to return to the procedures under these rules:

(A) within 10 days after the expiration of the period recommended by the Executive Director, if the matter has not been resolved; or

(B) within 20 days after service of a final decision resulting from the grievance procedures of the Architect or of the Capitol Police Board.

(iii) The period during which the matter is pending in the internal grievance procedure shall not count against the time available for counseling or mediation under the Act. If the grievance is resolved to the employee's satisfaction, or if no request to return to the procedures under these rules is received within the applicable time period, the Office will consider the case to be closed in its official files.

(2) Notice to employees who have not initiated counseling with the Office. When an employee of the Architect of the Capitol or the Capitol Police raises in the internal procedures of the Architect or of the Capitol Police Board an allegation which may also be raised under the procedures set forth in this subpart, the Architect or the Capitol Police Board should advise the employee in writing that a request for counseling about the allegation must be initiated with the Office within 180 days after the alleged violation of law occurred if the employee intends to use the procedures of the Office.

(3) Notice in final decisions when employees have not initiated counseling with the Office. When an employee raises in the internal procedures of the Architect or of the Capitol Police Board an allegation which may also be raised under the procedures set forth in this subpart, any final decision pursuant to the procedures of the Architect of the Capitol or of the Capitol Police Board should include notice to the employee of his or her right to initiate the procedures under these rules within 180 days after the alleged violation occurred.

(4) Notice in final decisions when there has been a recommendation by the Executive Director. When the Executive Director has made a recommendation under paragraph 1 above, the Architect or the Capitol Police Board should include notice to the employee of his or her right to resume the procedures under these rules within 20 days after service on the employee of the final decision and shall transmit a copy of the final decision, settlement agreement, or other final disposition of the case to the Executive Director.

§ 2.04 Mediation.

(a) Explanation. Mediation is a process in which employees, employing offices and their representatives, if any, meet separately and/or jointly with a neutral trained to assist them in resolving disputes. As parties to the mediation, employees, employing offices and their representatives discuss alternatives to continuing their dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution. The neutral has no power to impose a specific resolution, and the mediation process, whether or not a resolution is reached, is strictly confidential, pursuant to Section 416 of the Act.

(b) Initiation. Not more than 15 days after receipt by the employee of the notice of the conclusion of the counseling period under Section 2.03(l), the employee may file with the Office a written request for mediation. The request for mediation shall contain the employee's name, address, and telephone number, and the name of the employing office that is the subject of the request. Failure to request mediation within the prescribed period will preclude the employee's further pursuit of his or her claim.

(c) Notice of commencement of the mediation period. The Office shall notify the employing office or its designated representative of the commencement of the mediation period.

(d) Selection of Neutrals; Disqualification. Upon receipt of the request for mediation, the Executive Director shall assign one or more neutrals to commence the mediation process. In the event that a neutral considers him or herself unable to perform in a neutral role in a given situation, he or she shall withdraw from the matter and immediately shall notify the Office of the withdrawal. Any party may ask the Office to disqualify a neutral by filing a written request, including the reasons for such request, with the Executive Director. This request shall be filed as soon as the party has reason to believe there is a basis for disqualification. The Executive Director's decision on this request shall be final and unreviewable.

(e) Duration and Extension. (1) The mediation period shall be 30 days beginning on the date the request for mediation is received, unless the Office grants an extension.

(2) The Office may extend the mediation period upon the joint request of the parties. The request shall be written and filed with the Office no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefor, and specify when the parties expect to conclude their discussions. Requests for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the Office.

(f) Procedures. (1) The Neutral's Role. After assignment of the case, the neutral will promptly contact the parties. The neutral has the responsibility to conduct the mediation, including deciding how many meetings are necessary and who may participate in each meeting. The neutral may accept and may ask the parties to provide written submissions.

(2) The Agreement to Mediate. At the commencement of the mediation, the neutral will ask the parties to sign an agreement (''the Agreement to Mediate'') to adhere to the confidentiality of the process . The Agreement to Mediate will also provide that the parties to the mediation will not seek to have the counselor or the neutral participate, testify or otherwise present evidence in any subsequent civil action under Section 408 of the Act or any other proceeding.

(g) Who may participate. The covered employee, the employing office, their respective representatives, and the Office may meet, jointly or separately, with the neutral. A representative of the employee and a representative of the employing office who has actual authority to agree to a settlement agreement on behalf of the employee or the employing office, as the case may be, must be present at the mediation or must be immediately accessible by telephone during the mediation.

(h) Conclusion of the Mediation Period and Notice. If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period has concluded. The written notice to the employee will be sent by certified mail, return receipt requested and it will also notify the employee of his or her right to elect to file a complaint with the Office in accordance with Section 405 of the Act and Section 2.06 of these rules or to file a civil action pursuant to Section 408 of the Act and Section 2.11 of these rules.

(i) Independence of the Mediation Process and the Neutral. The Office will maintain the independence of the mediation process and the neutral. No individual, who is appointed by the Executive Director to mediate, may conduct or aid in a hearing conducted under Section 405 of the Act with respect to the same matter or shall be subject to subpoena or any other compulsory process with respect to the same matter.

(j) Confidentiality. Except as necessary to consult with the parties, their counsel or other designated representatives, the parties to the mediation, the neutral, and the Office shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process. This rule shall not preclude a neutral from consulting with the Office, except that when the covered employee is an employee of the Office a neutral shall not consult with any individual within the Office who might be a party or witness. This rule shall also not preclude the Office from reporting statistical information to the Senate and House of Representatives that does not reveal the identity of the employees or employing offices involved in the mediation. All parties to the action and their representatives will be advised of the confidentiality requirements of this process and of the sanctions that might be imposed for violating these requirements.

(k) Employees of the office of the Architect of the Capitol and the Capitol Police. At any time during the mediation period, the Executive Director may recommend that the

employee use the grievance procedures of the Architect of the Capitol and the Capitol Police in accordance with the procedures set forth in Section 203(m) of these rules.

§ 2.05 Election of proceeding

(a) Pursuant to Section 404 of the Act, not later than 90 days after a covered employee receives notice of the end of mediation under Section 2.04(h) of these rules, but no sooner than 30 days after that date, the covered employee may either:

File a complaint with the Office in accordance with Section 405 of the Act and the procedure set out in Section 2.06, below; or

File a civil action in accordance with Section 408 of the Act and Section 2.11 below in the United States District Court for the district in which the employee is employed or for the District of Columbia.

(b) A covered employee who files a civil action pursuant to Section 2.11, may not thereafter file a complaint under Section 2.06 on the same matter.

§ 2.06 Complaints

(a) Who may file. An employee who has completed mediation under Section 2.04 may timely file a complaint with the Office.

(b) When to file. A complaint may be filed no sooner than 30 days after the date of receipt of the notice under Section 2.04(h), but no later than 90 days after that notice.

(c) Form and contents. A complaint shall be written or typed on a complaint form available from the Office. All complaints shall be signed by the covered employee, or his or her representative, and shall contain the following information:

(1) the name, mailing address, and telephone number(s) of the complainant;

(2) the name, address and telephone number of the employing office against which the complaint is brought;

(3) the name(s) and title(s) of the individual(s) involved in the conduct that the employee claims is a violation of the Act;

(4) a description of the conduct being challenged, including the date(s) of the conduct;

(5) a brief description of why the complainant believes the challenged conduct is a violation of the Act and the Section(s) of the Act involved;

(6) a statement of the relief or remedy sought; and

(7) the name, address, and telephone number of the representative, if any, who will act on behalf of the complainant.

(d) Amendments. Amendments to the complaint may be permitted by the Office or, after assignment, by a Hearing Officer, on the following conditions: that all parties to the proceeding have adequate notice to prepare to meet the new allegations; that the amendments relate to the violations for which the employee has completed counseling and mediation; and that permitting such amendments will not unduly prejudice the rights of the employing office or other parties, unduly delay the completion of the hearing or otherwise interfere with or impede the proceedings.

(e) Service of complaint. Upon receipt of a complaint or an amended complaint, the Office shall serve the employing office named in the complaint, or its designated representative, with a copy of the complaint or amended complaint and a copy of these rules. The Office shall include a service list containing the names and addresses of the parties and their designated representatives.

(f) Answer. Within 15 days after service of a copy of a complaint or an amended complaint, the respondent employing office shall file an answer with the Office and serve one copy on the complainant. The answer shall contain a statement of the position of the respondent employing office on each of the issues raised in the complaint, including admissions, denials, or explanations of each allegation made in the complaint and any other defenses to the complaint. Failure to raise a claim or defense in the answer shall not bar its submission later unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

§ 2.07 Appointment of the hearing officer

Upon the filing of a complaint, the Executive Director will appoint an independent Hearing Officer, who shall have the authority specified in Sections 2.09 and 7.01(b) below. The Hearing Officer shall not be the counselor involved in or the neutral who mediated the matter under Sections 203 and 2.04 of these rules.

§ 2.08 Filing, service, and size limitations of motions, briefs, responses and other documents

(a) Filing with the office; number. One original and three copies of all motions, briefs, responses, and other documents, must be filed, whenever required, with the Office or Hearing Officer. However, when a party aggrieved by the decision of a Hearing Officer files an appeal with the Board, one original and seven copies of both any appeal brief and any responses must be filed with the Office.

(b) Service. The parties shall serve on each other one copy of all motions, briefs, responses and other documents filed with the Office, other than the request for counseling, the request for mediation and complaint. Service shall be made by mailing or by hand delivering a copy of the motion, brief, response or other document to each party, or if represented, the party's representative, on the service list previously provided by the Office. Each of these documents must be accompanied by a certificate of service specifying how, when and on whom service was made. It shall be the duty of each party to notify the Office and all other parties in writing of any changes in the names or addresses on the service list.

(c) Time limitations for response to motions or briefs and reply. Unless otherwise specified by the Hearing Officer or these rules, a party shall file a response to a motion or brief within 15 days of the service of the motion or brief upon the party. Any reply to such response shall be filed and served within 5 days of the service of the response. Only with the Hearing Officer's advance approval may either party file additional responses or replies.

(d) Size limitations. Except as otherwise specified by the Hearing Officer or these rules, no brief, motion, response, or supporting memorandum filed with the Office shall exceed 35 pages, or 8,750 words, exclusive of the table of contents, table of authorities and attachments. The Board, the Office or Hearing Officer may waive, raise or reduce this limitation for good cause shown or on its own initiative. Briefs, motions, responses, and supporting memoranda shall be on standard letter-size paper (8-1/2″ x 11″).

§ 2.09 Dismissal of complaints

(a) A Hearing Officer may, after notice and an opportunity to respond, dismiss any claim that the Hearing Officer finds to be frivolous or that fails to state a claim upon which relief may be granted, including, but not limited to, claims that were not advanced in counseling or mediation.

(b) A Hearing Officer may, after notice and an opportunity to respond, dismiss a complaint because it fails to comply with the applicable time limits or other requirements under the Act or these rules.

(c) If any complainant fails to proceed with an action, the Hearing Officer may dismiss the complaint with prejudice.

(d) Appeal. A dismissal by the Hearing Officer made under Section 2.09(a)–(c) or 7.16 of these rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under Section 8.01.

(e) Withdrawal of Complaint by Complainant. At any time a complainant may withdraw his or her own complaint by filing a notice with the Office for transmittal to the Hearing Officer and by serving a copy on the employing office or representative. Any such withdrawal must be approved by the Executive Director.

§ 2.10 Confidentiality

Pursuant to Section 416(c) of the Act, all proceedings and deliberations of Hearing Officers and the Board, including any related records, shall be confidential. A violation of the confidentiality requirements of the Act and these rules could result in the imposition of sanctions. Nothing in these rules shall prevent the Executive Director from reporting statistical information to the Senate and House of Representatives, so long as that statistical information does not reveal the identify of the employees involved or of employing offices that are the subject of a matter.

§ 2.11 Filing of civil action

(a) Filing. Section 404 of the Act provides that as an alternative to filing a complaint under Section 408 of the Act and Section 2.06 of these rules, a covered employee who receives notice of the end of mediation pursuant to Section 403 of the Act and Section 2.04(h) of these rules may elect to file a civil action in accordance with Section 408 of the Act in the United States district court for the district in which the employee is employed or for the District of Columbia.

(b) Time for filing. A covered employee may file such a civil action no earlier than 30 days after receipt of the notice under the Section 2.04(h), but no later than 90 days after that receipt.

Subpart C—[Reserved (part B—Section 210—ADA Public Services)]

Subpart D—[Reserved (Part C—Section 215—OSHA)]

Subpart E—[Reserved (Part D—Section 220—LMR)]

Subpart F—Discovery and Subpoenas

§ 6.01 Discovery
§ 6.02 Requests for Subpoenas
§ 6.03 Service
§ 6.04 Proof of Service
§ 6.05 Motion to Quash
§ 6.06 Enforcement

§ 6.01 Discovery

(a) Explanation. Discovery is the process by which a party may obtain from another person, including a party, information, not privileged, reasonably calculated to lead to the discovery of admissible evidence, for the purpose of assisting that party in developing, preparing and presenting its case at the hearing. This provision shall not be construed to permit any discovery, oral or written, to be taken from employees of the Office or the counselor(s), or the neutral(s) involved in counseling and mediation.

(b) Office policy regarding discovery. It is the policy of the Office to encourage the early and voluntary exchange of relevant and material nonprivileged information between the parties, including the names and addresses of witnesses and copies of relevant and material documents, and to encourage Hearing Officers to develop procedures which allow for the greatest exchange of relevant and material information and which minimize the need for parties to formally request such information.

(c) Discovery availability. Pursuant to Section 405(e) of the Act, the Hearing Officer

in his or her discretion may permit reasonable prehearing discovery. In exercising that discretion, the Hearing Officer may be guided by the Federal Rules of Civil Procedure.

(1) The Hearing Officer may authorize discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection or other purposes; physical and mental examinations; and requests for admission.

(2) The Hearing Officer may make any order setting forth the forms and extent of discovery, including orders limiting the number of depositions, interrogatories, and requests for production of documents, and may also limit the length of depositions.

(3) The Hearing Officer may issue any other order to prevent discovery or disclosure of confidential or privileged materials or information, as well as hearing or trial preparation materials and any other information deemed not discoverable, or to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Claims of privilege. Whenever a party withholds information otherwise discoverable under these rules by claiming that it is privileged or confidential or subject to protection as hearing or trial preparation materials, the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

§6.02 Request for subpoena

(a) Authority to issue subpoenas. At the request of a party, a Hearing Officer may issue subpoenas for the attendance and testimony of witnesses and for the production of correspondence, books, papers, documents, or other records. The attendance of witnesses and the production of records may be required from any place within the United States. However, no subpoena may be issued for the attendance or testimony of an employee of the Office of Compliance.

(b) Request. A request for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under paragraph (a) above shall be submitted to the Hearing Officer at least 15 days in advance of the date scheduled for the commencement of the hearing. If the subpoena is sought as part of the discovery process, the request shall be submitted to the Hearing Officer at least 10 days in advance of the date set for the attendance of the witness at a deposition or the production of documents. The Hearing Officer may waive the time limits stated above for good cause.

(c) Forms and showing. Requests for subpoenas shall be submitted in writing to the Hearing Officer and shall specify with particularity the witness, correspondence, books, papers, documents, or other records desired and shall be supported by a showing of general relevance and reasonable scope.

(d) Rulings. The Hearing Officer shall promptly rule on the request.

§6.03 Service

Subpoenas shall be served in the manner provided under rule 45(b) of the Federal Rules of Civil Procedure. Service of a subpoena may be made by any person who is over 18 years of age and not a party to the proceeding.

§6.04 Proof of service

When service of a subpoena is effected, the person serving the subpoena shall certify the date and the manner of service. The party on whose behalf the subpoena was issued shall file the server's certification with the Hearing Officer.

§6.05 Motion to quash

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the Hearing Officer before the time specified in the subpoena for compliance and not later than 10 days after service of the subpoena

§6.06 Enforcement

(a) Objections and Requests for enforcement. If a person has been served with a subpoena pursuant to Section 6.03 but fails or refuses to comply with its terms or otherwise objects to it, the party or person objecting or the party seeking compliance may seek a ruling from the Hearing Officer. The request for a ruling shall be submitted in writing to the Hearing Officer. However, it may be made orally on the record at the hearing at the Hearing Officer's discretion. The party seeking compliance shall present the proof of service and, except where the witness was required to appear before the Hearing Officer, shall submit evidence, by affidavit or declaration, of the failure or refusal to obey the subpoena

(b) Ruling by hearing officer. (1) The Hearing Officer shall promptly rule on the request for enforcement and/or the objection(s)

(2) On request of the objecting witness or any party, the Hearing Officer shall, or on the Hearing Officer's own initiative the Hearing Officer may, refer the ruling to the Board for review

(c) Review by the board. The Board may overrule, modify, remand or affirm the ruling of the Hearing Officer and in its discretion, may direct the General Counsel to apply in the name of the Office for an order from a United States district court to enforce the subpoena

(d) Application to an appropriate court; civil contempt. If a person fails to comply with a subpoena, the Board may direct the General Counsel to apply, in the name of the Office, to an appropriate United States district court for an order requiring that person to appear before the Hearing Officer to give testimony or produce records. Any failure to obey a lawful order of the district court may be held by such court to be a civil contempt thereof

Subpart G—Hearings

§7.01 The Hearing Officer
§7.02 Sanctions
§7.03 Disqualification of the Hearing Officer
§7.04 Motions and Prehearing Conference
§7.05 Scheduling the Hearing
§7.06 Consolidation and Joinder of Cases
§7.07 Conduct of Hearing; disqualification of representatives
§7.08 Transcript
§7.09 Admissibility of Evidence
§7.10 Stipulations
§7.11 Official Notice
§7.12 Confidentiality
§7.13 Immediate Board Review of a Ruling by a Hearing Officer
§7.14 Posthearing Briefs
§7.15 Closing the record
§7.16 Hearing Officer Decisions; Entry in Records of the Office

§7.01 The hearing officer

(a) Exercise of authority. The Hearing Officer may exercise authority as provided in paragraph (b) of this Section upon his or her own initiative or upon the motion of a party, as appropriate

(b) Authority. Hearing Officers shall conduct fair and impartial hearings and take all necessary action to avoid undue delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Rule on motions to disqualify designated representatives;

(3) Issue subpoenas in accordance with Section 6.02;

(4) Rule upon offers of proof and receive relevant evidence;

(5) Rule upon discovery issues as appropriate under Sections. 6.01 to 6.06;

(6) Hold prehearing conferences for the settlement and simplification of issues;

(7) Convene a hearing as appropriate, regulate the course of the hearing, and maintain decorum at and exclude from the hearing any person who disrupts, or threatens to disrupt, that decorum;

(8) Exclude from the hearing any person, except any complainant, any party, the attorney or representative of any complainant or party, or any witness while testifying;

(9) Rule on all motions, witness and exhibit lists and proposed findings, including motions for summary judgment;

(10) Require the filing of briefs, memoranda of law and the presentation of oral argument with respect to any question of fact or law;

(11) Order the production of evidence and the appearance of witnesses;

(12) Impose sanctions as provided under Section 7.02 of these rules;

(13) File decisions on the issues presented at the hearing;

(14) Maintain the confidentiality of proceedings; and

(15) Waive or modify any procedural requirements of Sections 6 and 7 of these rules so long as permitted by the Act.

§7.02 Sanctions

The Hearing Officer may impose sanctions upon the parties, under, but not limited to, the circumstances set forth in this Section.

(a) Failure to comply with an order. When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party's control, or for production of witnesses), the Hearing Officer may:

(1) Draw an inference in favor of the requesting party on the issue related to the information sought;

(2) Stay further proceedings until the order is obeyed;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

(4) Permit the requesting party to introduce secondary evidence concerning the information sought;

(5) Strike any part of the complaint, briefs, answer, or other submissions of the party failing to comply with the order;

(6) Direct judgment against the non-complying party in whole or in part; or

(7) Order that the non-complying party, or the representative advising that party, pay all or part of the attorney's fees and reasonable expenses of the other party or parties or of the Office, caused by such non-compliance, unless the Hearing Officer or the Board finds that the failure was substantially justified or that other circumstances make an award of attorney's fees and/or expenses unjust.

(b) Failure to prosecute or defend. If a party fails to prosecute or defend a position, the Hearing Officer may dismiss the action with prejudice or rule for the complainant.

(c) Failure to make timely filing. The Hearing Officer may refuse to consider any request, motion or other action that is not

filed in a timely fashion in compliance with this Part.

§ 7.03 Disqualification of the hearing officer

(a) In the event that a Hearing Officer considers himself or herself disqualified, either because of personal bias or of an interest in the case or for some other disqualifying reason, he or she shall withdraw from the case, stating in writing or on the record the reasons for his or her withdrawal, and shall immediately notify the Office of the withdrawal.

(b) Any party may file a motion requesting that a Hearing Officer withdraw on the basis of personal bias or of an interest in the case or for some other disqualifying reason. This motion shall specifically set forth the reasons supporting the request and be filed as soon as the party has reason to believe that there is a basis for disqualification.

(c) The Hearing Officer shall promptly rule on the withdrawal motion. If the motion is granted, the Executive Director will appoint another Hearing Officer within 5 days. Any objection to the ruling of the Hearing Officer on the withdrawal motion shall not be deemed waived by further participation in the hearing and may be the basis for an appeal to the Board from the decision of the Hearing Officer under Section 8.01 of these rules. Such objection will not stay the conduct of the hearing.

§ 7.04 Motions and prehearing conference

(a) Motions. When a case is before a Hearing Officer, motions of the parties shall be filed with the Hearing Officer and shall be in writing except for oral motions made on the record during the hearing. All written motions and any responses to them shall include a proposed order, where applicable. Only with the Hearing Officer's advance approval may either party file additional responses to the motion or to the response to the motion. Motions for extension of time will be granted only for good cause shown.

(b) Scheduling of the prehearing conference. Within 7 days after assignment, the Hearing Officer shall serve on the employee and the employing office and their designated representatives written notice setting forth the time, date, and place of the prehearing conference.

(c) Prehearing conference memoranda. The Hearing Officer may order each party to prepare a prehearing conference memorandum. That memorandum may include:

(1) The major factual contentions and legal issues that the party intends to raise at the hearing in short, successive, and numbered paragraphs, along with any proposed stipulations of fact or law.

(2) An estimate of the time necessary for presentation of the party's case;

(3) The specific relief, including the amount of monetary relief, that is being or will be requested;

(4) The names of potential witnesses for the party's case, except for potential rebuttal witnesses, and the purpose for which they will be called and a list of documents that the party is seeking from the opposing party, and, if discovery was permitted, the status of any pending request for discovery. (It is not necessary to list each document requested. Instead, the party may refer to the request for discovery.)

(5) A brief description of any other unresolved issues.

(d) At the prehearing conference, the Hearing Officer may discuss the subjects specified in paragraph (c) above and the manner in which the hearing will be conducted and proceed. In addition the Hearing Officer may explore settlement possibilities and consider how the factual and legal issues might be simplified and any other issues that might expedite the resolution of the dispute. The Hearing Officer shall issue an order, which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of the parties. Such order, when entered, shall control the course of the proceeding, subject to later modification by the Hearing Officer by his or her own motion or upon proper request of a party for good cause shown.

§ 7.05 Scheduling the hearing

(a) Date, time, and place of hearing. The Office shall issue the notice of hearing, which shall fix the date, time, and place of hearing. In no event, absent a postponement granted by the Office, will a hearing commence later than 60 days after the filing of the complaint.

(b) Motions for postponement or a continuance. Motions for postponement or for a continuance by either party shall be made in writing to the Office, shall set forth the reasons for the request, and shall state whether the opposing party consents to such postponement. Such a motion may be granted upon a showing of good cause. In no event will a hearing commence later than 90 days after the filing of the complaint.

§ 7.06 Consolidation and joinder of cases

(a) Explanation. (1) Consolidation is when two or more parties have cases that might be treated as one because they contain identical or similar issues or in such other appropriate circumstances.

(2) Joinder is when one person has two or more claims pending and they are united for consideration. For example, where a single individual who has one appeal pending challenging a 30-day suspension and another appeal pending challenging a subsequent dismissal, joinder might be warranted.

(b) The Board, the Office, or a Hearing Officer may consolidate or join cases on their own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties, taking into account the confidentiality requirements of Section 416 of the Act.

§ 7.07 Conduct of hearing; disqualification of representatives

(a) Pursuant to Section 405(d)(1) of the Act, the Hearing Officer shall conduct the hearing in closed session on the record. Only the Hearing Officer, the parties and their representatives, and witnesses during the time they are testifying, shall be permitted to attend, except that the Office may not be precluded from observing the hearings. The Hearing Officer, or a person designated by the Hearing Officer or the Executive Director, shall control the recording of the proceedings.

(b) The hearing shall be conducted as an administrative proceeding. Witnesses shall testify under oath or affirmation. Except as specified in the Act and in these rules, the Hearing Officer shall conduct the hearing, to the greatest extent practicable, in accordance with the principles and procedures in Sections 554 through 557 of title 5 of the United States Code.

(c) No later than the opening of the hearing, or as otherwise ordered by the Hearing Officer, each party shall submit to the Hearing Officer and to the opposing party typed lists of the hearing exhibits and the witnesses, excluding rebuttal witnesses, expected to be called to testify.

(d) At the commencement of the hearing, or as otherwise ordered by the Hearing Officer, the Hearing Officer may consider any stipulations of facts and law pursuant to Section 7.10, take official notice of certain facts pursuant to Section 7.11, rule on objections made by the parties and hear the examination and cross-examination of witnesses. Each party will be expected to present his or her cases in a concise manner, limiting the testimony of witnesses and submission of documents to relevant matters.

(e) If the Hearing Officer concludes that a representative of an employee, a witness, or an employing office has a conflict of interest, he or she may, after giving the representative an opportunity to respond, disqualify the representative. In that event, within the time limits for hearing and decision established by the Act, the affected party will have a reasonable time to retain other representation.

§ 7.08 Transcript

(a) Preparation. An accurate electronic or stenographic record of the hearing shall be kept and shall be the sole official record of the proceeding. The Office shall be responsible for the cost of transcription of the hearing. Upon request, a copy of a transcript of the hearing shall be provided to each party, provided, however, that such party has first agreed to maintain and respect the confidentiality of such transcript in accordance with the applicable rules prescribed by the Office or the Hearing Officer in order to effectuate Section 416(c) of the Act. Additional copies of the transcript shall be made available to a party at the party's expense. Exceptions to the payment requirement may be granted for good cause shown. A motion for an exception shall be made in writing and accompanied by an affidavit or declaration setting forth the reasons for the request. Requests for copies of transcripts shall be directed to the Office. The Office may, by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) Corrections. Corrections to the official transcript will be permitted. Motions for correction must be submitted within 10 days of service of the transcript upon the party. Corrections of the official transcript will be permitted only upon approval of the Hearing Officer. The Hearing Officer may make corrections at any time with notice to the parties.

§ 7.09 Admissibility of evidence

The Hearing Officer shall apply the Federal Rules of Evidence to the greatest extent practicable. These rules provide, among other things, that the Hearing Officer may exclude evidence if, among other things, it constitutes inadmissible hearsay or its probative value is substantially outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 7.10 Stipulations

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§ 7.11 Official notice

The Hearing Officer on his or her own motion or on motion of a party, may take official notice of a fact that is not subject to reasonable dispute because it is either: (a) A matter of common knowledge; or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

Where a decision, or part thereof, rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

§ 7.12 Confidentiality

Pursuant to Section 416 of the Act, all proceedings and deliberations of Hearing Officers and the Board, including the transcripts of hearings and any related records, shall be confidential, except as specified in Section 416(d), (e), and (f) of the Act. All parties to the proceeding and their representatives, and witnesses who appear at the hearing, will be advised of the importance of confidentiality in this process and of their obligations, subject to sanctions, to maintain it.

§ 7.13 Immediate board review of a ruling by a hearing officer

(a) Review strongly disfavored. Board review of a ruling by a hearing officer while a proceeding is ongoing (an ''interlocutory appeal'') is strongly disfavored. In general, a request for interlocutory review may go before the Board for consideration only if the Hearing Officer, on his or her own motion or by motion of the parties, determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention.

(b) Standards for review. In determining whether to forward a request for interlocutory review to the Board, the Hearing Officer shall consider the following:

(1) Whether the ruling involves a significant question of law or policy about which there is substantial ground for difference of opinion;

(2) Whether an immediate review of the Hearing Officers ruling by the Board will materially advance the completion of the proceeding; and

(3) Whether denial of immediate review will cause undue harm to a party or the public.

(c) Time for Filing. A motion by a party for interlocutory review of a ruling of the Hearing Officer shall be filed with the Hearing Officer within 5 days after service of the ruling upon the parties. The motion shall include arguments in support of both interlocutory review and the determination requested to be made by the Board upon review. Responses, if any, shall be filed with the Hearing Officer within 3 days after service of the motion.

(d) Hearing Officer Action. If the conditions set forth in paragraph (b) above are met, the Hearing Officer shall forward a request for interlocutory review to the Board for its immediate consideration. Any such submission shall explain the basis on which the Hearing Officer concluded that the standards in paragraph (b) have been met.

(e) Grant of Interlocutory Review Within Board's Sole Discretion. The Board, in its sole discretion, may grant interlocutory review.

(f) Stay Pending Review. Unless otherwise directed by the Board, the stay of any proceedings during the pendency of either a request for interlocutory review or the review itself shall be within the discretion of the Hearing Officer, provided that no stay shall serve to toll the time limits set forth in Section 405(d) of the Act.

(g) Denial of Motion Not Appealable; Mandamus. The grant or denial of a motion for a request for interlocutory review shall not be appealable. The Hearing Officer shall promptly bring a denial of such a motion, and the reasons therefor, to the attention of the Board. If, upon consideration of the motion and the reason for denial, the Board believes that interlocutory review is warranted, it may grant the review sua sponte. In addition, the Board may, in its discretion, in extraordinary circumstances, entertain directly from a party a writ of mandamus to review a ruling of a Hearing Officer.

(h) Procedures Before Board. Upon its acceptance of a ruling of the Hearing Officer for interlocutory review, the Board shall issue an order setting forth the procedures that will be followed in the conduct of that review.

(i) Review of a Final Decision. Denial of interlocutory review will not affect a party's right to challenge rulings, which are otherwise appealable, as part of an appeal to the Board under Section 8.01 from the Hearing Officer's decision issued under Section 7.16 of these rules.

§ 7.14 Posthearing briefs

(a) May Be Filed. The Hearing Officer may permit the parties to file posthearing briefs on the factual and the legal issues presented in the case.

(b) Length. No principal brief shall exceed 50 pages, or 12,500 words, and no reply brief 25 pages, or 6,250 words, exclusive of tables and pages limited only to quotations of statutes, rules, and the like. Motions to file extended briefs shall be granted only for good cause shown; the Hearing Officer may in his or her discretion also reduce the page limits. Briefs in excess of 10 pages shall include an index and a table of authorities.

(c) Format. Every brief must be easily readable. Briefs must have double spacing between each line of text, except for quoted texts and footnotes, which may be single-spaced.

§ 7.15 Closing the record of the hearing

(a) Except as provided in Section 7.14, the record shall be closed at the conclusion of the hearing. However, when the Hearing Officer allows the parties to submit additional evidence previously identified for introduction, the Hearing Officer may allow an additional period before the conclusion of the hearing as is necessary for that purpose.

(b) Once the record is closed, no additional evidence or argument shall be accepted into the hearing record except upon a showing that new and material evidence has become available that was not available despite due diligence prior to the closing of the record. However, the Hearing Officer shall make part of the record any motions for attorney fees, supporting documentation, and determinations thereon, and any approved correction to the transcript.

§ 7.16 Hearing Officer decisions; entry in records of the Office

(a) Pursuant to Section 405(g) of the Act, no later than 90 days after the conclusion of the hearing, the Hearing Officer shall issue a written decision.

(b) Upon issuance, the decision and order of the Hearing Officer shall be entered into the records of the Office.

(c) The Office shall promptly provide a copy of the decision and order of the Hearing Officer to the parties.

(d) If there is no appeal of a decision and order of a Hearing Officer, that decision becomes a final decision of the Office, which is subject to enforcement under Section 8.021 of these rules.

Subpart H. Proceedings Before the Board

§ 8.01 Appeal to the Board
§ 8.02 Compliance with Final Decisions, Requests for Enforcement
§ 8.03 Judicial Review

§ 8.01 Appeal to the Board

(a) No later than 30 days after the entry of the decision and order of the Hearing Officer in the records of the Office, an aggrieved party may seek review of that decision and order by the Board by filing with the Office a petition for review by the Board. The appeal must be served on the opposing party or its representative.

(b) Unless otherwise ordered by the Board, within 21 days following the filing of a petition for review to the Board, the appellant shall file and serve a supporting brief in accordance with Section 2.08 of these rules. That brief shall identify with particularity those findings or conclusions in the decision and order that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or rules that are alleged to support each assertion made on appeal.

Unless otherwise ordered by the Board, within 21 days following the service of the appellant's brief, the opposing party may file and serve a responsive brief. Unless otherwise ordered by the Board, within 10 days following the service of the appellee's responsive brief, the appellant may file and serve a reply brief.

(c) Upon the request of any party or upon its own order, the Board, in its discretion, may hold oral argument on an appeal.

(d) Upon appeal, the Board shall issue a written decision setting forth the reasons for its decision. The Board may affirm, reverse, modify or remand the decision and order of the Hearing Officer in whole or in part. Where there is no remand the decision of the Board shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review.

(e) The Board may remand the matter to the Hearing Officer for further action or proceedings, including the reopening of the record for the taking of additional evidence. The Hearing Officer shall render a decision or report to the Board, as ordered, at the conclusion of proceedings on the remanded matters. Upon receipt of the decision or report, the Board shall determine whether the views of the parties on the content of the decision or report should be obtained in writing and, where necessary, shall fix by order the time for the submission of those views. A decision of the Board following completion of the remand shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review.

(f) Pursuant to section 406(c) of the Act, in conducting its review of the decision of a Hearing Officer, the Board shall set aside a decision if it determines that the decision was:

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

(g) In making determinations under paragraph (f), above, the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(h) Record. The complaint and any amendments, notice of hearing, answer and any amendments, motions, rulings, orders, stipulations, exhibits, documentary evidence, any portions of depositions admitted into evidence, and the transcript of the hearing (together with any electronic recording of the hearing if the original reporting was performed electronically) together with the Hearing Officer's decision and the petition for review, any response thereto, any reply to the response and any other pleadings shall constitute the record in the case.

§ 8.02 Compliance with final decisions, requests for enforcement

(a) Unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of an appeal pursuant to Section 407 of the Act, A party required to take any action under the terms of a final decision of the Office shall carry out its terms promptly, and shall within 30 days after the decision or order becomes final and goes into effect by its terms, provide the Office and all parties to the proceedings with a compliance

report specifying the manner in which compliance with the provisions of the decision or order has been accomplished. If complete compliance has not been accomplished within 30 days, the party required to take any such action shall submit a compliance report specifying why compliance with any provision of the decision order has not yet been fully accomplished, the steps being taken to assure full compliance, and the anticipated date by which full compliance will be achieved.

(b) The Office may require additional reports as necessary;

(c) If the Office does not receive notice of compliance in accordance with paragraph (a) of this Section, the Office shall make inquiries to determine the status of compliance. If the Office cannot determine that full compliance is forthcoming, the Office shall report the failure to comply to the Board and recommend whether court enforcement of the decision should be sought.

(d) Any party may petition the Board for enforcement of a final decision of the Office or the Board. The petition shall specifically set forth the reasons why the petitioner believes enforcement is necessary.

(e) Upon receipt of a report of non-compliance or a petition for enforcement of a final decision, or as it otherwise determines, the Board may issue a notice to any person or party to show cause why the Board should not seek judicial enforcement of its decision or order.

(f) Within the discretion of the Board, it may direct the General Counsel to petition the Court for enforcement under Section 407(a)2 of a decision under Section 406(e) of the Act whenever the Board finds that a party has failed to comply with its decision and order.

§8.03 Judicial review

Pursuant to Section 407 of the Act, a party aggrieved by a final decision of the Board under Section 406(e) in cases arising under Part A of Title II of the Act may file a petition for review with the United States Court of Appeals for the Federal Circuit. The party filing a petition for review shall serve a copy on the opposing party or its representative.

Subpart I—Other Matters of General Applicability

§9.01 Attorney's Fees and Costs
§9.02 Ex parte Communications
§9.03 Settlement Agreements
§9.04 Revocation, amendment or waiver of rules

§9.01 Attorney's fees and costs

(a) *Request*. No later than 20 days after the entry of a Hearing Officer's decision under Section 7.16 or after service of a Board decision by the Office, the complainant, if he or she is a prevailing party, may submit to the Hearing Officer who heard the case initially a motion for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. The Board or the Hearing Officer, after giving the respondent an opportunity to reply, shall rule on the motion.

(b) *Form of Motion*. In addition to setting forth the legal and factual bases upon which the attorney's fees and/or costs are sought, a motion for an award of attorney's fees and/or costs shall be accompanied by:

(1) accurate and contemporaneous time records;

(2) a copy of the terms of the fee agreement (if any);

(3) the attorney's customary billing rate for similar work; and

(4) an itemization of costs related to the matter in question.

§9.02 Reserved—Ex parte communications

§9.03 Informal resolutions and settlement agreements.

(a) Informal Resolution. At any time before a covered employee files a complaint under Section 405, a covered employee and the employing office, on their own, may agree voluntarily and informally to resolve a dispute, so long as the resolution does not require a waiver of a covered employee's rights or the commitment by the employing office to an enforceable obligation.

(b) Formal Settlement Agreement. The parties may agree formally to settle all or part of a disputed matter in accordance with Section 414 of the Act. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval.

§9.04 Revocation, amendment or waiver of rules

(a) The Executive Director, subject to the approval of the Board, may revoke or amend these rules by publishing proposed changes in the Congressional Record and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the Congressional Record.

(b) The Board or a Hearing Officer may waive a procedural rule contained in this Part in an individual case for good cause shown if application of the rule is not required by law.

Signed at Washington, D.C., on this _____ day of _____ , 1995.

R. Gaull Silberman,
Executive Director, Office of Compliance.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:32 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 37. Concurrent resolution directing the Clerk of the House of Representatives to make technical changes in the enrollment of the bill (H.R. 2539) entitled ''An Act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes.

The message also announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 136. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 5:57 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 1655. An act to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.J. Res. 136. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

At 6:58 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2539. An act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulations of transportation and for other purposes.

ENROLLED BILL SIGNED

The following enrolled bill, previously signed by the Speaker of the House, was signed on today, December 22, by the President pro tempore (Mr. THURMOND):

H.R. 1530. An act to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1996, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following measures were read the second time and placed on the calendar:

S. 1500. A bill to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado, and for other purposes.

H. J. Res. 134. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 509, A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with, the town of Grand Lake, Colorado, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park (Rept. No. 104–199).

H.R. 562. A bill to modify the boundaries of Walnut Canyon National Monument in the State of Arizona (Rept. No. 104–199).

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

H.R. 1296. A bill to provide for the Administration of certain Presidio properties at minimal cost to the Federal taxpayer.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 605. A bill to establish a uniform and more efficient Federal process for protecting

property owners' rights guaranteed by the fifth amendment.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations:

Anthony Cecil Eden Quainton, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Director General of the Foreign Service.

Eric James Boswell, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Assistant Secretary of State.

Joseph Lane Kirkland, of the District of Columbia, to be an Alternate Representative of the Unites States of America to the Fiftieth Session of the General Assembly of the United Nations.

Jeanne Moutoussamy-Ashe, of New York, to be an Alternate Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Tom Lantos, of California, to be a Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Toby Roth, of Wisconsin, to be a Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Rita Derrick Hayes, of Maryland, for the rank of Ambassador during her tenure of service as Chief Textile Negotiator.

(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.)

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. COHEN (for himself and Mr. NUNN):

S. 1501. A bill to amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, and for other purposes; to the Committee on the Judiciary.

By Mrs. HUTCHISON (for herself and Mr. BREAUX):

S. 1502. A bill to amend the Tariff Act of 1930 to provide that the requirements relating to marking imported articles and containers not apply to spice products, coffee, or tea; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. BIDEN, Mr. DOLE, Mr. NICKLES, Mr. MCCAIN, Mr. GRASSLEY, Mr. THURMOND, Mr. KYL, Mr. D'AMATO, Mr. ABRAHAM, and Mrs. FEINSTEIN:

S. 1503. A bill to control crime by mandatory victim restitution, and for other purposes; to the Committee on the Judiciary.

By Mr. ABRAHAM:

S. 1504. A bill to control crime by mandatory victim restitution; to the Committee on the Judiciary.

By Mr. LOTT (for himself, Mr. BREAUX, and Mrs. HUTCHISON):

S. 1505. A bill to reduce risk to public safety and the environment associated with pipeline transportation of natural gas and hazardous liquids, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ABRAHAM (for himself, Mr. LEVIN, Mr. ASHCROFT, Mr. COATS, Mr. NICKLES, and Mr. SANTORUM):

S. 1506. A bill to provide for a reduction in regulatory costs by maintaining Federal Average fuel economy standards applicable to automobiles in effect at current levels until changed by law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH (for himself, Mr. BIDEN, Mr. THURMOND, and Mr. KENNEDY):

S. 1507. A bill to provide for the extension of the Parole Commission to oversee cases of prisoners sentenced under prior law, to reduce the size of the Parole Commission, and for other purposes; considered and passed.

By Mr. DOLE (for himself, Mr. WARNER, and Mr. STEVENS):

S. 1508. A bill to assure that all federal employees work and are paid; considered and passed.

By Mr. DASCHLE (for himself and Mr. PRESSLER):

S. 1509. A bill to amend the Impact Aid program to provide for hold-harmless with respect to amounts for payments relating to the Federal acquisition of real property, to permit certain local educational agencies to apply for increased payments for fiscal year 1994 under the Impact Aid program, and to amend the Impact Aid program to make a technical correction with respect to maximum payments for certain heavily impacted local educational agencies; considered and passed.

By Mr. WARNER:

S. 1510. A bill to designate the United States Courthouse in Washington, District of Columbia, as the ''E. Barrett Prettyman United States Courthouse'', and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATCH:

S.J. Res. 45. A joint resolution proposing an amendment to the Constitution of the United States in order to ensure that private persons and groups are not denied benefits or otherwise discriminated against by the United States or any of the several States on account of religious expression, belief, or identity; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ABRAHAM (for himself, Mr. SIMON, Mr. GRAHAM, and Mr. KENNEDY):

S. Res. 202. A resolution concerning the ban on the use of United States passports for travel to Lebanon; to the Committee on Foreign Relations.

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 203. A resolution to authorize testimony by Senate employee and representation by Senate Legal Counsel; considered and agreed to.

S. Res. 204. A resolution to authorize representation by Senate Legal Counsel, considered and agreed to.

S. Res. 205. A resolution to authorize testimony by Senate employees and representation by Senate Legal Counsel; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COHEN (for himself and Mr. NUNN):

S. 1501. A bill to amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, and for other purposes; to the Committee on the Judiciary.

THE PROTECTING CLASS ACTION PLAINTIFFS ACT OF 1995

Mr. COHEN. Mr. President, today I am introducing the Protecting Class Action Plaintiffs Act of 1995. This legislation is necessary to address a troubling number of instances where class action lawsuits have been filed on behalf of thousands, and in some cases, millions of Americans, but the suits have been settled in ways that do not promote the best interest of the plaintiffs.

A class action is a lawsuit in which an attorney not only represents an individual plaintiff, but in addition, the suit seeks relief for all those individuals who have suffered an injury similar to the plaintiff. For example, a suit brought against a pharmaceutical company by a person suffering from the side effects of a drug, can, if the court approves it as a class action, be expanded to cover all individuals who used that drug.

More often than not, these suits are settled. Settlement agreements provide monetary and other relief to class Members, protect defendants from future lawsuits, and stipulate how the plaintiffs' attorneys will be paid.

All class members are notified of the terms of the settlement and given the opportunity to exclude themselves from the class action if they do not want to be bound by the agreement. All class action settlements must be approved by a court.

Although the class action is an important part of our civil justice system, it is fraught with difficulties. The primary problem is that the client in a class action is a diffuse group of thousands of individuals scattered across the country, that is incapable of exercising meaningful control over the litigation. While in theory the class action lawyers must be responsive to their clients, in practice, the lawyers control all aspects of the litigation.

Moreover, when a class actions is settled, the amount of the attorneys' fee, is negotiated between the plaintiffs' lawyers and the defendants. Yet, in most cases, the fee is paid by the class members—the only party that does not have a seat at the bargaining table.

In addition, class actions are now being used by defendants as a tool to limit their future liabilities. Class actions are being settled that cover all individuals exposed to a particular substance but whose injuries have not yet manifest themselves. As Prof. John Coffee of the Columbia Law School has written, ''the class action is providing a means by which unsuspecting future

claimants suffer the extinguishment of their claims even before they learn of their injury.''

In light of the incentives that are driving the parties, it is easy to understand how class action settlements can be abused. Plaintiffs' attorneys and corporate defendants can reach agreements that satisfy their respective interests—limiting the defendants' liability and maximizing the attorneys' fee. But, because the plaintiffs themselves do not participate in the settlement negotiations, they are sometimes left out in the cold. Again, as Professor Coffee has concluded, ''if not actually collusive, settlements all too frequently have advanced the interests of plaintiffs' attorneys, not those of class members.''

Presumably, judges would not approve settlements that were unfair to the plaintiffs. But, it is difficult for judges to adequately scrutinize such settlements. In most instances, the only parties appearing before them—the plaintiffs' lawyers and the defendants—support the settlement. Without anyone providing adversarial scrutiny to reveal the flaws in class action settlements, judges are apt to approve them, especially since they result in the removal of complex cases from crowded court dockets.

I am familiar with one particularly egregious case where this is exactly what transpired. A constituent of mine, Dexter Kamilewicz, of Yarmouth, ME was a member of a class action lawsuit filed in Alabama State Court against BancBoston Mortgage Corp. The suit alleged that the bank was availing itself of ''free money'' by requiring its mortgage holders to maintain an excessive balance in their mortgage escrow account. After the court ruled in favor of the plaintiffs on a preliminary motion, the parties settled the case.

Under the settlement, the defendants agreed to refund the excess money they were holding in escrow and provide a small amount of compensation to the plaintiffs for lost interest.

BancBoston offered to pay the entire fee for the lawyers representing the class based on a formula that had been used to settle a different case. But the plaintiffs' lawyers rejected this offer. Instead, they insisted that their fees be paid directly from their clients' escrow accounts based on a formula that would provide them a more lucrative return.

The bank assented to this process and the State court judge approved the settlement.

Pursuant to the settlement, Mr. Kamilewicz received a check for $2.19 in back interest, but did not receive any other refund because his escrow account did not have an excessive balance. Then, about a year later, Mr. Kamilewicz noticed on his annual bank statement that $91.33 had been withdrawn from his escrow account for miscellaneous disbursements. The bank told him that the money was used to pay the class action lawyers. In essence, Mr. Kamilewicz paid $91.33 to the lawyers for work on a lawsuit that provided him with only a $2.19 benefit.

The class action lawyers, however, did quite well. According to a recent New York Times article about the case, they received $8.5 million—over 20 percent of the $40 million refunded by the bank to class members. Not only is this a large fee, but one must consider that the $40 million refund was, and always would have been the plaintiffs' money. The only benefit of the lawsuit to the class was that they received the money in 1994 instead of when they closed their mortgages. The attorney fee in this case, therefore, bore no relationship to the actual benefit that the lawsuit provided to the class.

Since the New York Times article ran, I have learned a bit about the lawyers who were involved in this case. In an unrelated case from Chicago, a judge would not even permit these lawyers to maintain a class action based on his view that they would not adequately represent the class. The judge commented on the record that:

> For five and a half years . . . I have been witness to their unparalleled and shocking abuse of process; their blatant manipulation of the rules of Court; their disregard for orderly processes and Court orders; their discourtesy and hostility to opposing counsel; their subversion of their clients' best interests; their preoccupation with slanderous accusations; their disinclination to trial preparation; their unfamiliarity with and disregard for case law precedent in their path; and their unabashed utilization of class action techniques as a weapon to heighten litigation costs and bootstrap modest individual claims into handsome class fees.

The judge concluded that he ''could think of no plague worse than to have a Court impose [these lawyers] on absent and unsuspecting members of a class.''

There are other problematic cases from across the country. In Philadelphia, a group of lawyers settled a set of cases for clients of theirs against a consortium of asbestos companies. In exchange, these same lawyers agreed to a class action settlement covering all other individuals exposed to the companies' asbestos. The class action settlement, however, provided less money for the class members than had been provided for the lawyers' individual clients.

To make matters worse, this class action—Georgine versus Amchem Products—covers individuals that have been exposed to asbestos but have not yet become sick. How can these individuals make a rational decision about the merits of the settlement when they do not know whether they will become ill and, if they do, how serious their illnesses will be?

This month's American Bar Association Journal contains an article about two competing nationwide class actions currently pending in two different State courts. These cases both concern defective polybutelene pipe that is causing floods in people's homes across the country. The case in Tennessee has settled for $850 million. It may cover over 3 million homeowners. The case in Alabama is going to trial. Lawyers in the Alabama case are trying to convince homeowners to opt-out of the Tennessee settlement and join their case. Homeowners are receiving conflicting notices from both cases and are confused. As one of them said, ''I don't know about all this legal stuff . . . all I want is my walls fixed.''

So there are a wide range of legal and ethical issues concerning class actions that are deserving of some careful attention from Congress. My legislation is a first step in this direction. It attempts to address the problem of class action settlements in two ways:

First, it would require class action lawyers to notify the attorney general of States in which class members reside whenever a class action is settled. Providing notice to the attorneys general will enable them to scrutinize class action settlements and object to the court if the settlements fail to promote the consumers' interests. In my view, the participation of the attorneys general is critical to improve the class action settlement process.

Second, the legislation would require that notices mailed to class members contain summaries written in plain, easily understandable language. Such summaries are necessary because most class action notices are lengthy and filled with legal jargon that the average citizen cannot understand. Anyone covered by a class action settlement should know the benefits they will obtain, the rights that they are sacrificing, and the way their attorneys will be paid, Today, most people simply throw away action notices like junk mail because they are too complicated and difficult to comprehend.

In sum, the legislation will bring some sunlight into the class action process and, as we know, sunlight is the best disinfectant. It will enable State attorneys general to provide adversarial scrutiny to settlements and promote the interests of consumers when the plaintiffs' lawyers and corporate defendants are not. It will also give individual call members the information they need to make informed decisions about whether they wish to join a class action or be bound by a settlement agreement. This is a modest step, but one that I believe will be effective.

Before closing, I want to make clear that I do not oppose class action lawsuits. Over the past three decades, class actions have been used to oppose racially segregated schools, obtain redress for victims of employment discrimination, and provide compensation for individuals exposed to toxic chemicals or injured by defective products. Class actions increase access to our civil justice system because they enable people to pursue claims collectively that otherwise would be too expensive to litigate.

The difficulty of any litigation reform endeavor is finding ways to weed

out the bad cases without closing the courthouse doors to those who have genuine grievances deserving of redress. Legislation that limits monetary recoveries or provides immunity for wrongdoers does not meet this litmus test. In an effort to deter frivolous lawsuits these measures have the perverse effect of limiting the remedies available to those with legitimate claims.

The legislation I am introducing today is an example of the type of litigation reform that I believe will help to protect against unethical attorney behavior and curb abusive lawsuits. It will not limit the availability of judicial remedies for meritorious cases.

I urge my colleagues to support the legislation and I ask unanimous consent that a copy of the bill and the New York Times article about the Kamilewicz case be included in the RECORD.

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

S. 1501

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 ''Protecting Class Action Plaintiffs Act of 1995''.

SEC. 2. NOTIFICATION REQUIREMENT OF CLASS ACTION CERTIFICATION OR SETTLEMENT.

(a) IN GENERAL.—Part V of title 28, United States Code, is amended by inserting after chapter 113 the following new chapter:

''CHAPTER 114—CLASS ACTIONS

''Sec.
''1711. Notification of class action certifications and settlements.

''§ 1711. Notification of class action certifications and settlements

''(a) For purposes of this section, the term—

''(1) 'class' means a group of similarly situated individuals, defined by a class certification order, that comprise a party in a class action lawsuit;

''(2) 'class action' means a lawsuit filed pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State rules of procedure authorizing a lawsuit to be brought by 1 or more representative individuals on behalf of a class;

''(3) 'class certification order' means an order issued by a court approving the treatment of a lawsuit as a class action;

''(4) 'class member' means a person that falls within the definition of the class;

''(5) 'class counsel' means the attorneys representing the class in a class action;

''(6) 'electronic legal databases' means computer services available to subscribers containing text of judicial opinions and other legal materials, such as LEXIS or WESTLAW;

''(7) 'official court reporter' means a publicly available compilation of published judicial opinions;

''(8) 'plaintiff class action' means a class action in which the plaintiff is a class; and

''(9) 'proposed settlement' means a settlement agreement between the parties in a class action that is subject to court approval before it becomes binding on the parties.

''(b) This section shall apply to—

''(1) all plaintiff class actions filed in Federal court; and

''(2) all plaintiff class actions filed in State court in which—

''(A) any class member resides outside the State in which the action is filed; and

''(B) the transaction or occurrence that gave rise to the lawsuit occurred in more than 1 State.

''(c) No later than 10 days after a proposed settlement in a class action is filed in court, class counsel shall serve the State attorney general of each State in which a class member resides and the Department of Justice as if they were parties in the class action with—

''(1) a copy of the complaint and any materials filed with the complaint;

''(2) notice of any scheduled judicial hearing in the class action;

''(3) any proposed or final notification to class members of—

''(A) their rights to request exclusion from the class action; and

''(B) a proposed settlement of a class action;

''(4) any proposed or final class action settlement;

''(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

''(6) any final judgment or notice of dismissal; and

''(7) any written judicial opinion relating to the materials described under paragraphs (3) through (6).

''(d) A hearing to consider final approval of a proposed settlement may not be held earlier than 120 days after the date on which the State attorney generals and the Department of Justice are served notice under subsection (c).

''(e) A class member may refuse to comply with and may choose not be bound by a settlement agreement or consent decree in a class action lawsuit if the class member resides in a State where the State attorney general has not been provided notice and materials under subsection (c). The rights created by this subsection shall apply only to class members or any person acting on their behalf.

''(f) Any court order certifying a class, approving a proposed settlement in a class action, or entering a consent decree in a class action, and any written opinions concerning such court orders and decrees, shall be made available for publication in official court reporters and electronic legal databases.

''(g) Any court with jurisdiction over a plaintiff class action shall require that—

''(1) any written notice provided to the class through the mail or publication in printed media contain a short summary written in plain, easily understood language, describing—

''(A) the subject matter of the class action;

''(B) the legal consequences of joining the class action;

''(C) if the notice is informing class members of a proposed settlement agreement—

''(i) the benefits that will accrue to the class due to the settlement;

''(ii) the rights that class members will lose or waive through the settlement;

''(iii) obligations that will be imposed on the defendants by the settlement;

''(iv) a good faith estimate of the dollar amount of any attorney's fee if possible; and

''(v) an explanation of how any attorney's fee will be calculated and funded; and

''(D) any other material matter; and

''(2) any notice provided through television or radio to inform the class of its rights to be excluded from a class action or a proposed settlement shall, in plain, easily understood language—

''(A) describe the individuals that may potentially become class members in the class action; and

''(B) explain that the failure of individuals falling within the definition of the class to exercise their right to be excluded from a class action will result in the individual's inclusion in the class action.

''(h) Compliance with this section shall not immunize any party from any legal action under Federal or State law, including actions for malpractice or fraud.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V of title 28, United States Code, is amended by inserting after the item relating to chapter 113 the following:

''114. Class Actions ..... 1711''.

SEC. 3. APPLICABILITY.

This Act and the amendments made by this Act shall apply to all class action lawsuits filed after or pending on the date of enactment of this Act.

[From the New York Times]

MATH OF A CLASS-ACTION SUIT: 'WINNING' $2.19 COSTS $91.33

Dexter J. Kamilewicz never wants to win a class-action lawsuit again—at least not when it costs him more than he wins.

Mr. Kamilewicz, a real estate broker in Portland, Me., found out this year that he was among the winners of a class-action suit against his mortgage bank, the Bank of Boston. He learned of his victory only when he spotted a $91.33 ''miscellaneous deduction'' from his escrow account that turned out be his payment for lawyers he never knew he had hired. His winnings were apparently just $2.19 in back interest.

Many class actions end with plaintiffs winning meager awards while their lawyers walk away with millions of dollars in fees. But the suit against the Bank of Boston has taken that difference to a new level.

''This is the only class action that I have heard about where the consumers won and ended up paying money out of their own pockets,'' said Will Lund, superintendent of the Maine Bureau of Consumer Credit Protection.

The suit, which accused the bank of keeping excessive amounts of its customers' money in escrow accounts, involved a nationwide class of 715,000 current and former mortage holders. The 300,000 current holders would up footing the lawyers' bill for $8.5 million. Only after the case was settled last year did some members of that group—just how many is unclear—say they realized they ended up with a loss.

Now the matter is back in court again and may soon be the catalyst for Congressional action.

Mr. Kamilewicz (pronounced CAM-eh-levitch); his wife, Gretchen, and a third disgruntled plaintiff recently filed a new lawsuit—which is itself seeking class-action status—that accuses the original plaintiffs' lawyers, as well as the bank, of fraud. Both the bank and the lawyers say the settlement was fair and deny doing anything wrong.

Senator William S. Cohen, Republican of Maine, says he has heard enough complaints about the settlement to propose a corrective measure. His legislation, expected to be introduced in the next month, would differ from other recent efforts in Congress at tort reform in that it would protect plaintiffs, rather than defendants, against the excesses of lawyers.

''There is evidence from around the country that in many instances class actions are benefiting lawyers to a much greater extent than their clients,'' Senator Cohen said.

Dozens of suits were filed in the early 1990's over escrow accounts before Federal regulations were adopted to more strictly limit the excess money that banks could hold in the accounts. Scores of class actions of all sorts are certified in Federal and state courts each year.

In the Bank of Boston case, critics of the settlement note, the lawyers' fees took the form of an assessment against the escrow accounts that sometimes dwarfed the modest awards. What is more, apart from a few dollars in back interest, the ''awards'' were simply refunds of the plaintiffs' own money, which would have been returned sooner or later even without the suit. Mr. Kamilewicz and others who apparently had no excessive amounts of money in their accounts were hit hardest because they got no refund but still had to pay legal fees.

Finally, the fees were larger than they should have been, the critics say, because they were based not on the current value of the refunds but on unrealistic projections of their future worth.

''Lawyers' fees are often a problem in these kinds of cases,'' said Jerome Hoffman, a former top official with the Florida Attorney General's office, which had tried to block the settlement. ''But this is probably the most egregious case I have ever seen.''

For their part, the plaintiffs' lawyers and a bank spokesman noted that the settlement had been approved by a state judge in Alabama, where the suit was filed.

In the settlement itself, the bank denied doing anything improper in handling the escrow. Money held in escrow is used to pay real estate taxes and property insurance. Banks are allowed to maintain a cushion of extra money to cover increases in those costs, but the Bank of Boston was accused of using a formula that often resulted in an excessively large cushion.

Ed Russell, the bank spokesman, declined to comment on the new suit, filed this month in federal court in Chicago. But several of the lawyers now being sued described it as groundless. The lawyers are with Ezell & Sharbrough of Mobile, Ala., and two Chicago firms, Edelman & Combs and Lawrence Walner & Associates.

One of the lawyers, Daniel A. Edelman, called the new suit ''the most frivolous I have even seen.''

But legal experts say that the dispute highlights the problems associated with class actions. Consumers and investors are often made parties without realizing it or understanding that they may receive trivial amounts while their lawyers make millions.

Information in legal notices is often shrouded in dense jargon. In some cases, lawyers for both sides may intentionally cloud that information to mislead plaintiffs about important issues, the experts said.

''It is not designed to be good communication,'' said John Coffee, a professor at the Columbia University School of Law. ''It is designed to convince a judge who can wave his magic wand and approve a settlement.'' Stephen Gardner, a lawyer in Dallas who has handled many consumer cases, added, ''A lot of settlement notices are engineered by the parties to keep class members in the dark about how much money the lawyers are making versus how many dollars they are going to get.''

To address that problem, Senator Cohen said his legislation would, among other things, require the parties to disclose proposed settlements to the attorneys general in all states which plaintiffs reside.

In settling its case, the Bank of Boston agreed to pay a maximum of $8.76 in back interest to individual mortgage holders. The bank also agreed to change its future escrow accounting methods and refund about $30 million in excess escrow payments. Normally, any extra money is returned when a mortgage ends or is refinanced. All told, plaintiffs' lawyers say, the settlement conferred about $40 million in benefits, including estimated savings from the accounting change.

''Nothing fraudulent or improper took place,'' Mr. Edelman said. ''There was an economic benefit in excess of $40 million and the lawyers received $8.5 million, and that is a low-end number.''

Even critics acknowledged that the plaintiffs' lawyers helped their clients by getting the bank to change its escrow practices. Still, they said the plaintiffs ended up with a questionable deal on two fronts.

For one, fees were assessed even against people like Mr. Kamilewicz, who apparently did not have excessive amounts of money in escrow, or not enough extra to produce a refund to fully cover the fees.

The fees were levied as a percentage of the balance in each escrow account, court papers indicate. Mr. Russell, the bank's spokesman, declined to comment when asked if the bank knew how many accounts might not have had excessive amounts. He also declined to discuss Mr. Kamilewicz's case.

Speaking generally, Mr. Gardner, the Dallas lawyer, said that in an escrow case of this size, at least several thousand people would have no cushion at all in their accounts.

The other problem for the plaintiffs was the way the fee was set, critics of the settlement said.

After the plaintiffs won a partial summary judgment in 1993, negotiations to resolve the case began. Initially, the bank offered to change its escrow accounting procedures and to pay lawyers' fees of $500,000, court papers indicate. The bank said that to take such money out of the escrow accounts would result in a ''net out-of-pocket loss' to many customers, the new lawsuit contends.

Mr. Russell, the bank spokesman, declined to make the bank's lawyers available. But one of the plaintiffs' lawyers, John W. Sharbrough 3d, said the $500,000 offer did not even cover the lawyers' expenses, and to negotiate fees with the bank would have been unethical.

In any event, the lawyers requested as their fee a third of the $42 million in excess escrow that was then held by the bank, a court transcript shows.

A one-third award to plaintiffs' lawyers would not be unusual in a typical contingency-fee case, like a personal injury suit, where the settlement comes out of a defendant's pocket. But since an escrow case involves the return of the plaintiffs' own money, banks have frequently paid the plaintiffs' legal bill using a fixed figure for each account.

To justify a far larger fee, the plaintiffs' firms offered expert testimony suggesting that consumers would realize a significant windfall by getting their money back now rather than later.

For example, E.W. McKean, an accountant in Mobile testified that if a consumer used a hypothetical $100 refund to reduce the principal on a 20-year, $10,000 loan at 8.6 percent interest, the benefit over time in lower interest payments would be nearly $400 in current dollars.

But consumer lawyers like Mr. Gardner said it was unrealistic to place too much future value on small sums that are recovered.

''This is like winning a scratch card,'' he said. ''People are not going to invest this money.''

Mr. Edelman, the plaintiffs' lawyer, disagreed, saying that the future benefit of a recovery is a common yardstick for determining fees.

The judge in the case eventually awarded the plaintiffs' lawyers 28 percent of the excess escrow, a pie that totaled about $30 million when the fees were actually set.

Mr. Sharbrough said that while some class members who got in touch with him were initially confused about the settlement, they were all pleased once it was explained to them. Mr. Edelman said banks were probably behind the new lawsuit because he had represented consumers in other class-action claims against financial institutions.

Such an assertion would no doubt surprise Mr. Kamilewicz, who said he started the ball rolling because he was so angry. ''The issue isn't the $91,'' he said. ''The issue is behavior standards.''

Some lawyers are wishing him luck. ''Somebody ought to give him a gold medal,'' said Peter Antonacci, the Deputy Attorney General of Florida. ''This thing was begging to be done.''

By Mrs. HUTCHISON (for herself and Mr. BREAUX):

S. 1502. A bill to amend the Tariff Act of 1930 to provide that the requirements relating to marking imported articles and containers not apply to spice products, coffee, or tea; to the Committee on Finance.

THE TARIFF ACT OF 1930 AMENDMENT ACT OF 1995

Mrs. HUTCHISON. Mr. President, today I am introducing legislation to correct several inadvertent results from recent rulings by the U.S. Treasury Department changing over 50 years of law and practice in the U.S. regarding spices. This legislation will exempt these products, as well as coffee and tea, from proposed new regulations that would needlessly and inadvertently require their containers to be individually marked with country of origin.

These labeling requirements are unnecessary because the coffee, tea and spices under consideration, with one exception, are not manufactured in the United States and therefore do not offer consumers the option to purchase domestically-grown alternatives. The one exception is not processed in such a way as to fall under the new regulations, so it will be unaffected by this legislation.

This bill, supported by the House Ways and Means Committee, was included in the House's version of the budget reconciliation bill, but was excluded under Senate rules. The legislation is also supported by the U.S. Treasury Department, which issued the regulations but requires legislative language to except these three areas.

Finally, my bill is supported by coffee, tea, and spice importers. Without this legislation, regulations calling for country of origin markings ultimately would require extremely costly record keeping and marking of individual jars and canisters of products which are often mixes of nearly identical products from different countries and different parts of the world. The countries of origin vary quite often due to market prices and availability. Marking requirements under the new regulations would ultimately cost consumers millions of dollars in higher coffee, tea and spice prices while providing no useful information.

Mr. President, I look forward to working with my colleagues to pass this important and bipartisan technical correction.

By Mr. ABRAHAM:

S. 1504. A bill to control crime by mandatory victim restitution; to the Committee on the Judiciary.

VICTIM RESTITUTION LEGISLATION

Mr. ABRAHAM. Mr. President, I rise today to introduce S. 1504, the Victims Restitution Enforcement Act of 1995. I do so because I am convinced that justice demands we devise an effective mechanism for enforcing orders of restitution owed by criminals to the victims of their crimes.

We take an important step today with the adoption of H.R. 665. This bill makes restitution mandatory and thereby sends a clear message to criminals that they will be made to pay for their crimes. I also believe it is critical that we let victims know that at last they will be entitled to some relief.

In order to help realize the promise of H.R. 665's mandatory victim restitution, however, I believe further steps are needed. To that end, the bill I am introducing today will bring important and needed changes to the enforcement mechanisms covering orders of restitution in Federal court. This bill will further ensure that restitution payments from criminals to their victims become a reality.

S. 1504 will provide four major advantages to victims named in criminal restitution orders.

First, restitution orders would be enforceable as a civil debt and payable immediately.

Right now, most restitution is collected entirely through the criminal justice system. It is frequently paid as directed by the probation officer, which means restitution payments can't begin until the prisoner is released. This bill makes restitution orders payable immediately, as a civil debt, speeding recovery and impeding attempts to avoid payment.

Without this provision, it will remain easier for the Government to go after students who have defaulted on their student loans than it is for the Government to enforce an order of restitution against convicted criminals. Of course, this provision will impose no criminal penalties on those unable to pay. It will simply allow civil collection against those who have assets.

Second, this bill will add a whole new arsenal of weapons for collecting victim restitution payments. If the debt is payable immediately all normal civil collection procedures—principally the Federal Debt Collection Act—can be used. This bill also explicitly gives victims access to other extensive civil procedures already in place for the collection of debts.

We want to make criminals pay, not burden our courts or our Federal criminal prosecutors. Thus we should not be unilaterally deciding to place enforcement of all victim restitution within the criminal process, but should permit the Attorney General to place responsibility for collecting restitution payments on Government attorneys charged with collecting other civil debts.

Third, this bill will make restitution judgments subject to criminal enforcement for 5 years.

Current law only allows enforcement of an order of restitution by the United States in the same manner as fines are enforced, permitting the limited use of some criminal sanctions. Presently, for example, the court will be permitted to resentence a criminal who wilfully refuses to make restitution payments—but nothing short of that.

This bill will add a variety of less draconian criminal sanctions to the court's arsenal, such as modification of the terms or conditions of parole, extension of the defendant's probation or supervised release, or revocation of probation or supervised release.

The bill will thus retain the fines mechanism, and improve on the criminal sanctions, as well as add a number of purely civil methods of debt collection.

Fourth, this legislation will give the courts power to impose presentence restraints on defendant's use of their assets in appropriate cases. This will prevent well-heeled defendants from dissipating assets prior to sentencing.

Without this provision the whole victim restitution law may well be useless in many cases. Even in those rare cases in which a defendant has the means to pay full restitution at once, if the court has no capacity to prevent the defendant from spending ill-gotten gains prior to the sentencing phase, frequently there will be nothing left for the victim by the time the restitution order is entered.

The provisions permitting pre-sentence restraints are similar to other such provisions that already exist in the law for private civil actions and asset forfeiture cases. For example, they require a court hearing and place a preponderance of the evidence burden on the Government.

Finally, this bill will prevent the defendant from denying the essential findings underlying a criminal restitution judgment in any future civil action brought by the victim.

All victims named in a restitution order will be able to bring a civil action to enforce the order in State court without having to relitigate the essential findings of the criminal judgment against the defendant.

This provision merely corrects an aberration in the law.

Currently the United States and some—but not all—victims are permitted to use the criminal judgment in subsequent civil proceedings.

Indeed, under current law, the only victims who absolutely cannot use the essential findings of a criminal judgment in a subsequent civil action are victims who happen to live in states with mutuality requirements for collateral estoppel, and who have been victims of crimes in which the defendant did not plead guilty.

This makes no sense. In such instances there has already been a full criminal trial in Federal court convicting the defendant under a higher burden of proof than is required in a civil action.

Ordinarily, the victim would be able to take advantage of the criminal conviction, just as the United States can. And in fact, victims are often able to use anything the criminal has agreed to in a plea bargain because those statements constitute judicial admissions.

But because of a clause in the law that limits the effect of criminal judgments in subsequent civil actions to the extent that would be permitted by state law, these Federal criminal judgments are, in some cases, not accorded the effect they are due. For the sake of judicial economy alone, this should be corrected.

If we are willing to take the step of making some crimes subject to mandatory restitution, as we do in the victim restitution bill today, I believe we should take the additional step of making those mandatorily-issued orders easily enforceable.

This is why I urge my colleagues to join me in supporting these further steps to make victim restitution work that are contained in my victim restitution bill.

By Mr. LOTT (for himself, Mr. BREAUX and Mrs. HUTCHISON):

S. 1505. A bill to reduce risk to public safety and the environment associated with pipeline transportation of natural gas and hazardous liquids, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE ACCOUNTABLE PIPELINE SAFETY AND PARTNERSHIP ACT

Mr. LOTT. Mr. President, I rise today as chairman of the Surface Transportation Subcommittee to introduce the Accountable Pipeline Safety and Partnership Act. It is the necessary reauthorization legislation for the Office of Pipeline Safety [OPS] in the Department of Transportation.

This is important legislation because it will reauthorize the Federal program with regulatory authority for approximately 2 million miles of natural gas pipelines and nearly 200,000 miles of hazardous liquid pipelines. In the lower 48 States and Hawaii, there are 700 different operators who manage these pipelines. This bill does not affect the Federal statute that regulates the Alaskan pipeline.

The goal of my legislation is accurately reflected in three words from the title—accountable, safety, and partnership. The bill gives the Office of Pipeline Safety the necessary tools to shift the program away from a very prescriptive, command-and-control approach to a responsible risk-based management partnership which continues to ensure industry's accountability and the public's safety.

According to the National Transportation Safety Board [NTSB], transportation of natural gas and liquids by pipelines is by far the safest mode of

conveyance. NTSB's 1994 transportation safety data highlight this fact. Out of 43,134 transportation facilities, only 22—just 0.05 percent—were related to pipelines.

Let me be absolutely clear: I want to send an unambiguous signal here today on the Senate floor and through the text of this bill that pipeline safety will not be jeopardized.

In fact, I would assert that the public's safety will be enhanced through a more effective Government and industry pipeline safety partnership that is proposed by this bill.

Through this legislation, Congress will recognize and appreciate this relationship. Pipeline operators, who are responsible for day-to-day safe operations, experience many adverse consequences from accidents on their systems. Therefore, pipeline operators have a direct and compelling reason to work hard to keep their system and the public safe.

There is another partnership role which must be acknowledged and that is the active and positive involvement of States which also direct resources at pipeline monitoring.

The governmental role is two-tiered: OPS for the Federal Government and State agencies. Together their mission is to inspect, audit, and enforce pipeline compliance and safety activities.

Historically, the regulations governing safety for transmission and utility pipelines have been modeled or based upon industry-developed standards and practices. The most effective procedures have formed the core of today's pipeline safety regulations.

However, recent legislative proposals would, in effect, add unnecessary layers of regulations in direct response to specific atypical incidents. This has diverted resources. This is what this legislation will address using the same three words from the bill's title as my philosophical underpinning—accountable, safety, partnership.

For the past 2½ years, OPS has worked with natural gas and hazardous liquid pipeline operators and other interested parties to find better ways to address the issues inherent to pipeline safety. Their goal is to promulgate new reasonable, effective and cost efficient regulations. OPS is currently analyzing the actual risks juxtaposed to existing regulations to determine what is useful and what is unnecessary.

This process develops a regulatory approach which provides companies with greater flexibility in protecting both their systems and the public's safety. I built upon this activity, and it served as the starting point for a legislative approach which is incorporated into this reauthorization.

It is worthwhile to note that the major provisions of this bill were drafted through a genuine bipartisan effort. This bill reflects real input and informal consultation with the regulated industry, national associations representing personnel who are actively involved in pipeline safety, and Administration officials. Technical assistance was also provided throughout the drafting process from the Congressional Research Service. I appreciate all of the invaluable suggestions during the development of this legislation.

There are four major provisions within the legislation.

First, it establishes a new risk assessment combined with a detailed cost-benefit analysis followed by an independently verified peer review for all future regulations. The process is streamlined and meets the American common sense test. President Clinton's Executive Order 12866 provided the framework for this bill's new regulatory approach. It also takes advantage of risk models being developed by OPS.

Second, it authorizes a 4-year demonstration project under which companies can voluntarily develop individually tailored risk management plans. These plans must be approved by the Department of Transportation. OPS will monitor the plans to ensure that operations will provide equal or greater safety protection than existing regulations.

Third, it authorizes funding for the OPS in such a manner that money will be double the projected inflation rate through the end of this century. Each year the funding will increase by 6-percent. Because OPS is funded entirely by user fees assessed on pipelines, these funds must be concentrated on OPS's primary mission of monitoring pipeline safety on the public's behalf.

Fourth, it clarifies the Pipeline Safety Act of 1992. This will remove confusions which have hampered finalizing several rules.

My intention is straightforward: to focus OPS regulatory resources on areas where there are significant nationwide pipeline safety risks, and to identify and develop cost-effective regulatory means for addressing these risks.

The bill will ensure that America's taxpayers get the maximum safety value from their OPS investment. It will lead to a responsible allocation of limited resources to increase public safety.

It will prevent a hidden tax on natural gas consumers resulting from an excessive increase in user fees to duplicate ongoing industry research.

It also means that rules will be clarified to accommodate changes affecting issues like smart pig retrofitting and explicit definitions for unusually sensitive environmental areas.

There will always be some who will argue that the Government must spend more and more money for safety concerns. My response is that safety is not just a function of how much the government spends. I believe the critical factor is how the money is spent—not how much. This bill deals with how. The NTSB Safety data makes the case that the excellent safety record for pipelines does not indicate that increased funding is needed.

This legislation is both responsible and balanced.

Amercian taxpayers win.

Government regulators win.

Regulatory reform wins.

I want to thank my colleagues who are my initial cosponsors, and I look forward to other Senators joining me as cosponsors of this important reauthorization bill.

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

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

S. 1505

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 ''Accountable Pipeline Safety and Partnership Act of 1995''.

SEC. 2. REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—Section 60101(a) is amended—

(1) in each of paragraphs (1) through (22), by striking the period at the end and inserting a semicolon;

(2) in paragraph (21), by striking subparagraph (B) and inserting the following:

''(B) does not include the gathering of gas, other than gathering through regulated gathering lines, in those rural locations that are located outside the limits of any incorporated or unincorporated city, town, or village, or any other designated residential or commercial area (including a subdivision, business, shopping center, or community development) or any similar populated area that the Secretary of Transportation determines to be a nonrural area, except that the term 'transporting gas' includes the movement of gas through regulated gathering lines;''; and

(3) by adding at the end the following:

''(23) 'benefits' means the reasonably identifiable or estimated safety, environmental, and economic benefits that are reasonably expected to result directly or indirectly from the implementation of a standard, regulatory requirement, or option;

''(24) 'costs' means, with respect to the implementation of, or compliance with, a standard, regulatory requirement, or option, the estimated or actual direct and indirect costs of that implementation or compliance;

''(25) 'incremental benefit' or 'incremental cost' means the additional estimated benefit or cost that—

''(A) would be caused by a particular action (whether regulatory or nonregulatory) in comparison with other options that may be taken in lieu of that action; and

''(B) is based on quantifiable or qualifiable assessments that use generally available and reasonably obtainable scientific or economic data;

''(26) 'risk management' means the systematic application, by the owner or operator of a pipeline facility, of management policies, procedures, finite resources, and practices to the tasks of analyzing, assessing, and minimizing risk in order to protect employees, the general public, the environment, and pipeline facilities;

''(27) 'risk management plan' means a management plan utilized by a gas or hazardous liquid pipeline facility owner or operator that encompasses risk management; and

''(28) 'Secretary' means—

''(A) the Secretary of Transportation; or

''(B) if applicable, any person to whom the Secretary of Transportation delegates authority with respect to a matter concerned.''.

(b) GATHERING LINES.—Section 60101(b)(2) is amended by inserting '', if appropriate,'' after ''Secretary'' the first place it appears.

SEC. 4. GENERAL AUTHORITY.

(a) MINIMUM SAFETY STANDARDS.—Section 60102(a) is amended—

(1) in paragraph (1), by striking subparagraph (C) and inserting the following:

''(C) shall include a requirement that all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities.''; and

(2) by striking paragraph (2) and inserting the following:

''(2) The qualifications applicable to an individual who operates and maintains a pipeline facility shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of a pipeline facility shall ensure that employees who operate and maintain the facility are qualified to operate and maintain the pipeline facilities.''.

(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—Section 60102(b) is amended to read as follows:

''(b) PRACTICABILITY AND SAFETY NEEDS.—

''(1) IN GENERAL.—A standard prescribed under subsection (a) shall be—

''(A) practicable; and

''(B) designed to meet the need for—

''(i) gas pipeline safety;

''(ii) safely transporting hazardous liquids; and

''(iii) protecting the environment.

''(2) FACTORS FOR CONSIDERATION.—Except as provided in section 60112, when prescribing a standard under this section or section 60101(b), 60103, 60108, 60109, 60110, or 60113, the Secretary shall consider—

''(A) relevant available—

''(i) gas pipeline safety information; or

''(ii) hazardous liquid pipeline safety and environmental protection information;

''(B) the appropriateness of the standard for the particular type of pipeline transportation or facility;

''(C) the reasonableness of the standard;

''(D) based on a risk assessment, the extent to which the standard will benefit public safety and the protection of the environment;

''(E) the costs of compliance with the standard;

''(F) comments and information received from the public; and

''(G) the comments and recommendations of the Technical Pipeline Safety Standards Committee described in section 60115 and the Liquid Pipeline Safety Standards Committee described in section 60115.

''(3) RISK ASSESSMENT DOCUMENT.—In prescribing a standard referred to in paragraph (2), the Secretary shall prepare a risk assessment document that—

''(A) identifies the regulatory and nonregulatory options that the Secretary considered in prescribing a proposed standard;

''(B) identifies the incremental costs and incremental benefits with respect to public safety and the protection of the environment that are associated with the proposed standard;

''(C) includes—

''(i) an explanation of the reasons for the selection of the proposed standard in lieu of the other options identified; and

''(ii) with respect to each of those other options, a brief explanation of the reasons that the Secretary found that option to be less cost-effective or flexible than the proposed standard; and

''(D) provides any technical data or other information upon which the risk assessment document and proposed standard is based.

''(4) REVIEW.—

''(A) IN GENERAL.—The Secretary shall—

''(i) submit each risk assessment document prepared under this section to the Technical Pipeline Safety Standards Committee described in section 60115 or the Hazardous Liquid Pipeline Safety Standards Committee described in section 60115, or both, as appropriate; and

''(ii) make that document available to the general public.

''(B) PEER REVIEW PANELS.—The committees referred to in subparagraph (A) shall serve as peer review panels to review risk assessment documents prepared under this section. Not later than 90 days after receiving a risk assessment document for review pursuant to subparagraph (A), each committee that receives that document shall prepare and submit to the Secretary a report that includes—

''(i) an evaluation of the merit of the data and methods used in that document; and

''(ii) any recommended options relating to that document and the associated standard or regulatory requirement that the committee determines to be appropriate.

''(C) REVIEW BY SECRETARY.—Not later than 90 days after receiving a report submitted by a committee under subparagraph (B), the Secretary—

''(i) shall review the report;

''(ii) shall provide a written response to the committee that is the author of the report concerning all significant peer review comments and recommended alternatives contained in the report; and

''(iii) may revise the risk assessment and the proposed standard or regulatory requirement before promulgating the final standard or requirement.

''(5) INCREMENTAL BENEFITS AND COSTS.—Before issuing a final standard that is subject to the requirements contained in paragraphs (1) and (2), the Secretary shall certify that the incremental benefits of the final standard will likely justify, and be reasonably related to, the incremental costs incurred by the Federal Government and State, local, and tribal governments and any other public entity, and the private sector.

''(6) EMERGENCIES.—In the case of an emergency that meets the criteria described in section 60112(e), the Secretary may suspend the application of this section for the duration of the emergency.

''(7) REPORT.—Not later than March 31, 1999, the Secretary shall transmit to the Congress a report that—

''(A) describes the implementation of the risk assessment requirements of this section, including the extent to which those requirements have improved regulatory decision making; and

''(B) includes any recommendations that the Secretary determines would make the risk assessments conducted pursuant to the requirements under this chapter a more effective means of assessing the benefits and costs associated with alternative regulatory and nonregulatory options in prescribing standards under the Federal pipeline safety regulatory program under this chapter.''.

(c) FACILITY OPERATION INFORMATION STANDARDS.—The first sentence of section 60102(d) is amended—

(1) by inserting ''as required by the standards prescribed under this chapter'' after ''operating the facility'';

(2) by striking ''to provide the information'' and inserting ''to make the information available''; and

(3) by inserting ''as determined by the Secretary'' after ''to the Secretary and an appropriate State official''.

(d) PIPE INVENTORY STANDARDS.—The first sentence of section 60102(e) is amended—

(1) by striking ''and, to the extent the Secretary considers necessary, an operator of a gathering line that is not a regulated gathering line (as defined under section 60101(b)(2) of this title),''; and

(2) by striking ''transmission'' and inserting ''transportation''.

(e) SMART PIGS.—

(1) MINIMUM SAFETY STANDARDS.—Section 60102(f) is amended by striking paragraph (1) and inserting the following:

''(1) MINIMUM SAFETY STANDARDS.—The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas or hazardous liquid pipeline transmission facility be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a 'smart pig'). The Secretary shall also prescribe minimum safety standards that require that when a segment of an existing gas or hazardous liquid pipeline transmission facility is replaced, to the extent practicable, the replacement segment can accommodate the passage of an instrumented internal inspection device. The Secretary may apply the standards to an existing gas or hazardous liquid facility and require that the facility be changed to allow the facility to be inspected with an instrumented internal inspection device if the basic construction of the facility will accommodate the device.''.

(2) PERIODIC INSPECTIONS.—Section 60102(f)(2) is amended—

(A) by striking ''(2) Not later than'' and inserting the following:

''(2) PERIODIC INSPECTIONS.—Not later than''; and

(B) by inserting '', if necessary, additional'' after ''the Secretary shall prescribe''.

(f) UPDATING STANDARDS.—Section 60102 is amended by adding at the end the following new subsection:

''(l) UPDATING STANDARDS.—The Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulatory program under this chapter.''.

SEC. 5. RISK MANAGEMENT.

(a) IN GENERAL.—Chapter 601 is amended by adding at the end the following new section:

''§ 60126. Risk management

''(a) RISK MANAGEMENT PROGRAM DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary shall establish risk management demonstration projects—

''(A) to demonstrate, through the voluntary participation by owners and operators of gas pipeline facilities and hazardous liquid pipeline facilities, the applications of risk management; and

''(B) to evaluate the safety and cost-effectiveness of the applications referred to in subparagraph (A).

''(2) WAIVERS.—In carrying out a demonstration project under this subsection, the Secretary—

''(A) may waive, with respect to the owner or operator of any pipeline facility covered under the project (referred to in this subsection as a 'covered pipeline facility'), the

applicability of all or a portion of the requirements under this chapter that would otherwise apply to that owner or operator with respect to the pipeline facility; and

''(B) shall waive, for the period of the project, with respect to the owner or operator that participates in the project, the applicability of any new standard or regulatory requirement that the Secretary promulgates under this chapter during the period of that participation, if the Secretary determines that the risk management plan applicable to the demonstration project provides an overall level of safety that is equivalent to or greater than the level of safety provided by requiring the application of that standard or regulatory requirement.

''(b) REQUIREMENTS.—In carrying out a demonstration project under this section, the Secretary shall—

''(1) invite owners and operators of pipeline facilities to submit risk management plans for timely approval by the Secretary;

''(2) require, as a condition of approval, that a risk management plan submitted under this subsection contain measures that are designed to achieve an equivalent or greater overall level of safety than would otherwise be achieved through compliance with the standards and regulatory requirements contained in this chapter or promulgated by the Secretary under this chapter;

''(3) provide for—

''(A) collaborative government and industry training;

''(B) methods to measure the safety performance of risk management plans;

''(C) the development and application of new technologies;

''(D) the promotion of community awareness concerning how the overall level of safety will be enhanced by the demonstration project;

''(E) the development of a model that categorizes the risks inherent to each covered pipeline facility, taking into consideration the location, volume, pressure, and material transported or stored by that pipeline facility;

''(F) the application of risk assessment and risk management methodologies that are suitable to the inherent risks that are determined to exist through the use of the model developed under subparagraph (E);

''(G) the development of project elements that are necessary to ensure that—

''(i) the owners and operators that participate in the demonstration project demonstrate that they are effectively managing the risks referred to in subparagraph (E); and

''(ii) the risk management plans carried out under the demonstration project under this subsection can be audited;

''(H) a process whereby an owner or operator of a pipeline facility is able to amend, modify, or otherwise adjust a risk management plan referred to in paragraph (1) that has been approved by the Secretary pursuant to that paragraph to respond to—

''(i) changed circumstances; or

''(ii) a determination by the Secretary that the owner or operator is not achieving an overall level of safety that is at least equivalent to the level that would otherwise be achieved through compliance with the standards and regulatory requirements contained in this chapter or promulgated by the Secretary under this chapter; and

''(I) such other elements as the Secretary, with the agreement of the owners and operators that participate in the demonstration project under this section, determines to further the purposes of this section; and

''(4) in selecting participants for the demonstration project, take into consideration the past safety and regulatory performance of each applicant who submits a risk management plan pursuant to paragraph (1).

''(c) EMERGENCIES.—In the case of an emergency that meets the criteria described in section 60112(e), the Secretary may suspend or revoke the participation of an owner or operator in the demonstration project under this section.

''(d) PARTICIPATION BY STATE AUTHORITY.—Notwithstanding any other provision of this chapter, in carrying out the demonstration project under this section, the Secretary may provide for the participation in the demonstration project by a State that has in effect a certification that has been approved by the Secretary under section 60105.

''(e) REPORT.—Not later than March 31, 1999, the Secretary shall transmit to the Congress a report on the results of the demonstration projects carried out under this section that includes—

''(1) an evaluation of each such demonstration project, including an evaluation of the performance of each participant in that project with respect to safety and environmental protection; and

''(2) recommendations concerning whether the applications of risk management demonstrated under the demonstration project should be incorporated into the Federal pipeline safety program under this chapter on a permanent basis.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by adding at the end the following:

''60126. Risk management.''.

SEC. 6. INSPECTION AND MAINTENANCE.

Section 60108 is amended—

(1) in subsection (a)(1), by striking ''transporting gas or hazardous liquid or'' each place it appears;

(2) in subsection (b)(2), by striking the second sentence;

(3) in the heading to subsection (c), by striking ''NAVIGABLE WATERS'' and inserting ''OTHER WATERS''; and

(4) by striking clause (ii) of subsection (c)(2)(A) and inserting the following:

''(ii) any other pipeline facility crossing under, over, or through waters where a substantial likelihood of commercial navigation exists, if the Secretary decides that the location of the facility in those waters could pose a hazard to navigation or public safety.''.

SEC. 7. HIGH-DENSITY POPULATION AREAS AND ENVIRONMENTALLY SENSITIVE AREAS.

(a) IDENTIFICATION.—Section 60109(a)(1)(B)(i) is amended by striking ''a navigable waterway (as the Secretary defines by regulation)'' and inserting ''waters where a substantial likelihood of commercial navigation exists''.

(b) UNUSUALLY SENSITIVE AREAS.—Section 60109(b) is amended to read as follows:

''(b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including—

''(1) locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and

''(2) locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.''.

SEC. 8. EXCESS FLOW VALUES.

Section 60110 is amended—

(1) in subsection (b)—

(A) in the first sentence, by inserting '', if any,'' after ''circumstances''; and

(B) in paragraph (4), by inserting '', operating, and maintaining'' after ''cost of installing'';

(2) in subsection (c)(1)(C), by inserting '', maintenance, and replacement'' after ''installation''; and

(3) in subsection (e), by inserting after the first sentence the following: ''The Secretary may adopt industry accepted performance standards in order to comply with the requirement under the preceding sentence.''.

SEC. 9. CUSTOMER-OWNED NATURAL GAS SERVICE LINES.

Section 60113 is amended—

(1) by striking ''(a) MAINTENANCE INFORMATION.—''; and

(2) by striking subsection (b).

SEC. 10. UNDERGROUND FACILITY DAMAGE PREVENTION PROGRAMS.

(a) APPLICATION.—Section 60114(a) is amended—

(1) in the matter preceding paragraph (1), by striking ''one-call notification system'' and inserting ''underground facility damage prevention program (hereafter in this subsection referred to as a 'program')'';

(2) in paragraph (1)—

(A) by striking ''the system apply to''; and

(B) by inserting before the period the following: ''be covered by the program'';

(3) in each of paragraphs (2), (4), (5), (6), and (8), by striking ''system'' each place it appears and inserting ''program'';

(4) in paragraph (3), by striking ''appropriate one-call notification system'' and inserting ''appropriate program'';

(5) in paragraph (4), by striking ''qualifications'' and inserting ''Qualifications'';

(6) in paragraph (5), by striking ''procedures'' and inserting ''Procedures''; and

(7) in each of paragraphs (1), (2), (3), (6), (7), (8), and (9), by striking ''a'' the first place it appears and inserting ''A''.

(b) SANCTIONS.—Section 60114(a)(9), as amended by subsection (a)(7), is further amended by striking ''60120, 60122, and 60123'' and inserting ''60120 and 60122''.

(c) GRANTS.—Section 60114(b) is amended by striking ''one-call notification system'' and inserting ''underground facility damage prevention program''.

(d) APPORTIONMENT.—Section 60114(d) is amended by striking ''one-call notification system'' each place it appears and inserting ''underground facility damage prevention program''.

(e) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading to section 60114 is amended to read as follows:

''§ 60114. Underground facility damage prevention programs''.

(2) CHAPTER ANALYSIS.—The analysis for chapter 601 is amended by striking the item relating to section 60114 and inserting the following item:

''60114. Underground facility damage prevention programs.''.

SEC. 11. TECHNICAL SAFETY STANDARDS COMMITTEES.

(a) PEER REVIEW.—Section 60115(a) is amended by adding at the end the following: ''The committees referred to in the preceding sentence shall serve as peer review committees for carrying out this chapter. Peer reviews conducted by the committees shall be treated for purposes of all Federal laws relating to risk assessment and peer review (including laws that take effect after the date of the enactment of the Pipeline Safety Act of 1995) as meeting any peer review requirements of such laws.''.

(b) COMPOSITION AND APPOINTMENT.—Section 60115(b) is amended—

(1) in paragraph (1), by inserting ''or risk management'' before the period at the end of the last sentence;

(2) in paragraph (2), by inserting ''or risk management'' before the period at the end of the last sentence;

(3) in paragraph (3)—

(A) in subparagraph (B), by striking ''4'' and inserting ''5''; and

(B) in subparagraph (C), by striking ''6'' and inserting ''5''; and

(4) in paragraph (4)—

(A) in subparagraph (A), by adding at the end the following: ''At least 1 of the individuals selected for each committee under paragraph (3)(A) shall have relevant scientific education, background, or experience.'';

(B) in subparagraph (B), by adding at the end the following: ''At least 1 of the individuals selected for each committee under paragraph (3)(B) shall have education, background, or experience in risk assessment and cost-benefit analysis. The Secretary shall consult with the national organizations representing the owners and operators of pipeline facilities before selecting individuals under paragraph (3)(B).''; and

(C) in subparagraph (C), by inserting after the first sentence the following: ''At least 1 of the individuals selected for each committee under paragraph (3)(C) shall have education, background, or experience in risk assessment and cost-benefit analysis.''.

(c) COMMITTEE REPORTS.—Section 60115(c) is amended—

(1) by inserting ''or regulatory requirement'' after ''standard'' each place it appears in paragraphs (1), (2), and (3);

(2) in paragraph (1)—

(A) in subparagraph (A), by inserting '', including the risk assessment document and other analyses supporting each proposed standard or regulatory requirement'' before the semicolon; and

(B) in subparagraph (B), by inserting '', including the risk assessment document and other analyses supporting each proposed standard or regulatory requirement'' before the period; and

(3) in paragraph (2)—

(A) in the first sentence—

(i) by inserting ''and supporting analyses'' before the first comma;

(ii) by inserting ''and submit to the Secretary'' after ''prepare'';

(iii) by inserting ''cost-effectiveness,'' after ''reasonableness,''; and

(iv) by inserting ''and include in the report recommended actions'' before the period at the end; and

(B) in the second sentence, by inserting ''any recommended actions and'' after ''including''.

(d) PROPOSED COMMITTEE STANDARDS AND REGULATORY REQUIREMENTS.—Section 60115(d)(1) is amended by inserting ''or regulatory requirement'' after ''standard'' each place it appears;

(e) MEETINGS.—Section 60115(e) is amended by striking ''twice'' and inserting ''4 times''.

(f) EXPENSES.—Section 60115(f) is amended—

(1) in the subsection heading by striking ''PAY AND'';

(2) by striking the first 2 sentences; and

(3) by inserting ''of a committee under this section'' after ''A member''.

SEC. 12. PUBLIC EDUCATION PROGRAMS.

Section 60116 is amended—

(1) by striking ''person transporting gas'' and inserting ''owner or operator of a gas pipeline facility'';

(2) by inserting ''the use of an underground facility damage prevention program prior to excavation,'' after ''educate the public on''; and

(3) by inserting a comma after ''gas leaks''.

SEC. 13. ADMINISTRATIVE.

Section 60117 is amended by adding at the end the following new subsection:

''(k) AUTHORITY FOR COOPERATIVE AGREEMENTS.—To carry out this chapter, the Secretary may enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of State or local government, any educational institution, or any other entity to further the objectives of this chapter. The objectives of this chapter include the development, improvement, and promotion of one-call damage prevention programs, research, risk assessment, and mapping.''.

SEC. 14. COMPLIANCE AND WAIVERS.

Section 60118 is amended by adding at the end the following new subsection:

''(e) COMPLIANCE WITH RISK MANAGEMENT PLANS.—The owners and operators of pipeline facilities that participate in the demonstration project under section 60126 shall, during the applicable period of participation in the program, be considered to be in compliance with any prescribed safety standard or regulatory requirement that is covered by a plan that is approved by the Secretary under section 60126.''.

SEC. 15. DAMAGE REPORTING.

Section 60123(d)(2) is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

''(B) a pipeline facility and does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or''.

SEC. 16. BIANNUAL REPORTS.

(a) BIANNUAL REPORTS.—

(1) SECTION HEADING.—The section heading of section 60124 is amended to read as follows:

''§ 60124. Biannual reports''.

(2) REPORTS.—Section 60124(a) is amended by striking the first sentence and inserting the following:

''(a) SUBMISSION AND COMMENTS.—Not later than August 15, 1997, and every 2 years thereafter, the Secretary of Transportation shall submit to Congress a report on carrying out this chapter for the 2 immediately preceding calendar years for gas and a report on carrying out this chapter for such period for hazardous liquid.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by striking the item relating to section 60124 and inserting the following:

''60124. Biannual reports.''.

SEC. 17. POPULATION ENCROACHMENT.

(a) IN GENERAL.—Chapter 601, as amended by section 5, is further amended by adding at the end the following new section:

''§ 60127. Population encroachment

''(a) LAND USE RECOMMENDATIONS.—The Secretary of Transportation shall make available to an appropriate official of each State, as determined by the Secretary, the land use recommendations of the special report numbered 219 of the Transportation Research Board, entitled 'Pipelines and Public Safety'.

''(b) EVALUATION.—The Secretary shall—

''(1) evaluate the recommendations in the report referred to in subsection (a);

''(2) determine to what extent the recommendations are being implemented;

''(3) consider ways to improve the implementation of the recommendations; and

''(4) consider other initiatives to further improve awareness of local planning and zoning entities regarding issues involved with population encroachment in proximity to the rights-of-way of any interstate gas pipeline facility or interstate hazardous liquid pipeline facility.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by inserting after the item relating to section 60126 the following:

''60127. Population encroachment.''.

SEC. 18. USER FEES.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall transmit to the Congress a report analyzing the assessment of pipeline safety user fees solely on the basis of mileage to determine whether—

(1) that measure of the resources of the Department of Transportation is the most appropriate measure of the resources used by the Department of Transportation in the regulation of pipeline transportation; or

(2) another basis of assessment would be a more appropriate measure of those resources.

SEC. 19. DUMPING WITHIN PIPELINE RIGHTS-OF-WAY.

(a) AMENDMENT.—Chapter 601, as amended by section 17, is further amended by adding at the end the following new section:

''§ 60128. Dumping within pipeline rights-of-way

''(a) PROHIBITION.—No person shall excavate for the purpose of unauthorized disposal within the right-of-way of an interstate gas pipeline facility or interstate hazardous liquid pipeline facility, or any other limited area in the vicinity of any such interstate pipeline facility established by the Secretary of Transportation, and dispose solid waste therein.

''(b) DEFINITION.—For purposes of this section, the term 'solid waste' has the meaning given that term in section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).''.

(b) CONFORMING AMENDMENTS.—

(1) CROSS-REFERENCE.—Sections 60122 and 60123 are each amended by striking ''or 60118(a)'' and inserting '', 60118(a), or 60128''.

(2) CHAPTER ANALYSIS.—The analysis for chapter 601 is amended by adding at the end the following new item:

''60128. Dumping within pipeline rights-of-way.''.

SEC. 20. PREVENTION OF DAMAGE TO PIPELINE FACILITIES.

Section 60117(a) is amended by inserting after ''and training activities'' the following: ''and promotional activities relating to prevention of damage to pipeline facilities''.

SEC. 21. TECHNICAL CORRECTIONS.

(a) SECTION 60105.—The heading to section 60105 is amended by inserting ''**pipeline safety program**'' after ''**State**''.

(b) SECTION 60106.—The heading to section 60106 is amended by inserting ''**pipeline safety**'' after ''**State**''.

(c) SECTION 60107.—The heading to section 60107 is amended by inserting ''**pipeline safety**'' after ''**State**''.

(d) CHAPTER ANALYSIS.—The analysis for chapter 601 is amended—

(1) in the item relating to section 60105, by inserting ''pipeline safety program'' after ''State'';

(2) in the item relating to section 60106, by inserting ''pipeline safety'' after ''State''; and

(3) in the item relating to section 60107, by inserting ''pipeline safety'' after ''State''.

SEC. 22. AUTHORIZATION OF APPROPRIATIONS.

(a) GAS AND HAZARDOUS LIQUID.—Section 60125 is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) GAS AND HAZARDOUS LIQUID.—To carry out this chapter (except for sections 60107 and 60114(b)) related to gas and hazardous

liquid, there are authorized to be appropriated to the Department of Transportation—

''(1) $9,936,000 for fiscal year 1996;

''(2) $10,512,000 for fiscal year 1997;

''(3) $11,088,000 for fiscal year 1998; and

''(4) $11,664,000 for fiscal year 1999.''; and

(2) by striking subsection (b).

(b) STATE GRANTS.—Section 60125(c)(1) is amended by adding at the end the following:

''(D) $10,764,000 for fiscal year 1996.

''(E) $11,388,000 for fiscal year 1997.

''(F) $12,012,000 for fiscal year 1998.

''(G) $12,636,000 for fiscal year 1999.''.

By Mr. HATCH:

S.J. Res. 45. A joint resolution proposing an amendment to the Constitution of the United States in order to ensure that private persons and groups are not denied benefits or otherwise discriminated against by the United States or any of the several States on account of religious expression, belief, or identity; to the Committee on the Judiciary.

RELIGIOUS EQUALITY CONSTITUTIONAL AMENDMENT

Mr. HATCH. Mr. President, religious liberty is the first freedom mentioned in the Bill of Rights. Today, I am introducing a religious equality constitutional amendment to restore that freedom to its intended and proper place in American society. This amendment is intended to rescue the first amendment's requirement that Congress ''shall make no law * * * prohibiting the free exercise [of religion] * * *'' from a misguided Supreme Court jurisprudence and the hostility that jurisprudence has spawned among local, State, and Federal Governments toward the participation of religious institutions in the public square. This is the same amendment introduced by Congressman HENRY HYDE, chairman of the House Judiciary Committee. In my view, our Nation benefits greatly from the participation of religious institutions in the public square. Religious values and influences are important components in addressing the social problems facing our country. These problems include the breakdown of the family, loss of respect for the values of human life, honesty, and hard work, the growing problem of juvenile crime, and the worsening drug problem.

We can provide public support to private religious institutions in carrying out vital social welfare functions whenever public support is provided to private secular institutions without establishing a religion or group of religions.

The amendment embodies two key principles. First, if public benefits are dispensed to private secular entities, Government cannot deny such benefits to private religious entities. Second, in dispensing such benefits among private religious entities, the Government may not discriminate among them based on religious beliefs.

Mr. President, I introduce this amendment after careful personal consideration and considerable public debate. I revere the Constitution and do not take lightly the proposal of new amendments to it. But after long study and discussion, and a series of hearings in the Judiciary Committee which I chair, I believe that a constitutional amendment is necessary to protect the rights of believing Americans. These rights are now often denied as a result of a confused and often erroneous constitutional jurisprudence in the courts and discrimination against religious groups and individuals by administrative agencies.

In our Judiciary Committee hearings this past autumn, we heard stories of individuals who were denied access to government benefits simply because of their religious beliefs. Surely no one who has not been schooled in the intricate confusions of first amendment jurisprudence would think that the cases we heard were fairly resolved.

We heard from the station manager of the Fordham University public radio station, which was denied construction funds available to all other public radio stations by the Clinton administration's Commerce Department because it broadcasts the Catholic mass 1 hour a week.

Arguments that the religious broadcast was a very small part of a very diverse programming schedule or that it was a practice going back more than 50 years were unavailing. Even the fact that the station was responding to community needs, as public stations are supposed to, by providing this religious programming to the elderly and disabled shut-ins did not move the bureaucrats at the Commerce Department. Given that the station needed the funds to comply with government facility requirements, but were told that the station would receive no money as long as the offending program was broadcast, the Clinton administration was virtually saying, ''stop broadcasting Catholic mass or stop broadcasting at all.''

This is appalling enough as an administrative abuse, but is has been abetted by a lower Federal court, and now awaits an appeals court decision. I should note that the statutory remedy provided by the landmark Religious Freedom Restoration Act, which I was proud to cosponsor and which President Clinton was proud to sign, was held unavailing in this case.

Two Supreme Court cases that were much discussed at our hearings by constitutional experts point up the human costs of discrimination by the government in dispensing public benefits. In Aguilar versus Felton, the Supreme Court held that remedial English and math could not be provided to economically deprived children on the premises of their school, if the school is religious. Similarly, in the case of Witters versus Dept. of Services for the Blind, Larry Witters, and otherwise eligible applicant for Government assistance to blind students, was ultimately denied that assistance because his chosen course of study was religious. The Supreme Court held that the first amendment did not require that he be denied funding, but it was not prepared to hold that the First Amendment prohibited antireligious discrimination. On remand, the State supreme court of Washington found that the State constitution required the denial of benefits and the U.S. Supreme Court denied further review of the case. Mr. President, does it make sense that people with disabilities who are otherwise entitled to Government assistance are denied that help because they also choose to exercise their rights of conscience?

Even when a religious person wins a case, it often takes so long that the help is no longer needed, or the case is decided on such narrow grounds or with such narrow vote margins that future parties have no comfort in ordering their conduct based on Supreme Court precedent. In the case of Zobrest versus Catalina Foothills School District, a deaf student's right to a deaf interpreter at school was not vindicated until well after he had graduated. And in the important case of Rosenberger versus University of Virginia, decided earlier this year, a Christian student group's right to funding of publishing activities on par with other student groups, including Jewish and Muslim groups, was upheld on a 5-to-4 vote, with Justice O'Connor, one of the five-vote majority, explicitly stating that the case was decided on its particular facts and that no broad principle upon which anyone can rely was announced in that case.

Mr. President, more must be done to safeguard the right of conscience of religious Americans. Many of us have tried to help with statutory safeguards like the Religious Freedom Restoration Act. But statutory solutions are not wholly adequate to correcting the erroneous interpretations of first amendment law by the courts. Only a constitutional amendment can do that. And that is why I am proposing one today.

The proposed amendment does not seek to bring back school-sponsored or state-sponsored prayer; it does not seek to create a nationally established theology. It merely seeks to require that the government act neutrally among beneficiaries of generally available resources. At a time when social values are eroding and family structures are collapsing why should we actively discriminate against religious entities and drive them out of the public square? At a time when all types of groups and viewpoints can receive Federal funds, why do we shut out or seriously hamper religious groups? At a time when we wish to make our Federal dollars go farther, why should we not take advantage of religious charities, day care, educational, or other social services? We should not be cutting ourselves off from their help simply because they have a partly religious mission. Nor should we be turning away otherwise qualified Americans from Government assistance simply because they seek to enjoy their rights as religious believers.

On a more personal note, Mr. President, I come from a religious tradition which has known the heavy hand of government. People of my faith know what it is like to be a minority religion subject to persecution by other religions and by the State and Federal Governments. In the middle of the last century, the Mormons were driven from State to State, and ultimately out of the then-United States altogether, and even then they were still molested by the Federal Government. I am concerned that government not drive religion out of the public square and from our public dialog on issues confronting our people. And I am concerned that the Government not single out persons of faith for worse treatment than their fellow Americans when it comes to enjoying the benefits of public resources.

Rather than upset the fine balance between religious beliefs and other philosophies in our pluralistic society, the proposed amendment seeks to restore it. No group should be disenfranchised by government fiat—and we should be especially careful that no group be disenfranchised for exercise of religious faith. Their rights were to be protected by the First particular among our Bill of Rights. It is sad that we must revisit so basic an issue in this way at this late hour because of recent aberrations in our Government's understanding of those rights.

Mr. President, I realize that this is an important issue and that amending the Constitution is a serious step. I am confident that this amendment will generate useful discussion and debate about the issue, and I think that will be good for the country. I commend this amendment to my colleagues, scholars, and fair-minded people throughout our country, and hope it will find their support.

ADDITIONAL COSPONSORS

S. 90

At the request of Mr. ROBB, his name was added as a cosponsor of S. 90, a bill to amend the Job Training Partnership Act to improve the employment and training assistance programs for dislocated workers, and for other purposes.

S. 1028

At the request of Mrs. KASSEBAUM, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 1028, a bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

S. 1166

At the request of Mr. LUGAR, the names of the Senator from Virginia [Mr. WARNER] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 1166, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, to improve the registration of pesticides, to provide minor use crop protection, to improve pesticide tolerances to safeguard infants and children, and for other purposes.

S. 1317

At the request of Mr. AKAKA, his name was added as a cosponsor of S. 1317, a bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1995, and for other purposes.

At the request of Mr. D'AMATO, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 1317, supra.

S. 1419

At the request of Mrs. KASSEBAUM, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 1419, a bill to impose sanctions against Nigeria.

S. 1484

At the request of Mr. NICKLES, the names of the Senator from Alabama [Mr. SHELBY] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 1484, a bill to enforce the public debt limit and to protect the social security trust funds and other Federal trust funds and accounts invested in public debt obligations.

S. 1494

At the request of Mr. CHAFEE, his name was added as a cosponsor of S. 1494, a bill to provide an extension for fiscal year 1996 for certain programs administered by the Secretary of Housing and Urban Development and the Secretary of Agriculture, and for other purposes.

SENATE RESOLUTION 202—CONCERNING THE BAN ON THE USE OF UNITED STATES PASSPORTS FOR TRAVEL TO LEBANON

Mr. ABRAHAM (for himself, Mr. SIMON, Mr. GRAHAM, and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 202

Whereas on January 26, 1987, the Department of State issued a prohibition on the use of United States passports for travel to Lebanon, creating a ban on travel to Lebanon by United States citizens;

Whereas the ban on travel to Lebanon was instituted during a time of civil war, anarchy, and general lawlessness in Lebanon, when the safety and well-being of United States citizens were at serious risk, American hostages were being taken, and hundreds of lives were being lost due to acts of terrorism;

Whereas the civil war in Lebanon ended in 1990 and the last United States hostage held in Lebanon was freed on December 4, 1991;

Whereas there has been no incident of violence against any United States citizen in Lebanon since December 4, 1991;

Whereas security in Lebanon has improved demonstrably since the end of the civil war due to, among other efforts, the exchange of security delegations between the United States and Lebanon to monitor ongoing progress on security;

Whereas the United States and Lebanon have made special joint efforts to agree upon and sign international conventions against terrorism which would address crimes committed against United States citizens in Lebanon during the civil war;

Whereas the United States maintains an economic and military assistance program in Lebanon;

Whereas it is estimated that more than 45,000 United States citizens, including Members of Congress, traveled safely to Lebanon in the past 4 years, either in defiance of the ban or under current United States regulations which permit the use of passports by dual Lebanese-United States nationals and in urgent humanitarian cases;

Whereas Americans of Lebanese descent who have families residing in Lebanon and who are not willing to defy the travel ban have been seriously harmed by this ban and are prevented from being reunited with their loved ones in Lebanon;

Whereas the United States has eased certain restrictions on the travel ban to permit airline tickets to be issued directly from the United States to Beirut for travel by non-United States nationals United States citizens who have obtained the appropriate waiver from the Department of State;

Whereas it is in the United States' national interest to assist actively the Government of Lebanon to attain the principles of democracy in the region;

Whereas the Lebanese government has initiated a 10-year, $18,000,000,000 reconstruction effort, and in 1993–1995 awarded more than 500 contracts worth more than $2,700,000,000 to business firms for development, reconstruction, and consulting projects;

Whereas the ban on the use of United States passports for travel to Lebanon creates a major impediment to United States firms that wish to bid for contracts in Lebanon;

Whereas it is in the United States national interest for United States businesses to participate in the reconstruction of Lebanon, since United States participation will bring economic benefit to the United States;

Whereas it is in the national interest of the United States for there to be an independent, politically and economically self-reliant Lebanon as a stabilizing state in the region;

Whereas in determining whether to restrict the use of United States passports in any country, the Secretary of State should apply consistent criteria; and

Whereas travel advisories, rather than travel bans, are in effect for countries such as Bosnia, Rwanda, Haiti, Colombia, and Peru, in which United States citizens have historically experienced as serious risk to their safety as they do in traveling to Lebanon: Now, therefore, be it *Resolved*, That it is the sense of the Senate that—

(1) in deciding whether to renew the ban on the use of United States passports for travel to Lebanon, the Secretary of State should—

(A) expand the present humanitarian waiver provisions to permit American citizens of Lebanese descent to travel to Lebanon for family reunification purposes;

(B) create a new waiver category to permit exceptions for United States business personnel who wish to travel to Lebanon for business purposes; and

(C) change the Lebanon travel ban to a travel advisory because American citizens have been safely traveling there since 1991, and it appears as if the risk posed to the safety of American citizens is no greater in Lebanon that it is in other countries that currently maintain travel advisories; and

(2) the Secretary of State should identify those conditions within Lebanon that are of risk to United States citizens and provide

suggestions for Lebanon to ameliorate those risks.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the Secretary of State.

Mr. ABRAHAM. Mr. President, I rise today to submit legislation regarding the ban on the use of United states passports for travel to Lebanon. I, along with my colleagues, Mr. SIMON, Mr. GRAHAM of Florida, and Mr. KENNEDY, cosponsored this resolution with the hope that the passport restriction will eventually be lifted.

The current policy—in effect, a travel ban to Lebanon—has had a negative impact on United States businesses and individuals. Since the restriction on the use of United States passports for travel to Lebanon inordinately affects Americans of Lebanese descent, we are proposing expanding the humanitarian considerations provision to permit those Americans of Lebanese descent to travel to Lebanon. This would ease the concerns of many Lebanese Americans who may want to travel to Lebanon for family reunification purposes, but who presently are unable to do so.

We also advocate creating a new waiver category which would permit travel by United States business personnel who wish to do business in Labanon. While the reconstruction effort in Lebanon is progressing at a fast pace, United States businesses are hindered from participating in this rebuilding effort due to the travel restrictions. United States businesses cannot compete with foreign companies with representation in and free access to Lebanon.

While we understand and agree that the safety and security of United States citizens is of paramount concern when reviewing the travel policy, it is also our understanding that more than 45,000 Americans are estimated to have traveled without incident to Lebanon during the past 4 years. That being the case, the current restrictions appear to be inconsistent with the situation on the ground. In addition, we note that other countries equally and, in some cases, more unstable than Lebanon are not subject to similar travel constraints.

In view of these considerations, and taking into account the overall improvement in circumstances inside Lebanon, we urge the Secretary of State to lift the passport restriction for Lebanon and issue in its place a travel advisory. Such a step would make clear any risks and dangers associated with travel to Lebanon, and at the same time enable United States citizens to make their own informed decisions.

Mr. President, I hope that this resolution will be incorporated into the next review process of the travel restrictions to Lebanon, and that in February 1996, the Department of State will implement the suggestions encompassed in this resolution.

SENATE RESOLUTION 203—RELATIVE TO THE SENATE LEGAL COUNSEL

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 203

Whereas, in the case of *Sheila Cherry* v. *Richard Cherry*, Case No. FM–18145–91, pending in the New Jersey Superior Court, a subpoena *duces tecum* for testimony at a deposition and for the production of documents has been issued to William Ayala, an employee of Senator Frank Lautenberg;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2) (1994), the Senate may direct its counsel to represent committees, Members, officers, and employees of the Senate with respect to subpoenas or orders to them in their official capacity: Now, therefore, be it

Resolved, That William Ayala is authorized to testify in the case of *Cherry* v. *Cherry*, except concerning matters for which a privilege or an objection should be asserted.

SEC. 2. That the Senate Legal Counsel is directed to represent William Ayala and Senator Lautenberg's office in connection with the subpoena issued in this case.

SENATE RESOLUTION 204—RELATIVE TO THE SENATE LEGAL COUNSEL

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 204

Whereas, in the case of *Charles Okoren, et al.* v. *Fyfe Symington, et al.*, No. CV–95–2527–PHX–RCB, pending in the United States District Court for the District of Arizona, the plaintiffs have named the United States Senate as a defendant;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1)(1994), the Senate may direct its counsel to defend the Senate in civil actions relating to its official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the United States Senate in the case of *Charles Okoren, et al.* v. *Fyfe Symington, et al.*

SENATE RESOLUTION 205—RELATIVE TO THE SENATE LEGAL COUNSEL

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 205

Whereas, in the case of *United States of America* v. *Karl Zielinski*, Case No. F12187–94, a criminal action pending in the Superior Court of the District of Columbia, the United States Attorney has caused a trial subpoena to be served on Michael O'Leary, a Senate employee on the staff of the Committee on the Judiciary;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 740(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to requests for testimony made to them in their official capacities: Now, therefore, be it

Resolved, That Michael O'Leary is authorized to provide testimony in the case of *United States of America* v. *Karl Zielinski*, except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Michael O'Leary in connection with the testimony authorized by section 1 of this resolution.

AMENDMENTS SUBMITTED

CONTINUING APPROPRIATIONS JOINT RESOLUTION

HATFIELD AMENDMENT NO. 3110

Mr. LOTT (for Mr. HATFIELD) proposed an amendment to the joint resolution (H.J. Res. 134) making further continuing appropriations for the fiscal year 1996, and for other purposes; as follows:

Strike all after the resolving clause and insert in lieu thereof:

TITLE I—AID TO FAMILIES WITH DEPENDENT CHILDREN AND FOSTER CARE AND ADOPTION ASSISTANCE

That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

SEC. 101. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995 for continuing the following projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this joint resolution) which were conducted in the fiscal year 1995:

All projects and activities funded under the account heading ''Family support payments to States'' under the Administration For Children and Families in the Department of Health and Human Services;

All projects and activities funded under the account heading ''Payments to States for foster care and adoption assistance'' under the Administration For Children and Families in the Department of Health and Human Services; and

Such amounts as may be necessary for the Medicaid program under title XIX of the Social Security Act for the second quarter of fiscal year 1996;

All administrative activities necessary to carry out the projects and activities in the preceding three paragraphs:

Provided, That whenever the amount which would be made available or the authority which would be granted under an Act which included funding for fiscal year 1996 for the projects and activities listed in this section is greater than that which would be available or granted under current operations, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate.

(b) Whenever the amount which would be made available or the authority which would be granted under the Act which included funding for fiscal year 1996 for the projects and activities listed in this section as passed by the House as of the date of enactment of this joint resolution, is different from that which would be available or granted under such Act as passed by the Senate as of the date of enactment of this joint resolution, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate or the rate permitted by the action of the House or the Senate, whichever is lower, under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

(c) Whenever an Act which included funding for fiscal year 1996 for the projects and activities listed in this section has been passed by only the House or only the Senate as of the date of enactment of this joint resolution, the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the one House at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

SEC. 102. Appropriations made by section 101 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 103. No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

SEC. 104. No provision which is included in the appropriations Act enumerated in section 101 but which was not included in the applicable appropriations Act for fiscal year 1995 and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this joint resolution.

SEC. 105. Appropriations made and authority granted pursuant to this title of this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 106. Unless otherwise provided for in this title of this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this title of this joint resolution, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) January 3, 1996, whichever first occurs.

SEC. 107. Expenditures made pursuant to this title of this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 108. No provision in the appropriations Act for the fiscal year 1996 referred to in section 101 of this joint resolution that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 106(c) of this joint resolution.

SEC. 109. Appropriations and funds made available by or authority granted pursuant to this title of this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

TITLE II—DISTRICT OF COLUMBIA

That the following sums are hereby appropriated, out of the general fund and enterprise funds of the District of Columbia for the District of Columbia for the fiscal year 1996, and for other purposes, namely:

SEC. 201. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act of the fiscal year 1995 for continuing projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this title of this joint resolution) which were conducted in the fiscal year 1995 and for which appropriations, funds, or other authority would be available in the following appropriations Act:

The District of Columbia Appropriations Act, 1996:

Provided, That whenever the amount which would be made available or the authority which would be granted in this Act is greater than that which would be available or granted under current operations, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate.

(b) Whenever the amount which would be made available or the authority which would be granted under the Act listed in this section as passed by the House as of the date of enactment of this joint resolution, is different from that which would be available or granted under such Act as passed by the Senate as of the date of enactment of this joint resolution, the pertinent project or activity shall be continue at a rate for operations not exceeding the current rate or the rate permitted by the action of the House or the Senate, whichever is lower, under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995: *Provided*, That where an item is not included in either version or where an item is included in only one version of the Act as passed by both Houses as of the date of enactment of this joint resolution, the pertinent project or activity shall not be continued except as provided for in section 211 or 212 under the appropriation, fund, or authority granted by the applicable appropriations Act for the fiscal year 1995 and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

SEC. 202. Appropriations made by section 201 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 203. No appropriation or funds made available or authority granted pursuant to section 201 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

SEC. 204. No provision which is included in the appropriations Act enumerated in section 201 but which was not included in the applicable appropriations Act for fiscal year 1995 and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this title of this joint resolution.

SEC. 205. Appropriations made and authority granted pursuant to this title of this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this title of this joint resolution.

SEC. 206. Unless otherwise provided for in this title of this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this title of this joint resolution shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this title of this joint resolution, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) January 3, 1996, whichever first occurs.

SEC. 207. Notwithstanding any other provision of this title of this joint resolution, except section 206, none of the funds appropriated under this title of this joint resolution shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.

SEC. 208. Expenditures made pursuant to this title of this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 209. No provision in the appropriations Act for the fiscal year 1996 referred to in section 201 of this title of this joint resolution that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 206(c) of this joint resolution.

SEC. 210. Appropriations and funds made available by or authority granted pursuant to this title of this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 211. Notwithstanding any other provision of this title of this joint resolution, except section 206, whenever the Act listed in section 201 as passed by both the House and Senate as of the date of enactment of this joint resolution, does not include funding for an ongoing project or activity for which there is a budget request, or whenever the rate for operations for an ongoing project or activity provided by section 201 for which there is a budget request would result in the project or activity being significantly reduced, the pertinent project or activity may be continued under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995 by increasing the rate for operations provided by section 201 to a rate for operations not to exceed one that provides the minimal level that would enable existing activities to continue. No new contracts or grants shall be awarded in excess of an amount that bears the same ratio to the rate for operations provided by this section as the number of days covered by this resolution bears to 366. For

the purposes of this title of this joint resolution the minimal level means a rate for operations that is reduced from the current rate by 25 percent.

SEC. 212. Notwithstanding any other provision of this title of this joint resolution, except section 206, whenever the rate for operations for any continuing project or activity provided by section 201 or section 211 for which there is a budget request would result in a furlough of Government employees, that rate for operations may be increased to the minimum level that would enable the furlough to be avoided. No new contracts or grants shall be awarded in excess of an amount that bears the same ratio to the rate for operations provided by this section as the number of days covered by this resolution bears to 366.

SEC. 213. Notwithstanding any other provision of this title of this joint resolution, except sections 206, 211, and 212, for those programs that had high initial rates of operation or complete distribution of funding at the beginning of the fiscal year in fiscal year 1995 because of distributions of funding to States, foreign countries, grantees, or others, similar distributions of funds for fiscal year 1996 shall not be made and no grants shall be awarded for such programs funded by this title of this resolution that would impinge on final funding prerogatives.

SEC. 214. This title of this joint resolution shall be implemented so that only the most limited funding action of that permitted in this title of this resolution shall be taken in order to provide for continuation of projects and activities.

SEC. 215. The provisions of section 132 of the District of Columbia Appropriations Act, 1988, Public Law 100–202, shall not apply for this title of this joint resolution.

SEC. 216. Notwithstanding any other provision of this title of this joint resolution, except section 206, none of the funds appropriated under this title of this joint resolution shall be used to implement or enforce any system of registration of unmarried, cohabiting couples whether they are homosexual, lesbian, heterosexual, including but not limited to registration for the purpose of extending employment, health, or governmental benefits to such couples on the same basis that such benefits are extended to legally married couples; nor shall any funds made available pursuant to any provision of this title of this joint resolution otherwise be used to implement or enforce D.C. Act 9–188, signed by the Mayor of the District of Columbia on April 15, 1992.

TITLE III—VETERANS' BENEFITS

That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

SEC. 301. ENSURED PAYMENT DURING FISCAL YEAR 1996 OF VETERANS' BENEFITS IN EVENT OF LACK OF APPROPRIATIONS.

(a) PAYMENTS REQUIRED.—In any case during fiscal year 1996 in which appropriations are not otherwise available for programs, projects, and activities of the Department of Veterans Affairs, the Secretary of Veterans Affairs shall nevertheless ensure that—

(1) payments of existing veterans benefits are made in accordance with regular procedures and schedules and in accordance with eligibility requirements for such benefits; and

(2) payments to contractors of the Veterans Health Administration of the Department of Veterans Affairs are made when due in the case of services provided that directly relate to patient health and safety.

(b) FUNDING.—There is hereby appropriated such sums as may be necessary for the payments pursuant to subsection (a), including such amounts as may be necessary for the costs of administration of such payments.

(c) CHARGING OF ACCOUNTS WHEN APPROPRIATIONS MADE.—In any case in which the Secretary uses the authority of subsection (a) to make payments, applicable accounts shall be charged for amounts so paid, and regular appropriations become available for those purposes.

(d) EXISTING BENEFITS SPECIFIED.—For purposes of this section, existing veterans benefits are benefits under laws administered by the Secretary of Veterans Affairs that have been adjudicated and authorized for payment as of—

(1) December 15, 1995; or

(2) if appropriations for such benefits are available (other than pursuant to subsection (b)) after December 15, 1995, the last day on which appropriations for payment of such benefits are available (other than pursuant to subsection (b)).

SEC. 302. Section 301 shall expire on January 3, 1996.

START II TREATY RESOLUTION OF RATIFICATION

LUGAR (AND PELL) AMENDMENT NO. 3111

Mr. LUGAR (for himself and Mr. PELL) proposed an amendment to the resolution of ratification to Treaty Document No. 103–1; as follows:

In section 1(b)(2) of the resolution of ratification, insert ''(A)'' after ''START II Treaty''.

In section 1(b)(2), before the period at the end, insert '', and (B) changes none of the rights of either Party with respect to the provisions of the ABM Treaty, in particular, Articles 13, 14, and 15''.

At the end of section 1(b) of the resolution of ratification, add the following new condition:

(7) IMPLEMENTATION ARRANGEMENTS.—(A) The START II Treaty shall not be binding on the United States until such time as the Duma of the Russian Federation has acted pursuant to its constitutional responsibilities and the START II Treaty enters into force in accordance with Article VI of the Treaty.

(B) If the START II Treaty does not enter into force pursuant to subparagraph (A), and if the President plans to implement reductions of United States strategic nuclear forces below those currently planned and consistent with the START Treaty, then the President shall—

(i) consult with the Senate regarding the effect of such reductions on the national security of the United States; and

(ii) take no action to reduce United States strategic nuclear forces below that currently planned and consistent with the START Treaty until he submits to the Senate his determination that such reductions are in the national security interest of the United States.

In section 1(c)(2) of the resolution of ratification, insert ''(A)'' immediately after ''REDUCTIONS.—''.

At the end of section 1(c)(2), insert the following:

(B) Recognizing that instability could result from an imbalance in the levels of strategic offensive arms, the Senate calls upon the President to submit a report in unclassified form to the Committees on Foreign Relations and Armed Services of the Senate not later than January 31 of each year beginning with January 31, 1997, and continuing through such time as the reductions called for in the START II Treaty are completed by both parties, which report will provide—

(i) details on the progress of each party's reductions in strategic offensive arms during the previous year;

(ii) a certification that the Russian Federation is in compliance with the terms of the START II Treaty or specifies any act of noncompliance by the Russian Federation; and

(iii) an assessment of whether a strategic imbalance endangering the national security interests of the United States exists.

In section 1(c)(4) of the resolution of ratification—

(1) strike ''the parties'' and all that follows through ''national security interests'' and insert ''the President to seek further strategic offensive arms reductions to the extent consistent with United States national security interests''; and

(2) strike ''it is the sense of the Senate that'' and insert in ''and''.

At the end of section 1(c) of the resolution of ratification, add the following new declarations:

(8) COMPLIANCE.—Concerned by the clear past pattern of Soviet noncompliance with arms control agreements and continued cases of noncompliance by the Russian Federation, the Senate declares that—

(A) the START II Treaty is in the interests of the United States only if both the United States and the Russian Federation are in strict compliance with the terms of the Treaty as presented to the Senate for its advice and consent to ratification, such compliance being measured by performance and not by efforts, intentions, or commitments to comply;

(B) the Senate expects the Russian Federation to be in strict compliance with its obligations under the terms of the START II Treaty as presented to the Senate for its advice and consent to ratification; and

(C) given its concern about compliance issues, the Senate expects the Administration to offer regular briefings, but not less than four times per year, to the Committees on Foreign Relations and Armed Services on compliance issues related to the START II Treaty. Such briefings shall include a description of all U.S. efforts in U.S./Russian diplomatic channels and bilateral fora to resolve the compliance issues and shall include, but would not necessarily be limited to, the following:

(i) Any compliance issues the United States plans to raise with the Russian Federation at the Bilateral Implementation Commission, in advance of such meetings;

(ii) Any compliance issues raised at the Bilateral Implementation Commission, within thirty days of such meetings; and

(iii) Any Presidential determination that the Russian Federation is in non-compliance with or is otherwise acting in a manner inconsistent with the object and purpose of the START II Treaty, within thirty days of such a determination, in which case the President shall also submit a written report, with an unclassified summary, explaining why it is in the national security interests of the United States to continue as a party to the START II Treaty.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) SUBMISSION OF FUTURE AGREEMENTS AS TREATIES.—The Senate declares that following Senate advice and consent to ratification of the START II Treaty, any agreement or understanding which in any material way

modifies, amends, or reinterprets United States or Russian obligations under the START II Treaty, including the time frame for implementation of the Treaty, should be submitted to the Senate for its advice and consent to ratification.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) NATURE OF DETERRENCE.—(A) On June 17, 1992, Presidents Bush and Yeltsin issued a Joint Understanding and a Joint Statement at the conclusion of their Washington Summit, the first of which became the foundation for the START II Treaty. The second, the Joint Statement on a Global Protection System, endorsed the cooperative development of a defensive system against ballistic missile attack and demonstrated the belief by the governments of the United States and the Russian Federation that strategic offensive reductions and certain defenses against ballistic missiles are stabilizing, compatible, and reinforcing.

(B) It is, therefore, the sense of the Senate that:

(i) The long-term perpetuation of deterrence based on mutual and severe offensive nuclear threats would be outdated in a strategic environment in which the United States and the Russian Federation are seeking to put aside their past adversarial relationship and instead build a relationship based upon trust rather than fear.

(ii) An offense-only form of deterrence cannot address by itself the emerging strategic environment in which, as Secretary of Defense Les Aspin said in January 1994, proliferators acquiring missiles and weapons of mass destruction ''may have acquired such weapons for the express purpose of blackmail or terrorism and thus have a fundamentally different calculus not amenable to deterrence. . . . New deterrent approaches are needed as well as new strategies should deterrence fail.''.

(iii) Defenses against ballistic missiles are essential for new deterrent strategies and for new strategies should deterrence fail. Because deterrence may be inadequate to protect United States forces and allies abroad, theater missile defense is necessary, particularly the most capable systems of the United States such as THAAD, Navy Upper Tier, and the Space and Missile Tracking System. Similarly, because deterrence may be inadequate to protect the United States against long-range missile threats, missile defenses are a necessary part of new deterrent strategies. Such defenses also are wholly in consonance with the summit statements from June 1992 of the Presidents of the United States and the Russian Federation and the September 1994 statement by Secretary of Defense William J. Perry, who said, ''We now have the opportunity to create a new relationship, based not on MAD, not on Mutual Assured Destruction, but rather on another acronym, MAS, or Mutual Assured Safety.''.

(iv) As the governments of the United States and Russia have built upon the June 17, 1992, Joint Understanding in agreeing to the START II Treaty, so too should these governments promptly undertake discussions based on the Joint Statement to move forward cooperatively in the development and deployment of defenses against ballistic missiles.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) REPORT ON USE OF FOREIGN EXCESS BALLISTIC MISSILES FOR LAUNCH SERVICES.—It is the sense of the Senate that the President should not issue licenses for the use of a foreign excess ballistic missile for launch services without first submitting a report to Congress, on a one-time basis, on the implications of the licensing approval on nonproliferation efforts under the Treaty and on the United States space launch industry.

At the end of section 1(c) of the resolution of ratification, add the following new declaration:

(8) UNITED STATES COMMITMENTS ENSURING THE SAFETY, RELIABILITY, AND PERFORMANCE OF ITS NUCLEAR FORCES.—The Senate declares that the United States is committed to ensuring the safety, reliability, and performance of its nuclear forces. To this end, the United States undertakes the following additional commitments:

(A) The United States is committed to proceeding with a robust stockpile stewardship program, and to maintaining nuclear weapons production capabilities and capacities, that will ensure the safety, reliability, and performance of the United States nuclear arsenal at the START II levels and meet requirements for hedging against possible international developments or technical problems, in conformance with United States policies and to underpin deterrence.

(B) The United States is committed to reestablishing and maintaining sufficient levels of production to support requirements for the safety, reliability, and performance of United States nuclear weapons and demonstrate and sustain production capabilities and capacities.

(C) The United States is committed to maintaining United States nuclear weapons laboratories and protecting the core nuclear weapons competencies therein.

(D) As tritium is essential to the performance of modern nuclear weapons, but decays radioactively at a relatively rapid rate, and the United States now has no meaningful tritium production capacity, the United States is committed to ensuring rapid access to a new production source of tritium within the next decade.

(E) As warhead design flaws or aging problems may occur that a robust stockpile stewardship program cannot solve, the United States reserves the right, consistent with United States law, to resume underground nuclear testing if that is necessary to maintain confidence in the nuclear weapons stockpile. The United States is committed to maintaining the Nevada Test Site at a level in which the United States will be able to resume testing, within one year, following a national decision to do so.

(F) The United States reserves the right to invoke the supreme national interest of the United States to withdraw from any future arms control agreement to limit underground nuclear testing.

CONDITION

(a) CONDITIONS.—The Senate's advice and consent to the ratification of the START II Treaty is subject to the following condition, which shall be binding upon the President:

(1) PRESIDENTIAL CERTIFICATION AND REPORT ON NATIONAL TECHNICAL MEANS.—Within ninety days after the United States deposits instruments of ratification of the START II Treaty, the President shall certify that U.S. National Technical Means are sufficient to ensure effective monitoring of Russian compliance with the provisions of the Treaty governing the capabilities of strategic missile systems. This certification shall be accompanied by a report to the Senate of the United States indicating how U.S. National Technical Means, including collection, processing and analytic resources, will be marshalled to ensure effective monitoring. Such report may be supplemented by a classified annex, which shall be submitted to the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Armed Services and the Select Committee on Intelligence of the Senate.

THE VICTIM RESTITUTION ACT OF 1995

HATCH (AND BIDEN) AMENDMENT NO. 3112

Mr. WARNER (for Mr. HATCH, for himself and Mr. BIDEN) proposed an amendment to the bill (H.R. 665) to control crime by mandatory victim restitution; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Victims Justice Act of 1995''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—RESTITUTION

Sec. 101. Order of restitution.
Sec. 102. Conditions of probation.
Sec. 103. Mandatory restitution.
Sec. 104. Order of restitution to victims of other crimes.
Sec. 105. Procedure for issuance and enforcement of restitution order.
Sec. 106. Procedure.
Sec. 107. Instruction to Sentencing Commission.
Sec. 108. Justice Department regulations.
Sec. 109. Special assessments on convicted persons.
Sec. 110. Effective date.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Crime victims fund.
Sec. 202. Victims of terrorism act.
Sec. 203. Severability.
Sec. 204. Study and report.

TITLE I—RESTITUTION

SEC. 101. ORDER OF RESTITUTION.

Section 3556 of title 18, United States Code, is amended—

(1) by striking ''may'' and inserting ''shall''; and

(2) by striking ''sections 3663 and 3664.'' and inserting ''3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.''.

SEC. 102. CONDITIONS OF PROBATION.

Section 3563 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking ''and'' at the end;

(B) in the first paragraph (4) (relating to conditions of probation for a domestic crime of violence), by striking the period and inserting a semicolon;

(C) by redesignating the second paragraph (4) (relating to conditions of probation concerning drug use and testing) as paragraph (5);

(D) in paragraph (5), as redesignated, by striking the period at the end and inserting a semicolon; and

(E) by inserting after paragraph (5), as redesignated, the following new paragraphs:

''(6) that the defendant—

''(A) make restitution in accordance with sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and

''(B) pay the assessment imposed in accordance with section 3013; and

''(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.''; and

(2) in subsection (b)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (22) as paragraphs (2) through (21), respectively; and

(C) by amending paragraph (2), as redesignated, to read as follows:

''(2) make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A));''.

SEC. 103. MANDATORY RESTITUTION.

(a) IN GENERAL.—Chapter 232 of title 18, United States Code, is amended by inserting immediately after section 3663 the following new section:

''§ 3663A. Mandatory restitution to victims of certain crimes

''(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to any other penalty authorized by law, that the defendant make restitution to the victim of the offense, or, if the victim is deceased, to the victim's estate.

''(2) For the purposes of this section, the term 'victim' means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

''(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

''(b) The order of restitution shall require that such defendant—

''(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

''(A) return the property to the owner of the property or someone designated by the owner; or

''(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

''(i) the greater of—

''(I) the value of the property on the date of the damage, loss, or destruction; or

''(II) the value of the property on the date of sentencing, less

''(ii) the value (as of the date the property is returned) of any part of the property that is returned;

''(2) in the case of an offense resulting in bodily injury to a victim—

''(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

''(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

''(C) reimburse the victim for income lost by such victim as a result of such offense;

''(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

''(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

''(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

''(A) that is—

''(i) a crime of violence, as defined in section 16;

''(ii) an offense against property under this title, including any offense committed by fraud or deceit; or

''(iii) an offense described in section 1365 (relating to tampering with consumer products); and

''(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

''(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

''(3) This section shall not apply if the court finds, from facts on the record, that—

''(A) the number of identifiable victims is so large as to make restitution impracticable; or

''(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

''(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 232 of title 18, United States Code, is amended by inserting immediately after the matter relating to section 3663 the following:

''3663A. Mandatory restitution to victims of certain crimes.''.

SEC. 104. ORDER OF RESTITUTION TO VICTIMS OF OTHER CRIMES.

(a) IN GENERAL.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking ''(a)(1) The court'' and inserting ''(a)(1)(A) The court'';

(B) by inserting '', section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section),'' before ''or section 46312,'';

(C) by inserting ''other than an offense described in section 3663A(c),'' after ''title 49,'';

(D) by inserting before the period at the end the following: '', or if the victim is deceased, to the victim's estate'';

(E) by adding at the end the following new subparagraph:

''(B)(i) The court, in determining whether to order restitution under this section, shall consider—

''(I) the amount of the loss sustained by each victim as a result of the offense; and

''(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

''(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.''; and

(F) by amending paragraph (2) to read as follows:

''(2) For the purposes of this section, the term 'victim' means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.'';

(2) by striking subsections (c) through (i); and

(3) by adding at the end the following new subsections:

''(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B) (i)(II) and (ii), when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

''(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

''(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine ordered for the offense charged in the case.

''(3) Restitution under this subsection shall be distributed as follows:

''(A) 65 percent of the total amount of restitution shall be paid to the Victim Assistance Administration of the State in which the crime occurred.

''(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

''(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under section 981 or 982.

''(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

''(6) Requests for community restitution under this subsection shall be considered in all plea agreements negotiated by the United States.

''(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

''(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

''(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.''.

(b) SEXUAL ABUSE.—Section 2248 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''or 3663A'' after ''3663'';

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

''(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of

the victim's losses as determined by the court pursuant to paragraph (2).'';

(B) by amending paragraph (2) to read as follows:

''(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.'';

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

(c) SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN.—Section 2259 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''or 3663A'' after ''3663'';

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

''(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).'';

(B) by amending paragraph (2) to read as follows:

''(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.'';

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (e).

(d) DOMESTIC VIOLENCE.—Section 2264 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''or 3663A'' after ''3663'';

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

''(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).'';

(B) by amending paragraph (2) to read as follows:

''(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.'';

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (g); and

(4) by adding at the end the following new subsection (c):

''(c) VICTIM DEFINED.—For purposes of this section, the term 'victim' means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.''.

(e) TELEMARKETING FRAUD.—Section 2327 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''or 3663A'' after ''3663'';

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

''(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).'';

(B) by amending paragraph (2) to read as follows:

''(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.'';

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

SEC. 105. PROCEDURE FOR ISSUANCE AND ENFORCEMENT OF RESTITUTION ORDER.

(a) IN GENERAL.—Section 3664 of title 18, United States Code, is amended to read as follows:

''§ 3664. Procedure for issuance and enforcement of order of restitution

''(a) For orders of restitution under this title, the court shall order the probation service of the court to obtain and include in its presentence report, or in a separate report, as the court directs, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation service shall so inform the court.

''(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

''(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

''(d)(1) Within 60 days after conviction and, in any event, not later than 10 days prior to sentencing—

''(A)(i) the attorney for the Government, after consulting with all identified victims, shall promptly provide the probation service of the court with a listing of the amounts subject to restitution;

''(ii) the attorney for the Government shall provide notice to all identified victims, informing the victims of the offenses of which the defendant was convicted, the listing of amounts subject to restitution submitted to the probation service, the victim's right to submit information to the probation service concerning the amount of the victim's losses, and the scheduled date, time, and place of the sentencing hearing; and

''(iii) if any victim objects to any of the information provided to the probation service relating to the amount of the victim's losses subject to restitution, the attorney for the Government shall advise the victim that the victim may file a separate affidavit and shall provide the victim with an affidavit form which may be used to do so; and

''(B) each defendant shall prepare and file with the probation service of the court an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and other information the court requires relating to such other factors as the court deems appropriate.

''(2) After reviewing the report of the probation service of the court, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

''(3) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the attorney for the Government shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

''(4) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

''(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

''(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

''(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

''(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

''(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

''(B) projected earnings and other income of the defendant; and

''(C) any financial obligations of the defendant; including obligations to dependents.

''(3)(A) A restitution order may direct the defendant to make a single, lump-sum payment, partial payment at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

''(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of

a restitution order in the foreseeable future under any reasonable schedule of payments.

''(4) An in-kind payment described in paragraph (3) may be in the form of—

''(A) return of property;

''(B) replacement of property; or

''(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

''(g)(1) No victim shall be required to participate in any phase of a restitution order.

''(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

''(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

''(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may issue an order of priority based on the type and amount of each victim's loss, accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all individual victims receive full restitution before the United States receives any restitution.

''(j)(1) If a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution shall be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

''(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

''(A) any Federal civil proceeding; and

''(B) any State civil proceeding, to the extent provided by the law of the State.

''(k) A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

''(l) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

''(m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or

''(ii) by all other available and reasonable means.

''(B) An order of restitution may also be enforced by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

''(2) An order of in-kind restitution in the form of services shall be enforced by the probation service of the court.

''(n) If a person obligated to provide restitution or pay a fine receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.''.

(b) TECHNICAL AMENDMENT.—The item relating to section 3664 in the analysis for chapter 232 of title 18, United States Code, is amended to read as follows:

''3664. Procedure for issuance and enforcement of order of restitution.''.

SEC. 106. PROCEDURE.

(a) AMENDMENT OF FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 32(b) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (1), by adding at the end the following: ''Notwithstanding the preceding sentence, a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court directs, shall be required in any case in which restitution is required to be ordered.''; and

(2) in paragraph (4)—

(A) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(B) by inserting after subparagraph (E), the following new subparagraph:

''(F) in appropriate cases, information sufficient for the court to enter an order of restitution;''.

(b) FINES.—Section 3572 of title 18, United States Code, is amended—

(1) in subsection (b) by inserting ''other than the United States,'' after ''offense,'';

(2) in subsection (d)—

(A) in the first sentence, by striking ''A person sentenced to pay a fine or other monetary penalty'' and inserting ''(1) A person sentenced to pay a fine or other monetary penalty, including restitution,'';

(B) by striking the third sentence; and

(C) by adding at the end the following:

''(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

''(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.'';

(3) in subsection (f), by inserting ''restitution'' after ''special assessment,'';

(4) in subsection (h), by inserting ''or payment of restitution'' after ''A fine''; and

(5) in subsection (i)—

(A) in the first sentence, by inserting ''or payment of restitution'' after ''A fine''; and

(B) by amending the second sentence to read as follows: ''Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3613A.''.

(c) POSTSENTENCE ADMINISTRATION.—

(1) PAYMENT OF A FINE OR RESTITUTION.—Section 3611 of title 18, United States Code, is amended—

(A) by amending the heading to read as follows:

''§ 3611. Payment of a fine or restitution'';

and

(B) by striking ''or assessment shall pay the fine or assessment'' and inserting '', assessment, or restitution, shall pay the fine, assessment, or restitution''.

(2) COLLECTION.—Section 3612 of title 18, United States, is amended—

(A) by amending the heading to read as follows:

''§ 3612. Collection of unpaid fine or restitution'';

(B) in subsection (b)(1)—

(i) in the matter preceding subparagraph (A), by inserting ''or restitution order'' after ''fine'';

(ii) in subparagraph (C), by inserting ''or restitution order'' after ''fine'';

(iii) in subparagraph (E), by striking ''and'';

(iv) in subparagraph (F)—

(I) by inserting ''or restitution order'' after ''fine''; and

(II) by striking the period at the end and inserting ''; and''; and

(v) by adding at the end the following new subparagraph:

''(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, or the appropriate entity of the court, by means of a form to be provided by the Attorney General or the court, of any change in the victim's mailing address while restitution is still owed the victim. The confidentiality of any information relating to a victim shall be maintained.'';

(C) in subsection (c)—

(i) in the first sentence, by inserting ''or restitution'' after ''fine''; and

(ii) by adding at the end the following: ''Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

''(1) A penalty assessment under section 3013 of title 18, United States Code.

''(2) Restitution of all victims.

''(3) All other fines, penalties, costs, and other payments required under the sentence.'';

(D) in subsection (d)—

(i) by inserting ''or restitution'' after ''fine''; and

(ii) by striking ''is delinquent, to inform him that the fine is delinquent'' and inserting ''or restitution is delinquent, to inform the person of the delinquency'';

(E) in subsection (e)—

(i) by inserting ''or restitution'' after ''fine''; and

(ii) by striking ''him that the fine is in default'' and inserting ''the person that the fine or restitution is in default'';

(F) in subsection (f)—

(i) in the heading, by inserting ''and restitution'' after ''on fines''; and

(ii) in paragraph (1), by inserting ''or restitution'' after ''any fine'';

(G) in subsection (g), by inserting ''or restitution'' after ''fine'' each place it appears; and

(H) in subsection (i), by inserting ''and restitution'' after ''fines''.

(3) CIVIL REMEDIES.—Section 3613 of title 18, United States Code, is amended—

(A) in subsection (b), by amending paragraph (1) to read as follows:

''(1) the later of 20 years after the entry of the judgment or 20 years after the release from imprisonment of the person fined or ordered to pay restitution; or''; and

(B) in subsection (e), by striking '', but in no event'' and all that follows through the end of the subsection and inserting a period.

(4) DEFAULT.—Chapter 229 of title 18, United States Code, is amended by inserting after section 3613 the following new section:

''§ 3613A. Effect of default

''(a)(1) Upon a finding that the defendant is in default on a payment of a fine or restitution, the court may, pursuant to section 3565, revoke probation or a term of supervised release or modify the terms or conditions of probation on a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

''(2) In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the order of a fine or restitution.

''(b)(1) Any hearing held pursuant to this section may be conducted by a magistrate judge, subject to de novo review by the court.

''(2) To the extent practicable, in a hearing held pursuant to this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.

''(3) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.''.

(5) RESENTENCING.—Section 3614 of title 18, United States Code, is amended—

(A) in the heading, by inserting ''or restitution'' after ''fine'';

(B) in subsection (a), by inserting ''or restitution'' after ''fine''; and

(C) by adding at the end the following new subsection:

''(c) EFFECT OF INDIGENCY.—In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent.''.

(d) CONFORMING AMENDMENT.—The analysis for subchapter B of chapter 229 of title 18, United States Code, is amended to read as follows:

''Sec.
''3611. Payment of a fine or restitution.
''3612. Collection of an unpaid fine or restitution.
''3613. Civil remedies for collection of an unpaid fine or restitution.
''3613A. Effect of default.
''3614. Resentencing upon failure to pay a fine or restitution.
''3615. Criminal default.''.

SEC. 107. INSTRUCTION TO SENTENCING COMMISSION.

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to reflect this Act and the amendments made by this Act.

SEC. 108. JUSTICE DEPARTMENT REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines, or amend existing guidelines, to carry out this Act and to ensure that—

(1) in all plea agreements negotiated by the United States, consideration is given to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually pleaded; and

(2) orders of restitution made pursuant to the amendments made by this Act are enforced to the fullest extent of the law.

SEC. 109. SPECIAL ASSESSMENTS ON CONVICTED PERSONS.

Section 3013(a)(2) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''$50'' and inserting ''not less than $100''; and

(2) in subparagraph (B), by striking ''$200'' and inserting ''not less than $400''.

SEC. 110. EFFECTIVE DATE.

The amendments made by this title shall be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. CRIME VICTIMS FUND.

(a) PROHIBITION OF PAYMENTS TO DELINQUENT CRIMINAL DEBTORS BY STATE CRIME VICTIM COMPENSATION PROGRAMS.—

(1) IN GENERAL.—Section 1403(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended—

(A) by striking ''and'' at the end of paragraph (7);

(B) by redesignating paragraph (8) as paragraph (9); and

(C) by inserting after paragraph (7) the following new paragraph:

''(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine or other monetary penalty imposed for the offense; and''.

(2) APPLICATION OF AMENDMENT.—The amendment made by paragraph (1) shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victims compensation programs that are sufficient to ensure that victims compensation is not denied to any person except as authorized by law.

(b) EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by inserting after subsection (b) the following new subsection:

''(c) EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.—Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.''.

SEC. 202. VICTIMS OF TERRORISM ACT.

(a) AUTHORITY TO PROVIDE ASSISTANCE AND COMPENSATION TO VICTIMS OF TERRORISM.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404A the following new section:

''SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

''(a) VICTIMS OF ACTS OF TERRORISM OUTSIDE THE UNITED STATES.—The Director may make supplemental grants to States to provide compensation and assistance to the residents of such States who, while outside the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

''(b) VICTIMS OF DOMESTIC TERRORISM.—The Director may make supplemental grants to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Offices for use in coordination with State victims compensation and assistance efforts in providing emergency relief.''.

(b) FUNDING OF COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM, MASS VIOLENCE, AND CRIME.—Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as follows:

''(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed $50,000,000.

''(B) The emergency reserve may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.''.

(c) CRIME VICTIMS FUND AMENDMENTS.—

(1) UNOBLIGATED FUNDS.—Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(A) in subsection (c), by striking ''subsection'' and inserting ''chapter''; and

(B) by amending subsection (e) to read as follows:

''(e) AMOUNTS AWARDED AND UNSPENT.—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums in excess of $500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than $500,000 shall be returned to the Fund.''.

(2) BASE AMOUNT.—Section 1404(a)(5) of such Act (42 U.S.C. 10603(a)(5)) is amended to read as follows:

''(5) As used in this subsection, the term 'base amount' means—

''(A) except as provided in subparagraph (B), $500,000; and

''(B) for the territories of the Northern Mariana Islands, Guam, American Samoa,

and the Republic of Palau, $200,000, with the Republic of Palau's share governed by the Compact of Free Association between the United States and the Republic of Palau.''.

SEC. 203. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 204. STUDY AND REPORT.

(a) STUDY.—The Attorney General, in cooperation with the Director of the Administrative Office of the United States Courts, shall conduct a study of the funds paid out of the Crime Victims Fund and the impact that the amendments made by this Act have on funds available in the Crime Victims Fund, including an assessment of any reduction or increase in fines collected and deposited into the Fund directly attributable to the amendments made by this Act.

(b) REPORT.—The Attorney General and the Director of the Administrative Office of the United States Courts shall report interim findings to the Chairman and ranking Member of the Committees on the Judiciary of the Senate and House of Representatives 1 year after the date of enactment of this Act, an annually thereafter until issuing a final report, together with recommendations, not later than 4 years after the date of enactment of this Act.

THE NATIONAL MARINE FISHERIES SERVICE LABORATORY CONVEYANCE ACT

PRESSLER (AND OTHERS) AMENDMENT NO. 3113

Mr. WARNER (for Mr. PRESSLER, for himself, Mr. KERRY, and Mr. STEVENS) proposed an amendment to the bill (H.R. 1358) to require the Secretary of Commerce to convey to the Commonwealth of Massachusetts the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, MA; as follows:

SECTION 1. CONVEYANCES.

(a) NATIONAL MARINE FISHERIES SERVICE LABORATORY AT GLOUCESTER, MASSACHUSETTS.—

(1) IN GENERAL.—The Secretary of Commerce shall convey to the Commonwealth of Massachusetts, all right, title, and interest of the United States in and to the property comprising the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, Massachusetts.

(2) TERMS.—A conveyance of property under paragraph (1) shall be made—

(A) without payment of consideration; and

(B) subject to the terms and conditions specified under paragraphs (3) and (4).

(3) CONDITIONS FOR TRANSFER.—

(A) IN GENERAL.—As a condition of any conveyance of property under this subsection, the Commonwealth of Massachusetts shall assume full responsibility for maintenance of the property for as long as the Commonwealth retains the right and title to that property.

(B) CONTINUED USE OF PROPERTY BY NMFS.—The Secretary may enter into a memorandum of understanding with the Commonwealth of Massachusetts under which the National Marine Fisheries Service is authorized to occupy existing laboratory space on the property conveyed under this subsection, if—

(i) the term of the memorandum of understanding is for a period of not longer than 5 years beginning on the date of enactment of this Act; and

(ii) the square footage of the space to be occupied by the National Marine Fisheries Service does not conflict with the needs of, and is agreeable to, the Commonwealth of Massachusetts.

(4) REVERSIONARY INTEREST.—All right, title, and interest in and to all property conveyed under this subsection shall revert to the United States on the date on which the Commonwealth of Massachusetts uses any of the property for any purpose other than the Commonwealth of Massachusetts Division of Marine Fisheries resource management program.

(5) RESTRICTION.—Amounts provided by the South Essex Sewage District may not be used by the Commonwealth of Massachusetts to transfer existing activities to, or conduct activities at, property conveyed under this section.

(b) PIER IN CHARLESTON, SOUTH CAROLINA.—Section 22(a) of the Marine Mammal Protection Act Amendments of 1994 (Pub. Law 103–238; 108 Stat. 561) is amended—

(1) by inserting ''(1)'' before ''Not''; and

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

''(2) Not later than December 31, 1996, the Secretary of the Navy may convey, without payment or other consideration, to the Secretary of Commerce, all right, title, and interest to the property comprising that portion of the Naval Base, Charleston, South Carolina, bounded by Hobson Avenue, the Cooper River, the landward extension of the property line located 70 feet northwest of and parallel to the centerline of Pier Q, and the northwest property line of the parking area associated with Pier R. The property shall include Pier Q, all towers and outbuildings on that property, and walkways and parking areas associated with those buildings and Pier Q.''.

SEC. 2. FISHERIES RESEARCH FACILITIES.

(a) FORT JOHNSON.—The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct on land to be leased from the State of South Carolina, a facility at Fort Johnson, South Carolina, provided that the annual cost of leasing the required lands does not exceed one dollar.

(b) AUKE CAPE.—The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct a facility on Auke Cape near Juneau, Alaska, to provide consolidated office and laboratory space for National Oceanic and Atmospheric Administration personnel in Juneau, provided that the property for such facility is transferred to the National Oceanic and Atmospheric Administration from the United States Coast Guard or the City of Juneau.

(c) COMPLETION DATE FOR FUNDED WORK.—The Secretary of Commerce shall complete the architectural and engineering work for the facilities described in subsections (a) and (b) by not later than May 1, 1996, using funds that have been previously appropriated for that work.

(d) AVAILABILITY OF APPROPRIATIONS.—The authorizations contained in subsections (a) and (b) are subject to the availability of appropriations provided for the purpose stated in this section.

SEC. 3. PRIBILOF ISLANDS.

(a) IN GENERAL.—The Secretary of Commerce shall, subject to the availability of appropriations provided for the purposes of this section, clean up landfills, wastes, dumps, debris, storage tanks, property, hazardous or unsafe conditions, and contaminants, including petroleum products and their derivatives, left by the National Oceanic and Atmospheric Administration on lands which it and its predecessor agencies abandoned, quitclaimed, or otherwise transferred or are obligated to transfer, to local entities or residents on the Pribilof Islands, Alaska, pursuant to the Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.), as amended, or other applicable law.

(b) OBLIGATIONS OF SECRETARY.—In carrying out cleanup activities under subsection (a), the Secretary of Commerce shall—

(1) to the maximum extent practicable, execute agreements with the State of Alaska, and affected local governments, entities, and residents eligible to receive conveyance of lands under Fur Seal Act of 1966 (16 U.S.C. 1161 et seq.) or other applicable law;

(2) manage such activities with the minimum possible overhead, delay, and duplication of State and local planning and design work;

(3) receive approval from the State of Alaska for agreements described in paragraph (1) where such activities are required by State law;

(4) receive approval from affected local entities or residents before conducting such activities on their property; and

(5) not seek or require financial contributions by or from local entities or landowners.

(c) RESOLUTION OF FEDERAL RESPONSIBILITIES.—(1) Within 9 months after the date of enactment of this section, and after consultation with the Secretary of the Interior, the State of Alaska, and local entities and residents of the Pribilof Islands, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Resources of the House of Representatives, a report proposing necessary actions by the Secretary of Commerce and Congress to resolve all claims with respect to, and permit the final implementation, fulfillment and completion of—

(A) title II of the Fur Seal Act Amendments of 1983 (16 U.S.C. 1161 et seq.);

(B) the land conveyance entitlements of local entities and residents of the Pribilof Islands under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(C) the provisions of this section; and

(D) any other matters which the Secretary deems appropriate.

(2) The report required under paragraph (1) shall include the estimated costs of all actions, and shall contain the statements of the Secretary of Commerce, the Secretary of the Interior, any statement submitted by the State of Alaska, and any statements of claims or recommendations submitted by local entities and residents of the Pribilof Islands.

(d) USE OF LOCAL ENTITIES.—Notwithstanding any other law to the contrary, the Secretary of Commerce shall, to the maximum extent practicable, carry out activities under subsection (a) and fulfill other obligations under federal and state law relating to the Pribilof Islands, through grants or other agreements with local entities and residents of the Pribilof Islands, unless specialized skills are needed for an activity, and the Secretary specifies in writing that such skills are not available through local entities and residents of the Pribilof Islands.

(e) DEFINITION.—For the purposes of this section, the term ''clean up'' means the planning and execution of remediation actions for lands described in subsection (a) and the redevelopment of landfills to meet statutory requirements.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated not to exceed $10,000,000 in each of fiscal years 1996, 1997, and 1998 for the purposes of carrying out this section.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, December 22, 1995, between the first and second rollcall votes.

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

ADDITIONAL STATEMENTS

PRESIDENT CLINTON'S GOVERNMENT SHUTDOWN

● Mr. FAIRCLOTH. Mr. President, we are in the 7th day of a partial Government shutdown. The President is playing politics with this issue and he should stop it. He is trying to blame Congress for his failure to sign the legislation which would have averted this crisis. In addition, he is trying to divide the House freshmen and the House Republican leadership. And, he is trying to divide House and Senate Republicans. Such desperate tactics on his part are doomed to fail.

Yesterday, in a demonstration of solidarity, House Republicans—conservatives and moderates alike—told the Nation that the President's politics of division wouldn't work, that they remained united in our struggle against President Clinton's efforts to undermine a balanced budget agreement. More importantly, they rightly pointed the finger of blame for the partial Government shutdown directly at the White House.

Congress has sent three spending bills to the President which would have kept open the Departments of Veterans Affairs, HUD, Commerce, Justice, State, and Interior. What did President Clinton do? He vetoed all of these bills, and in so doing delayed benefits checks to our Nation's veterans. He had the power to prevent the shutdown of these agencies and to keep Federal workers on the job. Instead, with the stroke of a pen he sent thousands of Federal workers home during this holiday season.

The Congress did its job and passed appropriations bills which responsibly reduced Government spending and which would have kept agencies open. But, President Clinton wasn't interested in that. He was looking for a photo opportunity. He vetoed funding bills and closed down parts of the Government. He should be and will be held accountable for this shutdown.

Furthermore, workers at the Departments of Labor, HHS, and Education could be at the desks today if the Democrats would end the filibuster which they began in September.

When you look at the Government shutdown, the facts simply don't support the President's extremist rhetoric. In reality, this crisis has been engineered by the President to bolster his reelection campaign. After being viewed as irrelevant for so long, the President has now identified himself with something he believes in passionately. He is passionate about spending—deficit spending. He is passionate about preserving the status quo which heaps trillions of dollars of debt on our children and grandchildren.

I hope that he will abandon his harsh scare tactics and get serious about balancing the budget. It was not until just a few days ago that he agreed to finally offer a balanced budget plan using honest numbers. He finally abandoned his preferred strategy of cooking the books as a way to balance the budget. Such policies won't lead to a balanced budget. They never have and they never will. President Clinton had chosen the path of certain failure. Congress rightly did not follow him down that dead-end road.

Although Congress has already passed legislation once to provide for veterans benefits, we have an opportunity today to overturn the President's action which cut off these funds. The men and women who have served our Nation in the armed services should not be used as a bargaining chip in this budget struggle between Congress and the President. I support the immediate restoration of funds for veteran benefits, and I hope that we will pass such legislation today.

Finally, I call upon the President to give America a Christmas present in the form of a balanced budget and a working Government. I call upon him to sign the funding bills which he has rejected, and I call upon him to help end the Democratic filibuster of the Labor, HHS appropriations bill. If the President wanted—all of this could be done before Christmas.●

MEDICARE REIMBURSEMENT TO THE DEPARTMENT OF DEFENSE

● Mr. INOUYE. Mr. President, I join with my esteemed colleague from Texas Senator GRAMM, to introduce this bill for Medicare reimbursement to the Department of Defense [DOD] for care provided in our military medical treatment facilities to Medicare eligible beneficiaries. When these dedicated men and women made a commitment to a career of service in the Armed Forces, a promise was made to them that upon retirement they and their family members would continue to receive health care for life in our superb Military Health Services System [MHSS]—if they so chose. In fact, approximately 230,000 of the 1.2 million Medicare eligible retirees currently do choose to get their health care at military treatment facilities. Regrettably, as the military downsizes and Defense health budgets are cut, without Medicare reimbursement, the MHSS will no longer be able to provide health care for these retirees. Many of these retired servicemembers and their families made career-long sacrifices based in part on the expectation that they would have guaranteed health care. I believe it is important that our Nation continue its firm commitment and honor the promises made to those individuals and their families.

Mr. President, this bill provides an additional benefit to the Nation—more cost effective health care for this population. If the MHSS can no longer provide their health care, 230,000 more retirees who are already Medicare eligible will be forced into the Medicare system—at a substantially higher cost than that for DOD reimbursement. As a taxpayer, this just makes good business sense.

Mr. President, these dedicated servicemembers kept their promise to our nation and now I believe it is right that the Nation keep its promise to them. This bill will enable the MHSS to continue to provide health care services to Medicare eligible retirees and their families as promised for those who choose to receive their care in our military facilities.●

THE AU PAIR PROGRAM

● Mr. GRAMS. Mr. President, over the past several weeks, my office has received many telephone calls from concerned Minnesotans regarding the partial shutdown of the Federal Government and the lack of funding which has resulted for the program which brings nannies from foreign countries into America.

Nannies have been coming to the United States through the Au Pair program, a cultural exchange program run by the United States Information Agency (USIA) which oversees the matching of young people from abroad with American families in need of live-in babysitters.

Approximately 13,000 young adults have participated in this program over the years and 10,000 American families have benefitted from the helping hands these visiting babysitters provide. They are paid a weekly salary of $115 plus room and board for their services.

When its appropriations expired at the end of the last fiscal year on September 30, the entire Au Pair program was put into limbo until it could be funded again. It had been included in three separate appropriations bills, but each has failed to become law due to objections over issues unrelated to the Au Pair program. On December 11, Senator HELMS recognized the pressing nature of the situation and introduced S. 1465, legislation funding and extending the Au Pair program for 2 years. The bill passed the Senate on December 13 and a related measure was introduced in the House that same day. It was passed by voice vote on December 18.

Late Wednesday night, this legislation was delivered to 1600 Pennsylvania Avenue. But now, 3 days later, it continues to sit on the President's desk awaiting his signature. Furthermore, while many families wait, there has been no indication yet as to whether the President will sign or veto this bill.

Therefore, I call on the President to swiftly review this matter, to continue the care and attention given to this issue by Congress, and to sign S. 1465 without delay.

This is a bill that swiftly passed both Chambers; on behalf of the families that await its enactment, it deserves equally swift consideration by the White House.●

CRIME IS DOWN BUT DRUGS ARE UP: SOLUTIONS ARE NO MYSTERY

● Mr. SIMON. Mr. President, the crime news is good and bad.

The good news is that murders in the United States were down 12 percent for the first 6 months of 1995, and the FBI reports an astounding and welcome drop.

The bad news is that drug and alcohol use among our Nation's eighth graders is on the rise, and because of that, as they grow older the crime rate probably will rise again.

Adding to this likelihood are the numbers. There are more eighth graders than their counterparts 4 years older, and as the numbers grow, we will probably have more, not less, bad news. Ten years from now there will be 25 percent more young males between the ages of 14 and 17.

What can be done?

There are no magic bullets, but there are some things that will help. They include:

Get treatment and counseling for adult drug and alcohol addicts.

Children of addicts are much more likely to be addicts. Illinois is like most States: people who want help often cannot get it. Considering the extent of our problem, we are woefully short on treatment facilities. Rev. George Clements, a quietly dynamic Roman Catholic priest, has suggested that all churches and synagogues and mosques should adopt one addict. That's not as easy as fixing the church roof or serving as usher or singing in the choir. But it is a greater test of the meaningfulness of faith. The most effective way to reach children is through a parent.

Discourage youthful cigarette smoking.

Young people who smoke cigarettes are much more likely to take up drugs and alcohol.

Enrich education programs so that they reach all young people.

Those who have great difficulty in school are more likely to give up, to see little future for themselves and reach out for the escape mechanism of drugs or alcohol. That is why budget cuts that reduce access to Head Start and other education programs are short-sighted. By the second grade—at the latest—teachers know which students need special help. They should receive it then, not wait until they make it through high school—if they make it through high school.

Start jobs programs that put people of limited skills to work. Show me an area of high unemployment, and I will show you an area of high crime, whether it is African-American, Hispanic, or white. Show me an area of high unemployment, and I will show you an area with a high drug use rate and high alcoholism, whether it is African-American, Hispanic, or white.

Real welfare reform must include jobs. Without a jobs factor, anything called welfare reform is political public relations. We need something like the WPA of a half-century ago. It would be the most effective anti-crime and anti-addition program we could have.

Keep parents from giving up.

That's not a Government program, but it is vital. A parent living in a tough neighborhood with drug sales visible in the area has a difficult time, but must strive to give her—or his—child hope. And do simple things like encouraging homework, use of the library, and careful use of television.

And attending religious services.

Harvard University's Richard Freeman found that ''among black urban youth, church attendance was a better predictor of who would escape drugs, crime and poverty than any other variable, income, family structure, and the church-going youth were more likely to behave in socially constructive ways.''

Yes, there are some discouraging signals for the future, but if we are really concerned, and then act, the future will be brighter.

None of these items I have listed is dramatic, yet if we were to act on all of them, there would be a significant change for the better in our future.●

AWARD PRESENTED TO ARTHUR S. FLEMMING

● Mr. HATFIELD. Mr. President. I want to share with my colleagues the remarks made by William L. Taylor in presenting to Dr. Arthur S. Flemming the American Civil Liberties Union's Human Rights Award. These thoughtful remarks outline the career of a man who truly represents the highest ideal of public service.

Antoinette and I have enjoyed a warm personal friendship with Dr. Flemming and his wife Bernice for many years. In addition to the number of significant Federal posts held by Dr. Flemming, he served for a time as the president of the University of Oregon. As someone who has followed Dr. Flemming's professional and personal life with interest and respect, I can say that no one is more deserving of the ACLU's Human Rights Award than Dr. Flemming, as Mr. Taylor's fine remarks make amply clear.

Mr. President, I ask that Mr. Taylor's remarks be printed in the RECORD.

The remarks follow:

REMARKS OF WILLIAM L. TAYLOR IN PRESENTING THE ACLU'S HUMAN RIGHTS AWARD TO ARTHUR S. FLEMMING AT THE ANNUAL DINNER OF THE VIRGINIA ACLU, DECEMBER 9, 1995

The American Civil Liberties Union does itself honor by honoring Arthur Flemming and it does me a great honor by asking me to introduce Arthur.

Arthur is, in my view, the greatest exemplar of public service in this nation in the 20th Century. He served in the federal government over a period of more than 40 years beginning in 1939 as an appointee to the Civil Service Commission of President Roosevelt and ending in the early 1980s when he was Deputy Chair of the White House Conference on Aging, a member of the Commission on Wartime Relocation and Internment of Civilians and Chairman of the U.S. Commission on Civil Rights, a post from which he was fired by President Reagan because Arthur believed in civil rights. But after these 40 plus years—and at the age of 77, Arthur began a new career serving the public in the private sector by heading coalitions and groups that work for the goals Arthur is most deeply committed to—preserving Social Security, extending health care to all and advancing the civil rights of all persons.

But it is not simply his longevity in public service that makes Arthur Flemming's career remarkable. (although I cannot refrain from noting that Arthur was born in 1905, 15 years before the ACLU was founded—so they have been advocates for justice for about the same period of time). It is also the quality of his service that makes him a long distance runner. Everybody who knows Arthur has his own story about Arthur's readiness to travel whenever he hears the call (I can remember in 1988 getting a call from an editor of the Yale Law Journal who said he wanted to extend an invitation to Arthur to speak at a symposium on the 20th Anniversary of the Fair Housing Act. He called me because he wondered whether Dr. Flemming would be able to make the trip to New Haven. At the time I got this call, Arthur was preparing to travel, I think to 28 cities in 30 days to speak on behalf of the Republicans for Dukakis). But what is more impressive than Arthur's seeming inability to stay away from airports is the reason he travels. Other people of renown travel to participate or be seen at international conferences, to go to dinners with other famous people. Arthur travels to attend meetings and rallys where he will have the opportunity to communicate with everyday people on the issues he most cares about—health care, civil rights and civil liberties and other issues that affect the dignity and well being of the American people.

And he is ready and willing to do the work in the trenches that other people may spurn once they reach a certain position. I remember in the 1980s going with him to a meeting of State civil rights officers where he had been asked to listen to the whole day's proceedings and then give a summation. By mid-afternoon, as the sessions went on (and on) most of us were flagging, but Arthur was still paying rapt attention. At 5:30, Arthur gave not only a fine analytical summary of what people had said—but he delivered an inspirational speech, rallying the troops to keep the faith during the hard times of the 80s.

And that talk was characteristic of so many I have heard Arthur give during the years we have worked together at the CCR. As Elliot Richardson has observed, Arthur speaks with ''simplicity, force and deep conviction.'' He has, I might add, the gift that all of the great advocates I have known have—an ability to understand complex matters and then reduce them to their essentials so that people will understand what is at stake. And despite many years in Washington, he has never become so jaded as to lose the capacity to be angered at injustice. So, for example, when the Reagan Administration pursued its policy of denying people welfare benefits without affording them due process and then ignored court orders to rectify the situation except in the jurisdiction

where they were issued—Arthur led the charge to expose and change this heartless policy.

My time is growing short and I have barely scratched the surface. But I could not close without mentioning Arthur's contribution to other institutions that are fundamental to the values and aspirations of the nation. In between his periods of government service, Arthur was President of three universities—Ohio Wesleyan (his alma mater), The University of Oregon and Macalester College. In these posts among many other things he promoted public service and helped extend opportunity for minority students. Arthur's service is also rooted in his religious convictions which he has made manifest through work in the United Methodist Church and the National Conference of Christians and Jews.

As for the institution of the family, Arthur and Bernice, his wife of 60+ years, have raised a family of 5 children, who have made contributions of their own—although you may not be surprised to hear (after what I've said) that in this area there are those who believe that the lion's share of the credit belongs to Bernice.

So, for all these reasons and many more, Arthur has earned the title bestowed on him by Bernice in her affectionate and occasionally irreverent memoir—''Crusader At Large''. His indominatable spirit and his unflagging optimism should serve as an inspiration to all of us who think we may be suffering burnout in these meanspirited times. Arthur has richly earned this honor by the ACLU and the admiration of all who care about social justice.●

COMPLIMENTING THE POSTAL SERVICE ON A JOB WELL DONE

● Mr. PRYOR. Mr. President, in these days of budget crisis and heated rhetoric, it is very easy to become cynical or disillusioned about government. In fact, some people around here would have you believe that the Government is simply incapable of playing a positive role of any kind.

So, Mr. President, I wanted to rise today and recognize one Government entity, the U.S. Postal Service, for the good work it is doing for Americans.

Earlier this month, the State of Oregon completed the primary phase of the Nation's first mail-in congressional election. That's right, over a 3-week period, Oregon voters mailed in their ballots for the State's open Senate seat.

While vote-by-mail has its skeptics, the results in Oregon were impressive. Some 52 percent of Oregon voters cast their ballots, as compared to the 43 percent who took part in last year's primaries. On January 30, the general election will also be conducted through the mail system.

Mr. President, whether or not vote-by-mail is the wave of the future, we should certainly commend the Postal Service for its critical role in this effort. The hard-working men and women of the Postal Service in Oregon saw to it that the ballots were delivered and returned on time. Without a postal system that could be counted on, neither Oregon nor any other State could even experiment with a mail-in election.

Oregon is not the only place where the Postal Service is getting the job done for Americans. Right now, millions of Christmas cards and packages are moving through the Nation's mail system. Believe it or not, Postal Service officials are estimating that today, as many as 725 million pieces of mail will be delivered. This is the delivery volume for just 1 day.

While these numbers may sound overwhelming, the men and women of the Postal Service are up to the challenge. As the latest on-time statistics confirm, the vast majority of Americans can drop that card or letter in the box and be confident that their mailing will be delivered on time. In fact, just yesterday, the Postal Service announced that its on-time delivery scores had reached a record high of 88 percent.

Mr. President, the Postal Service, like any organization, has its problems. In the past, I have been critical of both its performance and management decisions. But, I have never had cause to question the dedication of its people. From the Postmaster General on down, the men and women of the Postal Service are getting the job done during this Christmas season. They are a welcome reminder that government can work for America.●

● Mr. MACK. Mr. President, I urge my colleagues to support S. 1260, the Public Housing Reform and Empowerment Act of 1995. S. 1260 represents a major revision of the United States Housing Act of 1937 to reform and consolidate the public and assisted housing programs of the United States and redirect primary responsibility for those programs away from Federal bureaucracy toward the States and localities. This bill represents an important first step towards a complete overhaul of Federal housing programs to address the needs of low-income families more efficiently and effectively.

This legislation addresses a growing crisis in the Nation's public housing system. Over the years, micromanagement by both Congress and the Department of Housing and Urban Development [HUD] have saddled housing authorities with rules and regulations that make it difficult for even the best of them to operate efficiently and effectively. Even more important has been the destructive impact these rules have had on the ability of families to move up and out of public housing and become economically self-sufficient. In far too many places, public housing, which was intended to provide a housing platform from which lower income families could achieve their own aspirations of economic independence, have become warehouses of poverty that rob poor families of their hope and dignity.

Compounding the structural problems of public housing are the dual concerns of budget and HUD capacity. Public housing agencies are facing a significant decline in Federal resources. Given these limited resources, housing authorities need the increased flexibility to use their funds in a manner that helps to maintain decent, safe and affordable housing for their residents. In addition, HUD itself potentially faces a significant reduction in overall staffing over the next 5 years. The prospect of diminishing staff resources means that HUD will lack the capacity to maintain the same degree of oversight and control that it has exercised over the public housing system in recent decades.

S. 1260 addresses the crisis in public housing by consolidating public housing funding into two flexible block grants and transferring greater responsibility over the operation and management of public housing from HUD to local housing agencies. In addition, it creates a new streamlined voucher program that is more market-friendly and provides greater housing choices for low-income families.

The bill also ends Federal requirements that have prevented housing authorities from demolishing their obsolete housing stock, concentrated, and isolated the poorest of poor, and created disincentives for public housing residents to work and improve their lives.

While allowing well-run housing authorities much more discretion, S. 1260 also cracks down on those housing authorities that are troubled. Although small in number, these authorities with severe management problems control almost 15 percent of the Nation's public housing stock. HUD would be required to take over or appoint a receiver for housing authorities that are unable to make significant improvements in their operations. The legislation would also give HUD expanded powers to break up or reconfigure troubled authorities, dispose of their assets, or abrogate contracts that impede correction of the housing authority's problems.

I would like to express my deep appreciation to Senators D'AMATO and BOND, who cosponsored this bill, for their keen interest and active support of this legislation. I also wish to express my appreciation for the cooperation and support from Senators SARBANES and KERRY. This bill truly reflects bipartisan cooperation, and it specifically addresses many of the concerns that have been raised by minority. Finally, I also want to thank Secretary Cisneros for HUD's participation in the development of this bill. We have endeavored to accommodate the Department's concerns to the greatest extent possible.●

RETIREMENT OF BILL NORWOOD FROM UNITED AIRLINES

● Mr. SIMON. Mr. President, Bill Norwood is set to retire as a pilot from United Airlines. During his career, he participated in numerous educational, professional, and civic organizations in the State of Illinois. He also served with distinction on the Southern Illinois University Board of Trustees and the Board of the Illinois State Universities Retirement System.

Illinoisans can take great pride in Mr. Norwood's dedication to Southern Illinois University and the State of Illinois. A former U.S. Air Force pilot who flew B–52's, Mr. Norwood used that experience to go to work for United Airlines in 1965. While a United Airlines pilot, Mr. Norwood received several awards, including a community relations award. Mr. Norwood has served his community and State well.

I wish my friend and his family the best in his retirement. I am sure he will continue to be active in Illinois serving the community and the State.●

ORDER OF BUSINESS

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I would like to, on behalf of the distinguished majority leader, proceed with other matters now pending before the Senate.

EXTEND ENROLLMENT MIX REQUIREMENT TO CERTAIN HEALTH MAINTENANCE ORGANIZATIONS PROVIDING SERVICES UNDER DAYTON AREA HEALTH PLAN

Mr. WARNER. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 1878, extending for 2 years certain requirements relating to Dayton Area Health Plan, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1878) to extend for 4 years the period of applicability of enrollment mix requirement to certain health maintenance organizations providing services under Dayton Area Health Plan.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. WARNER. Mr. President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and that any statements appear at an appropriate place in the RECORD as if read.

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

The bill (H.R. 1878) was deemed to have been read the third time and passed.

PENSION INCOME TAXATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar number 296, H.R. 394, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 394) to amend title 4 of the United States Code to limit State taxation of certain pension income.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. WARNER. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, and the motion to reconsider be laid upon the table. Further, that any statements relating thereto be placed in the RECORD at the appropriate place as if read.

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

The bill (H.R. 394) was deemed to have been read the third time and passed.

Mr. WARNER. I noted a similar bill has passed the Senate on four occasions.

THE VICTIMS JUSTICE ACT OF 1995

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 257, H.R. 665, the victims restitution bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 665) to control crime by mandatory victim restitution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Victims Justice Act of 1995''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—RESTITUTION

Sec. 101. Order of restitution.
Sec. 102. Conditions of probation.
Sec. 103. Mandatory restitution.
Sec. 104. Order of restitution to victims of other crimes.
Sec. 105. Procedure for issuance and enforcement of restitution order.
Sec. 106. Procedure.
Sec. 107. Juvenile delinquency; dispositional hearing.
Sec. 108. Instruction to Sentencing Commission.
Sec. 109. Justice Department regulations.
Sec. 110. Special assessments on convicted persons.
Sec. 111. Crime Victims Fund.
Sec. 112. Victims of terrorism act.
Sec. 113. Effective date.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Severability.
Sec. 202. Study and report.

TITLE I—RESTITUTION

SEC. 101. ORDER OF RESTITUTION.

Section 3556 of title 18, United States Code, is amended—

(1) by striking ''may'' and inserting ''shall''; and

(2) by striking ''sections 3663 and 3664.'' and inserting ''3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.''.

SEC. 102. CONDITIONS OF PROBATION.

Section 3563 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking ''and'' at the end;

(B) in the first paragraph (4) (relating to conditions of probation for a domestic crime of violence), by striking the period and inserting a semicolon;

(C) by redesignating the second paragraph (4) (relating to conditions of probation concerning drug use and testing) as paragraph (5);

(D) in paragraph (5), as redesignated, by striking the period at the end and inserting a semicolon; and

(E) by inserting after paragraph (5), as redesignated, the following new paragraphs:

''(6) that the defendant—

''(A) make restitution in accordance with sections 2248, 2259, 2264, 3663, 3663A, and 3664;

''(B) pay the assessment imposed in accordance with section 3013; and

''(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.''; and

(2) in subsection (b)—

(A) by striking paragraphs (2) and (3); and

(B) by redesignating paragraphs (4) through (22) as paragraphs (2) through (20), respectively.

SEC. 103. MANDATORY RESTITUTION.

(a) IN GENERAL.—Chapter 232 of title 18, United States Code, is amended by inserting immediately after section 3663 the following new section:

''§3663A. Mandatory restitution to victims of certain crimes

''(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to any other penalty authorized by law, that the defendant make restitution to the victim of the offense, or, if the victim is deceased, to the victim's estate.

''(2) For purposes of restitution, a victim of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity means any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court. In no event shall the defendant be named as such representative or guardian.

''(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

''(b) The order of restitution shall require that such defendant—

''(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

''(A) return the property to the owner of the property or someone designated by the owner; or

''(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

''(i) the greater of—

''(I) the value of the property on the date of the damage, loss, or destruction; or

''(II) the value of the property on the date of sentencing, less

''(ii) the value (as of the date the property is returned) of any part of the property that is returned;

''(2) in the case of an offense resulting in bodily injury to a victim—

''(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

''(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

''(C) reimburse the victim for income lost by such victim as a result of such offense;

''(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

''(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

''(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

''(A) that is—

''(i) a crime of violence, as defined in section 16;

''(ii) a felony against property under this title, including any felony committed by fraud or deceit;

''(iii) an offense described in section 1365 (relating to tampering with consumer products); or

''(iv) an offense described in part D of the Controlled Substances Act (21 U.S.C. 841 et seq.); and

''(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

''(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

''(3) This section shall not apply if the court finds, from facts on the record, that—

''(A) the number of identifiable victims is so large as to make restitution impracticable; or

''(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

''(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 232 of title 18, United States Code, is amended by inserting immediately after the matter relating to section 3663 the following:

''3663A. Mandatory restitution to victims of certain crimes.''.

SEC. 104. ORDER OF RESTITUTION TO VICTIMS OF OTHER CRIMES.

(a) IN GENERAL.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking ''(a)(1) The court'' and inserting ''(a)(1)(A) The court'';

(B) by inserting ''other than an offense described in section 3663A(c),'' after ''under this title or section 46312, 46502, or 46504 of title 49,'';

(C) by inserting before the period at the end the following: '', or if the victim is deceased, to the victim's estate''; and

(D) by adding at the end the following new subparagraph:

''(B) The court, in determining whether to order restitution under this section, shall consider the amount of the loss sustained by each victim as a result of the offense, and may consider the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.'';

(2) by striking subsections (c) through (i); and

(3) by adding at the end the following new subsection:

''(c) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.''.

(b) SEXUAL ABUSE.—Section 2248 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''or 3663A'' after ''3663'';

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

''(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).'';

(B) by amending paragraph (2) to read as follows:

''(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.'';

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

(c) SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN.—Section 2259 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''or 3663A'' after ''3663'';

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

''(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).'';

(B) by amending paragraph (2) to read as follows:

''(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.'';

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (e).

(d) DOMESTIC VIOLENCE.—Section 2264 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''or 3663A'' after ''3663'';

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

''(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).'';

(B) by amending paragraph (2) to read as follows:

''(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.'';

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (g); and

(4) by adding at the end the following new subsection (c):

''(c) VICTIM DEFINED.—For purposes of this section, the term 'victim' means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.''.

SEC. 105. PROCEDURE FOR ISSUANCE AND ENFORCEMENT OF RESTITUTION ORDER.

(a) IN GENERAL.—Section 3664 of title 18, United States Code, is amended to read as follows:

''§3664. Procedure for issuance and enforcement of order of restitution

''(a) For orders of restitution under this title, the court shall order the probation service of the court to obtain and include in its presentence report, or in a separate report, as the court directs, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant.

''(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

''(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

''(d)(1) Within 60 days after conviction and, in any event, not later than 10 days prior to sentencing—

''(A)(i) the United States Attorney (or the United States Attorney's delegee), after consulting with all victims, shall prepare and file a statement with the probation service of the court listing the amounts subject to restitution;

''(ii) the statement shall be signed by the United States Attorney (or the United States Attorney's delegee) and the victims; and

''(iii) if any victim objects to any of the information included in the statement, the United States Attorney (or the United States Attorney's delegee) shall advise the victim that the victim may file a separate affidavit and shall provide the victim with an affidavit form which may be used to do so; and

''(B) each defendant shall prepare and file with the probation service of the court an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and other information the court requires relating to such other factors as the court deems appropriate.

''(2) If the court concludes, after reviewing the report of the probation service of the court and the supporting documentation, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

''(3) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the United States Attorney (or the United States Attorney's delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after

sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

''(4) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

''(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

''(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

''(B) Subject to subsection (k), subparagraph (A) shall not apply if—

''(i) the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments; and

''(ii) the court enters in its order the full amount of each victim's losses and provides a full restitution award with nominal periodic payments.

''(C) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

''(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

''(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

''(B) projected earnings and other income of the defendant; and

''(C) any financial obligations of the defendant; including obligations to dependents.

''(3) A restitution order may direct the defendant to make a single, lump-sum payment, partial payment at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

''(4) An in-kind payment described in paragraph (3) may be in the form of—

''(A) return of property;

''(B) replacement of property; or

''(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

''(g)(1) No victim shall be required to participate in any phase of a restitution order. If a victim declines to receive restitution made mandatory by this title, the court shall order that the victim's share of any restitution owed be deposited in the Crime Victims Fund in the Treasury. In the case of in-kind restitution ordered pursuant to subsection (f)(1)(B) or (f)(3), the court shall order that restitution be made to the State crime victim compensation program in the State in which the victim resides.

''(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

''(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

''(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for different payment schedules to reflect the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all individual victims receive full restitution before the United States receives any restitution.

''(j)(1) If a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution shall be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

''(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

''(A) any Federal civil proceeding; and

''(B) any State civil proceeding, to the extent provided by the law of the State.

''(k) A restitution order shall provide the following:

''(1) That the entry, collection, and enforcement of an order of restitution shall be governed by the provisions of this section, subchapter C of chapter 227, and subchapter B of chapter 229.

''(2) That the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

''(l)(1) An order of restitution shall be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title, and may be enforced by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

''(2) An order of in-kind restitution in the form of services shall be enforced by the probation service of the court.

''(m) If a person obligated to provide restitution receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution still owed.''.

(b) TECHNICAL AMENDMENT.—The item relating to section 3664 in the analysis for chapter 232 of title 18, United States Code, is amended to read as follows:

''3664. Procedure for issuance and enforcement of order of restitution.''.

SEC. 106. PROCEDURE.

(a) AMENDMENT OF FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 32(b) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (1), by adding at the end the following: ''Notwithstanding the preceding sentence, a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court directs, shall be required in any case in which restitution is required to be ordered.''; and

(2) in paragraph (4)—

(A) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(B) by inserting after subparagraph (E), the following new subparagraph:

''(F) in appropriate cases, information sufficient for the court to enter an order of restitution;''.

(b) FINES.—Section 3572 of title 18, United States Code, is amended—

(1) in subsection (b) by inserting ''other than the United States,'' after ''offense,'';

(2) in subsection (d)—

(A) in the first sentence, by striking ''A person sentenced to pay a fine or other monetary penalty'' and inserting ''(1) A person sentenced to pay a fine or other monetary penalty, including restitution,'';

(B) by striking the third sentence; and

(C) by adding at the end the following:

''(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

''(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.'';

(3) in subsection (f), by inserting ''restitution'' after ''special assessment,'';

(4) in subsection (h), by inserting ''or payment of restitution'' after ''A fine''; and

(5) in subsection (i)—

(A) in the first sentence, by inserting ''or payment of restitution'' after ''A fine''; and

(B) by amending the second sentence to read as follows: ''Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3616A.''.

(c) POSTSENTENCE ADMINISTRATION.—

(1) PAYMENT OF A FINE OR RESTITUTION.—Section 3611 of title 18, United States Code, is amended—

(A) by amending the heading to read as follows:

''§ 3611. Payment of a fine or restitution'';

(B) by striking ''or assessment shall pay the fine or assessment'' and inserting '', assessment, or restitution, shall pay the fine, assessment, or restitution''; and

(C) by adding at the end the following: ''In the case of restitution, the victim may request that payment be made directly to the victim or the victim's designee.''.

(2) COLLECTION.—Section 3612 of title 18, United States, is amended—

(A) by amending the heading to read as follows:

''§ 3612. Collection of unpaid fine or restitution'';

(B) in subsection (b)(1)—

(i) in the matter preceding subparagraph (A), by inserting ''or restitution order'' after ''fine'';

(ii) in subparagraph (C), by inserting ''or restitution order'' after ''fine'';

(iii) in subparagraph (E), by striking ''and'';

(iv) in subparagraph (F)—

(I) by inserting ''or restitution order'' after ''fine''; and

(II) by inserting ''and'' at the end; and

(v) by adding at the end the following new subparagraph:

''(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, by means of a form to be provided by the Attorney General, of any change in the victim's mailing address while restitution is still owed the victim.'';

(C) in subsection (c)—

(i) in the first sentence, by inserting ''or restitution'' after ''fine'';

(ii) by inserting between the first and second sentences the following: ''In the case of restitution, the Attorney General shall ensure that payments are transferred to the victim.''; and

(iii) by adding at the end the following: ''Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

''(1) A penalty assessment under section 3013 of title 18, United States Code.

''(2) Restitution of all victims.

''(3) All other fines, penalties, costs, and other payments required under the sentence.'';

(D) in subsection (d)—

(i) by inserting ''or restitution'' after ''fine''; and

(ii) by striking ''is delinquent, to inform him that the fine is delinquent'' and inserting ''or restitution is delinquent, to inform the person of the delinquency'';

(E) in subsection (e)—

(i) by inserting ''or restitution'' after ''fine''; and

(ii) by striking ''him that the fine is in default'' and inserting ''the person that the fine or restitution is in default'';

(F) in subsection (f)—

(i) in the heading, by inserting ''and restitution'' after ''on fines''; and

(ii) in paragraph (1), by inserting ''or restitution'' after ''any fine'';

(G) in subsection (g), by inserting ''or restitution'' after ''fine'' each place it appears; and

(H) in subsection (i), by inserting ''and restitution'' after ''fines''.

(3) CIVIL REMEDIES.—Section 3613 of title 18, United States Code, is amended—

(A) in the heading, by inserting ''or restitution'' after ''fine'';

(B) in subsection (a)—

(i) by striking ''A fine'' and inserting the following:

''(1) FINES.—A fine'';

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting accordingly; and

(iii) by adding at the end the following new paragraph:

''(2) RESTITUTION.—(A) An order of restitution shall operate as a lien in favor of the United States and crime victims against all property belonging to the defendant or defendants. The lien shall arise at the time of the entry of judgment or order and shall continue until the liability is satisfied, remitted, or set aside, or until it becomes otherwise unenforceable. Such lien shall apply against all property and property interests owned by the defendants at the time of arrest as well as all property subsequently acquired by the defendant or defendants.

''(B)(i) In a case in which some or all of the victims are not ascertainable at the time the restitution order is issued, the lien shall be entered in the name of all ascertained victims, if any, and the United States in behalf of the unascertained victims.

''(ii) If the court determines that all victims have been ascertained, no lien interest shall arise in favor of the United States, unless a person entitled to restitution chooses not to participate in the restitution program.

''(iii) In a case in which persons entitled to restitution cannot assert their interests in the lien for any reason, a lien shall arise in favor of the United States acting in behalf of such persons.

''(iv) In any action to enforce a restitution lien in which there is more than one lienholder for the subject property—

''(I) the lienholder seeking to enforce the lien must notify all other lienholders; and

''(II) the court shall make a determination, in the interest of justice, of the equitable distribution of the property subject to the lien.

''(3) JOINTLY HELD PROPERTY.—If property subject to a lien pursuant to this subsection is held jointly by the defendant and a third party or parties, the court shall make a determination, in the interest of justice, as to—

''(A) the enforceability of the lien; and

''(B) the proper distribution of the property.'';

(C) in subsection (b)—

(i) by amending paragraph (1) to read as follows:

''(1) the later of 20 years after the entry of the judgment or 20 years after the release from imprisonment of the person fined or ordered to pay restitution; or'';

(ii) in paragraph (2), by inserting ''or ordered to pay restitution'' before the period at the end; and

(iii) in the second sentence, by inserting ''or ordered to pay restitution'' after ''person fined'';

(D) in subsection (c)—

(i) by inserting ''or restitution'' after ''to a fine'';

(ii) by inserting ''or ordered to pay restitution'' after ''fined''; and

(iii) by striking '' 'fine' '' and inserting '' 'fine or restitution' '';

(E) in subsection (d), by inserting ''or restitution'' after ''fine''; and

(F) in subsection (e)—

(i) by inserting ''or restitution'' after ''fine'';

(ii) by inserting ''or ordered to pay restitution'' after ''fined''; and

(iii) by striking ''but in no event'' and all that follows through the end of the subsection and inserting a period.

(4) HEARING.—Chapter 229 of title 18, United States Code, is amended by inserting after section 3613 the following new section:

''§3613A. Hearing for delinquency

''(a)(1) When a fine or payment of restitution is 60 or more days delinquent, or in default, the court shall, upon the motion of the United States or of any victim named in the order to receive restitution, schedule a hearing to consider the delinquency or default. Upon a finding that the defendant is 60 or more days delinquent in payment, or in default, of a fine or restitution, the court may, pursuant to section 3565, revoke probation or a term of supervised release or modify the terms or conditions of probation on a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

''(2) In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the order of a fine or restitution.

''(b)(1) A hearing under this subsection may be conducted by a magistrate judge, subject to de novo review by the court.

''(2) To the extent practicable, in a hearing under this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.

''(3) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.''.

(5) RESENTENCING.—Section 3614 of title 18, United States Code, is amended—

(A) in the heading, by inserting ''or restitution'' after ''fine'';

(B) in subsection (a), by inserting ''or restitution'' after ''fine'';

(C) by adding at the end the following new subsection:

''(c) EFFECT OF INDIGENCY.—In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent.''.

(d) CONFORMING AMENDMENT.—The analysis for subchapter B of chapter 229 of title 18, United States Code, is amended to read as follows:

''Sec.

''3611. Payment of a fine or restitution.

''3612. Collection of an unpaid fine or restitution.

''3613. Civil remedies for collection of an unpaid fine or restitution.

''3613A. Hearing for delinquency.

''3614. Resentencing upon failure to pay a fine or restitution.

''3615. Criminal default.''.

SEC. 107. JUVENILE DELINQUENCY; DISPOSITIONAL HEARING.

Section 5037 of title 18, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting immediately after subsection (c), the following new subsection:

''(d) If a juvenile has been adjudicated delinquent for an offense that would have been an offense described in section 3663A, 2248, 2259, or 2264 if the juvenile had been tried and convicted as an adult, the restitution provisions of such sections shall apply.''.

SEC. 108. INSTRUCTION TO SENTENCING COMMISSION.

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to reflect this Act and the amendments made by this Act.

SEC. 109. JUSTICE DEPARTMENT REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines, or amend existing guidelines, to carry out this Act and to ensure that—

(1) in all plea agreements negotiated by the United States, consideration is given to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually pleaded; and

(2) orders of restitution made pursuant to the amendments made by this Act are enforced to the fullest extent of the law.

SEC. 110. SPECIAL ASSESSMENTS ON CONVICTED PERSONS.

Section 3013(a)(2) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''$50'' and inserting ''not less than $100''; and

(2) in subparagraph (B), by striking ''$200'' and inserting ''not less than $400''.

SEC. 111. CRIME VICTIMS FUND.

(a) PROHIBITION OF PAYMENTS TO DELINQUENT CRIMINAL DEBTORS BY STATE CRIME VICTIM COMPENSATION PROGRAMS.—

(1) IN GENERAL.—Section 1403(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended—

(A) by striking ''and'' at the end of paragraph (7);

(B) by redesignating paragraph (8) as paragraph (9); and

(C) by inserting after paragraph (7) the following new paragraph:

''(8) such program does not provide compensation to any person who has been convicted of an

offense under Federal law with respect to any time period during which the person is delinquent in paying a fine or other monetary penalty imposed for the offense; and''.

(2) APPLICATION OF AMENDMENT.—The amendment made by paragraph (1) shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victims compensation programs that are sufficient to ensure that victims compensation is not denied to any person except as authorized by law.

(b) EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by inserting after subsection (b) the following new subsection:

''(c) EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.—Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.''.

SEC. 112. VICTIMS OF TERRORISM ACT.

(a) AUTHORITY TO PROVIDE ASSISTANCE AND COMPENSATION TO VICTIMS OF TERRORISM.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404A the following new section:

''SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

''(a) VICTIMS OF ACTS OF TERRORISM OUTSIDE THE UNITED STATES.—The Director may make supplemental grants to States to provide compensation and assistance to the residents of such States who, while outside the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

''(b) VICTIMS OF DOMESTIC TERRORISM.—The Director may make supplemental grants to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Offices for use in coordination with State victims compensation and assistance efforts in providing emergency relief.''.

(b) FUNDING OF COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM, MASS VIOLENCE, AND CRIME.—Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as follows:

''(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed $50,000,000.

''(B) The emergency reserve may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.''.

(c) CRIME VICTIMS FUND AMENDMENTS.—

(1) UNOBLIGATED FUNDS.—Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(A) in subsection (c), by striking ''subsection'' and inserting ''chapter''; and

(B) by amending subsection (e) to read as follows:

''(e) AMOUNTS AWARDED AND UNSPENT.—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be returned to the Fund.''.

(2) BASE AMOUNT.—Section 1404(a)(5) of such Act (42 U.S.C. 10603(a)(5)) is amended to read as follows:

''(5) As used in this subsection, the term 'base amount' means—

''(A) except as provided in subparagraph (B), $500,000; and

''(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and Palau, $200,000.''.

SEC. 113. EFFECTIVE DATE.

The amendments made by this title shall be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 202. STUDY AND REPORT.

(a) STUDY.—The Attorney General, in cooperation with the Director of the Administrative Office of the United States Courts, shall conduct a study of the funds paid out of the Crime Victims Fund and the impact that the amendments made by this Act have on funds available in the Crime Victims Fund, including an assessment of any reduction or increase in fines collected and deposited into the Fund directly attributable to the amendments made by this Act.

(b) REPORT.—The Attorney General and the Director of the Administrative Office of the United States Courts shall report the findings of the study to the Chairman and ranking Member of the Committees on the Judiciary of the Senate and House of Representatives not later than 4 years after the date of enactment of this Act, together with their recommendations.

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate agree to a substitute amendment offered by Senators HATCH and BIDEN which is at the desk.

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

The amendment (No. 3112) was agreed to.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. HATCH. Mr. President, I rise in strong support of Victims Justice Act. As reported by the Judiciary Committee, and amended by the managers' substitute offered by myself and Senator BIDEN, this bill will fill a tremendous gap in our criminal justice system. This legislation represents an important step toward a criminal justice system in which the rights and needs of the victim are respected.

This legislation has a long history. Congress first enacted a general Federal victim restitution statute in 1982 as a part of the Victim and Witness Protection Act (Public Law 97–291). The 1982 act sought to remedy the unfortunate situation noted even then by the Judiciary Committee that:

> . . . restitution . . . lost its priority status in the sentencing procedures of our federal courts long ago. As a matter of practice, [restitution] is infrequently used and indifferently enforced.

The 1982 act provided, for the first time, Federal courts with the authority to order payments of restitution independently of a sentence of probation, and required the court to state its reasons for the record in instances in which restitution was not ordered.

The legislation enacted in 1982 has been the subject of modest amendments in the years since, but remains substantially intact as enacted 13 years ago. Unfortunately, however, while strides have been made since 1982 towards a greater respect for victims in the criminal justice system, much progress remains to be made in the area of victim restitution. According to the 1994 Annual Report of the U.S. Sentencing Commission, during Fiscal Year 1994, Federal courts ordered restitution in only 20.2 percent of criminal cases. Data from the same report show that restitution was ordered in only 27.9 percent of all murders, 28.2 percent of all kidnappings, 55.2 percent of all robberies, and 12.5 percent of all sexual abuses cases. That is simply not enough. It is just as important for a victim of violent crime to receive recompense for her injuries as it is for a victim of property crime to have the property returned, or otherwise paid for. Restitution, as a concept of justice, extends far beyond the mere return of property.

Language substantially similar to H.R. 665 has passed the Senate on three previous occasions. However, this language was never approved in legislation presented to the President.

In 1994, Congress enacted the Violence Against Women Act. That act included provisions requiring mandatory restitution in Federal cases to victims of sexual abuse, sexual exploitation and other abuse of children, and domestic violence.

The 1994 Crime Act also made restitution mandatory for victims of telemarketing fraud, a provision I strongly supported as the chief author of the Senior Citizens Against Marketing Scams [SCAMS] Act. It is time now, however, to extend this important protection to victims of other crimes as well.

Far too often our criminal justice system appears to ignore the victims of crime. It frequently seems that only criminals have rights in the system. Victims often seem to be marginalized once the criminal justice system shifts into gear. As a result, crime victims

often feel victimized twice—once by the criminal and then again by the system that seems to ignore their plight. Restitution to the victims of crime is a critical component of the justice system. The order of restitution represents the justice system's recognition that a real person, not only society, has suffered a wrong. Too often lost in the mix is the fact that, when the United States brings a criminal prosecution, while it does so on behalf of all the people, there is frequently a single person who has been victimized. While it is true that society as a whole is aggrieved by any criminal act, it is not society that must cope with the most immediate costs—the burden of fear, the loss of a loved one, or the anguish of personal loss. These burdens are reserved to the victims and survivors of crime.

Restitution, moreover, can provide important closure to victims of crime, even if it cannot turn back the clock and undo the loss itself. Many crime victims have told me that until the criminal is directed to pay restitution, the wound of the crime is not completely healed.

Restitution has an important penalogical function as well, providing a necessary reminder to the offender of the human consequences of his or her criminl act. Critics charge that most criminal defendants are too poor to pay restitution. But even if only a few dollars a month are collectd, it forces the criminal to contemplate his criminal act and truly pay for the crime.

As I have noted, the U.S. Sentencing Commission has reported that judges ordered restitution in only a small percent of Federal criminal cases during fiscal year 1994. This legislation addresses this problem with solid victim restitution reform. For the first time, it will be mandatory that identifiable victims of violent crimes, property and fraud crimes under title 18, and product tampering receive full restitution for their losses.

We nevertheless recognize and wish to avoid the danger that in complex cases the sentencing process could turn into a mini-civil trial. For this reason, the legislation permits the court to decline to order restitution if the number of identifiable victims is so large as to make restitution impracticable, or if the determination of complex factual issues would place burdens on the sentencing process that far outweigh the need for restitution.

This bill also recognizes the need of victims to have full restitution ordered despite the sad fact that the defendant will often be unable to make more than nominal payments. Our legislation gives the courts the flexibility to order nominl installment payments in these instances.

At the same time, we cannot ignore the costs that making orders of restitution mandatory in all Federal criminal cases could impose on the judicial cases could impose on the judicial system. We have attempted to strike a balance in this legislation, and I believe we have largely succeeded.

Our bill also provides one set of procedures for the issuance and enforcement of a restitution order under title 18. A single section of title 18, section 3664, will govern the issuance of all criminal victim restitution orders, including those we enacted last year in the Violence Against Women Act and the SCAMS Act. I want to emphasize that the scope of restitution orders authorized under those laws remains unchanged. We simply seek to reduce the burden caused by incompatible restitution systems.

The bill will also utilize existing provisions for the collection of fines to enforce restitution orders. Moreover, it will improve our ability to actually collect both restitution and fines by strengthening tools such as the revocation of probation, resentencing and other sanctions.

Finally, the bill strengthens victims assistance programs by including provisions that have already passed the Senate as a part of the terrorism bill. A provision originally authored by Senator LEAHY authorizes victim's assistance to victims of terrorism and makes other improvements to the Crime Victims Fund. Our bill seeks to enhance the resources available for victims assistance by including a McCain amendment to the terrorism bill that doubles the special assessments on persons convicted in Federal cases.

Mr. President, I want to express my particular appreciation to Senator BIDEN, Senator NICKLES, Senator MCCAIN, and Senator GRASSLEY for their able assistance in crafting this important bill.

This bill is not perfect. All of us recognize that there is much we need to do to streamline the collection of criminal debts, including restitution. Nor is this the last step we need to take to restore the victim to their rightful place in the criminal justice system. However, it is an important step. When enacted, our legislation will do much to restore respect for the victims of crime and to recognize their loss. I urge all of my colleagues to support this bill.

Mr. BIDEN. Mr. President, one of the measures in last year's crime law that I am most proud of is the provision mandating restitution for victims of sexual abuse and child abuse. This was part of the larger piece of legislation closest to my heart: The Violence Against Women Act.

The mandatory restitution provisions in that act sent out a strong and unequivocal message: we stand with the victims of family violence and sexual assault, and we will not stand for them being ignored by our criminal justice system any longer.

Today, we are considering similar provisions to provide mandatory restitution for all crime victims.

As we fight to make our neighborhoods safe and our communities secure, we must not forget the often faceless and voiceless statistics of crime—its victims.

Millions of Americans each year must bear the unbearable—in 1993 alone, over 35 million people were victimized by crime in this country.

For many victims, the crime only marks the beginning of the ordeal—there is the investigation, maybe a plea bargain, a trial that often puts the victim's truth and character on the stand, busy prosecutors, aggressive defense lawyers, harried court officers.

And in the end, even if the defendant is convicted, the victim's losses—emotional, physical, and financial losses—often go completely uncompensated.

It hasn't always been this way. During the colonial period, victims played a central role in our criminal justice system.

They apprehended their own wrongdoers—either by making the arrests themselves or by hiring the local sheriff—and they hired their own lawyers to prosecute their cases.

In those days, victims were allowed to collect damages from criminals, bind them into servitude, or pay the State to incarcerate those who had wronged them.

In the 19th century, our concept of criminal offenses began to change. Primarily to ensure that all citizens were protected—not just the rich who could afford to hire the marshal—the State became the surrogate for the victim, and undertook the prosecution of the crime.

What was once seen as a private dispute—the violation of one person by another—came to be seen as a crime against the State. Restitution gave way to incarceration as the chief form of punishment—and fines were exacted by the State and paid to the State.

But this evolution in our thinking about crime gradually led to a de-evolution in our concern for victims. Compassion and humanity dictate that we now try to restore to victims the rights, the respect, and the protection that they deserve.

In this spirit, Congress enacted the Victim and Witness Protection Act, which, among other provisions, gave courts the discretion to provide restitution to victims. I was also proud to coauthor the Victims of Crime Act in 1984, which established a crime victims fund financed by fines levied against convicted Federal criminals.

The Crime Victims Fund pays compensation to specific victims when the criminal can't pay—and it also underwrites general victims assistance programs, like courtroom victim advocates, and victims' counselors.

Still, however, there is much to be done. And this bill—which makes restitution mandatory in Federal criminal cases—does something very important.

It says to victims: You are not alone. We will demand accountability from your wrongdoers, and we understand that criminals owe a debt not only to society but to you.

This bill also sends an important message to criminals—you must take

responsibility for our actions, and you will pay for the pain you have caused.

Our Constitution is not a zero sum game. We do not diminish the rights of defendants by recognizing and defending the rights of victims.

I defend the rights of criminal defendants because I am deeply concerned about the rights of all Americans. And for that same reason, I defend the rights of victims—there is no contradiction, in my mind, between the two.

In our efforts to crack down on crime, we must never forget its victims. And we must do all in our power to help, in what little way we can, to ease their suffering.

I am proud to cosponsor this bill with Senator HATCH and I urge all my colleagues to support it.

Mr. LEAHY. Mr. President, when the bomb exploded outside the Murrah Federal Building in Oklahoma City earlier this year, my thoughts and prayers, and I suspect that those of all Americans, turned immediately to the victims of this horrendous act. It is my hope that through this legislation we will proceed to enact a series of improvements in our growing body of law recognizing the rights and needs of victims of crime. We can do more to see that victims of crime, including terrorism, are treated with dignity and assisted and compensated with Government help.

Section 202 of the manager's substitute incorporates the Victims of Terrorism Act, which will accomplish a number of worthwhile objectives. I introduced these measures last June as an amendment to antiterrorism legislation, they were previously adopted by the Senate as part of that legislation, and most recently were adopted by the Judiciary Committee as section 112 of the committee-passed bill.

They include a proposal to increase the availability of assistance to victims of terrorism and mass violence here at home. We in this country have been shielded from much of the terrorism perpetrated abroad. That sense of security has been shaken by the bombing in Oklahoma City, the destruction at the World Trade Center in New York, and recent assaults upon the White House. I, therefore, proposed that we allow additional flexibility in targeting resources to victims of terrorism and mass violence and the trauma and devastation that they cause.

Thus, the manager's substitute includes provisions to make funds available through supplemental grants to the States to assist and compensate our neighbors who are victims of terrorism and mass violence, which incidents might otherwise overwhelm the resources of a State's crime victims compensation program or its victims assistance services. I understand, for example, that assistance efforts to aid those who were the victims of the Oklahoma City bombing are now $1 million in debt. These provisions should help.

The substitute will also fill a gap in our law for residents of the United States who are victims of terrorism and mass violence that occur outside the borders of the United States. Those who are not in the military, civil service or civilians in the service of the United States are not eligible for benefits in accordance with the Omnibus Diplomatic Security and Antiterrorism Act of 1986. One of the continuing tragedies of the downing of Pan Am flight 103 over Lockerbie, Scotland, is that the United States Government had no authority to provide assistance or compensation to the victims of that heinous crime. Likewise, the U.S. victims of the Achille Lauro incident could not be given aid. This was wrong and should be remedied.

In its report to Congress in 1994, the Office for Victims of Crime at the U.S. Department of Justice identified the problem. Both the ABA and the State Department have commented on their concern and their desire that crime victims compensation benefits be provided to U.S. citizens victimized in other countries. This substitute is an important step in that direction. Certainly U.S. victims of terrorism overseas are deserving of our support and assistance.

In addition, I believe that we must allow a greater measure of flexibility to our State and local victims' assistance programs and some greater certainty so that they can know that our commitment to victims programming will not wax and wane with events. Accordingly, the substitute includes an important provision to increase the base amounts for States' victims assistance grants to $500,000 and allows victims assistance grants to be made for a 3-year cycle of programming, rather than the year of award plus one, which is the limit contained in current law. This programming change reflects the recommendation of the Office for Victims of Crime contained in its June 1994 report to Congress.

I am disappointed that some have objected to an important improvement that would have allowed any unspent grant funds to be returned to the Crime Victims Fund from which they came and reallocated to crime victims assistance programs. I believe that we ought to treat the Crime Victims Fund and the Violent Crime Reduction Trust Fund and Violence Against Women Act funds with respect and use them for the important purposes for which they were created.

The Crime Victims Fund, for example, is not a matter of appropriation and is not funded through tax dollars. Rather, it is funded exclusively through the assessments against those convicted of Federal crimes. The Crime Victims Fund is a mechanism to direct use of those funds to compensate and assist crime victims. That is the express purpose and justification for the assessments.

Accordingly, I believe it is appropriate for those funds to be used for crime victims and, when not expended for purposes of a crime victims program, they ought to be returned to the Crime Victims Fund for reobligation. Instead, because of a technicality in the application of the Budget Act, the manager's amendment includes a change from the language that I proposed and that was approved by the Judiciary Committee and previously by the Senate. My language would have returned all unspent crime victims grant funds to the Crime Victims Fund. The manager's amendment will require that some of the money that came from the Crime Victims Fund go, instead, to the General Treasury if it remains unobligated more than 2 years after the year of grant award. I am pleased that we have been able to obtain some concession in this regard and note that the unobligated funds must exceed $500,000 in order to revert to the General Treasury.

Fortunately, the Office for Victims of Crime has improved its administration of crime victims funds and that of the States over the past 2 years to a great extent. While more than $1 million a year has in past years remained unobligated from grants made through the States across the country, last year that number was reduced below $125,000. The Director of the Office for Victims of Crime, Aileen Adams, should be commended for this improvement. It is my hope that the administration of Crime Victims Fund grants will continue to improve through the Department of Justice and the States and that the Department of Health and Human Services will, likewise, improve its oversight and grant administration and encourage the States to be more vigilant so that the change in the language of the bill from that previously adopted by the Senate and by the Judiciary Committee will not result in a significant diversion of Crime Victims Fund money to other uses.

Our State and local communities and community-based nonprofits cannot be kept on a string like a yo-yo if they are to plan and implement victims assistance and compensation programs. They need to be able to plan and have a sense of stability if these measures are to achieve their fullest potential.

I know, for instance, that in Vermont Lori Hayes at the Vermont Center for Crime Victims Services, Judy Rex at the Vermont Network Against Domestic Violence and Sexual Abuse, and many others provide tremendous service under difficult conditions. They will be able to put increased annual assistance grants to good use. Such dedicated individuals and organizations will also be aided by increasing their programming cycle by even 1 year. Three years has been a standard that has worked well in other programming settings. Crime victims' programming deserves no less security.

In 1984 when we established the Crime Victims Fund to provide Federal assistance to State and local victims compensation and assistance efforts,

we funded it with fines and penalties from those convicted of Federal crime. The level of required contribution was set low. Ten years have passed and it is time to raise that level of assessment in order to fund the needs of crime victims. Accordingly, the manager's substitute includes as section 109 and the committee-passed bill included as section 110 a provision that I worked on with Senator MCCAIN and that the Senate previously passed as an amendment to the antiterrorism bill this past summer. It doubles the special assessments levied under the Victims of Crime Act against those convicted of federal felonies in order to assist all victims of crime.

I do not think that $100 to assist crime victims is too much for those individuals convicted of a Federal felony to contribute to help crime victims. I do not think that $400 is too much to insist that corporations convicted of a Federal felony contribute. Accordingly, the Committee substitute would raise these to be the minimum level of assessment against those convicted of crime.

While we have made progress over the last 15 years in recognizing crime victims' rights and providing much-needed assistance, we still have more to do. I am proud to have played a role in passage of the Victims and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Victims' Rights and Restitution Act of 1990 and the victims provisions included in such measures as the Violent Crime Control and Law Enforcement Act of 1994. I look forward to prompt consideration by the House of these provisions for aiding crime victims and to enactment of the Victims of Terrorism Act.

I continue to have some concern that the mandatory restitution provisions of the bill, while improved in our Committee deliberation, may not lead to the benefits to crime victims that we intended. I note, as well, that changes from the Committee-passed bill made by the manager's substitute have not been fully explained.

We run a significant risk, in my view, that resources will be diverted from programs that have been proven effective in providing compensation and assistance to crime victims. I believe that the study and report required of the Attorney General and Administrative Office of the United States Courts by section 204 of the Manager's substitute is extremely important and urge them to report as soon as possible.

I also urge the Attorney General to approach the responsibilities imposed by section 201(a)(2) of the manager's substitute carefully so as not unnecessarily to burden State agencies and those entrusted with the important responsibility for administering crime victims compensation programs.

I thank the outstanding crime victims advocates from Vermont for their help, advice and support in connection with the Victims of Terrorism Act and the improvements it includes to the Victims of Crime Act. I also thank them for the work they are doing by developing and implementing programs for crime victims in Vermont. In addition, I thank the National Organization for Victim Assistance, the National Association of Crime Victim Compensation Boards and the National Victim Center for their assistance and support in the development of the Victims of Terrorism Act. Without their help, we could not make the importance progress that its provisions contain.

Mr. SIMON. Mr. President, victim restitution is an important part of our criminal justice system. It can help make the victim of a crime ''whole,'' while holding the offender accountable for the damage caused by his or her crime. While I certainly applaud the good intentions of its sponsors, I do not support this ''mandatory victim restitution'' proposal. This bill would replace the current system, which allows judges to order victim restitution in certain types of cases, with an inflexible mandate which requires restitution be ordered in such cases.

In general, I do not support placing mandates on judges. I oppose mandatory minimum sentences because they substitute inflexible formulas, which cannot account for individual circumstances, for judicial discretion. Similarly, the ''mandatory victim restitution'' proposal will require judges to order restitution in cases where they know it can never be paid. The Judicial Conference of the United States reports that 85 percent of criminal defendants are indigent at the time of their conviction. And yet, according to the U.S. Sentencing Commission's 1994 Annual Report, judges order a fine or restitution in 37.7 percent of cases sentenced under the guidelines. These statistics lead me to believe that Federal judges are already doing a good job of ordering restitution when practicable.

I respect the motives of this proposal's sponsors, and agree that we must do all that is practicable to help victims of crime. However, rather than placing another mandate on judges, which seems unlikely to increase the amount of restitution actually paid to victims, we should instead consider alternative permissive forms of restitution which would enhance the current system. Included in this bill was an amendment proposed by my colleagues, Senators KYL and FEINSTEIN, which would allow judges to order those convicted of drug trafficking offenses where there is no identifiable victim to pay restitution to the affected community or to drug treatment organizations. I would support such a proposal, and other similar measures, within a permissive system.

Mrs. FEINSTEIN. Mr. President, I rise in support of the Victims Justice Act of 1995. Too often, our criminal justice system has overlooked the victim of crime in its zeal to protect the rights of the accused. This bill makes significant progress toward ensuring that the victim is not forgotten.

I want to thank the chairman and ranking member of the Judiciary Committee for the work they have put into this bill, in moving it through the committee and ensuring that it creates a workable system for awarding compensation to victims.

It is a sad fact that so many people in our society are affected by crime. In my State of California, 318,946 violent crimes were reported last year.

And yet, restitution to the victim is infrequently awarded. In fiscal year 1994, restitution was only awarded in 20.2 percent of Federal criminal cases.

The Victims Justice Act may well help this, by making restitution to the victim mandatory in Federal criminal cases where restitution can reasonably be anticipated by a judge.

Victim restitution is a matter of simple justice. If somebody has been hurt by a criminal, they should be made whole.

Restitution does more than simply compensate the victim for a loss, however. It says to the victim, ''You matter. You have been hurt, and this is wrong. We have not forgotten about you.''

It also speaks to the criminal. It reinforces to them that their crime hurt another person, that they are responsible for the consequences of their actions, and that they have a responsibility to the person they harmed.

Mr. President, I recognize that most criminal defendants are indigent, and cannot make complete restitution. But it is important to send this message of responsibility to all criminals. That is why I strongly support mandatory restitution, even if it is only nominal restitution, such as a few dollars a month. Even though this won't make the victim whole, it still sends the message to them that they matter, and still reminds the criminal, every month, about the consequences of his actions and his responsibility for them.

And should the criminal come into better financial circumstances later, this will ensure that he is not allowed to sit comfortably while his victim is left uncompensated.

I also want to highlight one aspect of the bill which I worked on with Senator KYL: community restitution in drug cases. Drug dealing is not a victimless crime. As a former mayor, I have seen drugs ravage whole neighborhoods, spurring other crimes, destroying property, and tearing apart communities. That is why I think it is important to permit restitution in drug cases, even where there is no identifiable individual victim.

This section of the bill will allow judges to order restitution in these drug trafficking cases. This restitution will go to the States in which the crime occurred, to their Victim Assistance Administration and to their entities which receive substance abuse block grant funds. By making restitution to these funds, drug dealers will be

forced to help crime victims and to fight the drug abuse which they have fostered and from which they profited, targeted to the States which they have harmed.

I call on Federal judges to implement this section, and not to disregard it. I am hopeful that they will do so, and that future legislation to mandate this restitution will not be necessary.

Mr. President, the Victims Justice Act will help victims, will help communities, and may well help to rehabilitate criminals. I urge my colleagues to pass it.

Mr. ABRAHAM. Mr. President, I strongly support this bill because it will require the perpetrators of many Federal crimes to make restitution to their victims in all cases, without exception. I also believe its enforcement mechanisms make significant improvements over those in existing law. I believe, however, that these procedures can be improved upon still further.

In discussions with restitution experts about what we can do to improve the procedures in current law, the one suggestion I have heard uniformly is that restitution orders should be made civil debts, payable immediately.

Instead of having the sentencing judge essentially attempt to rewrite civil debt collection procedures and require the Government to enforce them principally through its criminal attorneys, it would make more sense to make available the civil debt collection procedures, which are established collection methods fully consistent with due process, and make it easy for the Government to have its civil attorneys, who are well versed in collection actions and procedures, take on a significant portion of the enforcement responsibilities. These are, after all, the same procedures that we already apply to students who default on student loan payments and others who owe debts to the Government.

Accordingly, I am today introducing a bill that will pick up where I believe this bill leaves off.

My bill will improve on collection of victim restitution in four main areas. First, it would make restitution orders civil debts. Second, to enforce these orders it would make available to the U.S. Government the Federal Debt Collection Act and all other civil and administrative tools ordinarily used to collect debts owed the United States. The United States could use these tools to enforce restitution orders on its own behalf or on behalf of other victims. The bill also would allow victims to use State civil enforcement mechanisms on their own behalf. Third, the bill would allow victims to obtain the full benefit of collateral estoppel from judgments in Federal criminal cases giving rise to restitution orders in subsequent civil proceedings, regardless of state law limitations. And finally, it would allow the courts in appropriate cases to prevent defendants from dissipating the assets that would otherwise be able to be used to pay victim restitution orders.

Mr. President, I appreciate the leadership of the distinguished chairman and ranking member in formulating the current bill. I have worked with both of them in developing these additional proposals. Because of the timetable on which my friend from Utah is operating, it did not seem practical to include them in the legislation we are debating here today. But both he and my friend from Delaware have assured me that they are planning on making additional improvements in our enforcement procedures in an upcoming bill dealing with criminal fines, and it is the hope of all of us that we will be able to include some or all of these proposals, either in their current form or with modifications, in the fines legislation next year.

Mr. HATCH. I very much appreciate my colleague from Michigan's efforts, and I also appreciate his willingness to forbear from offering his proposals at this time. I know that he agrees with me on the need to act this session to make restitution mandatory in the Federal courts. We all agree that more remains to be done to enforce these debts. My colleague's proposals are both interesting and innovative, and I want to work with him and other Members to see that they are adopted by this body in some fashion when we take up our fines bill next year.

Mr. BIDEN. I too appreciate my colleague's efforts and forbearance. I believe many of his proposals are interesting and innovative, although I have reservations about some of them. I look forward to working with him and others to see to it that we make our enforcement mechanisms as simple and effective as possible, while maintaining a commitment to ensure due process.

Mr. MCCAIN. Mr. President, I want to thank the chairman and ranking member of the Judiciary Committee, as well as Senator DOLE and Senator NICKLES, for their hard work and leadership in bringing this bill to the floor.

The bill would amend the Federal criminal code to require that criminals compensate their victims—an initiative that is long overdue. According to the Bureau of Justice statistics 2 million people in the United States are injured each year as a result of violent crime. The cost of personal and household crime is estimated to exceed $20 billion per year—a sum that does not include the incalculable cost in human terms. In relatively few cases are victims made whole for their losses by those who preyed upon them.

Mr. President, one needs only to read the morning paper or watch the evening news to know that violence and crime plague our Nation. We have become inured to the ghastly statistics. But, Mr. President, victims are not statistics. They are real people. They are our brothers and sisters, mothers and fathers, sons, daughters and neighbors. They deserve our compassion and assistance. It's time that our criminal justice system no longer treat crime victims as second class citizens.

Passage of this bill will help achieve that goal by ensuring that victims are compensated as part of the criminal sentencing process rather than forcing the aggrieved to seek remedy through time consuming, costly and at times degrading and agonizing civil action.

I want to express my gratitude to Senator HATCH and Senator BIDEN for including a number of provisions I requested to improve the bill. I would like to review those provisions.

First, the committee included a provision to double the fine assessed to Federal felons from $50 to $100 and for criminal organizations from $200 to $400. This provision achieves the primary goal of a bill, S. 841, which I introduced earlier this year. The revenues from the increased assessment will be placed into the Crime Victim Fund to increase support for State and local victim assistance programs.

Second, the committee included language to require offenders to pay their criminal fines, assessments, and restitution orders in full and immediately if they have the resources to do so. If they cannot pay immediately, then the court will be required to impose a reasonable and enforceable payment plan that ensures full payment within the shortest time possible.

Third, language was inserted to ensure that when a criminal debtor becomes delinquent, a hearing can be held to determine the reason. If the offender has no resources with which to pay, then the payment schedule can be amended. If the delinquency is willful, however, penalties can be imposed, including an outright prohibition on criminal debtors receiving moneys from the Crime Victim Fund.

Fourth, the committee added a provision I requested to require offenders to notify the court of any change in their economic circumstances which might affect the offender's ability to pay their debt so that the applicable payment schedule can be appropriately modified. A Federal criminal whose financial circumstances improve should not be able to duck his or her responsibility to the victim because they are subject to an insufficient or outdated payment plan.

Fifth, the bill will make procedures for assessing and enforcing criminal debt uniform among the three major categories: mandatory assessments, discretionary fines and restitution which after passage of this bill will be mandatory.

Finally, the bill includes a provision to see that crime victim assistance will no longer be counted against a recipient as revenue in determining eligibility for Federal assistance programs.

Again, I want to thank the committee for their hard work. This is an important bill which I believe will not only assist victims but will prove to be a formidable deterrent to crime.

Mr. President, having said that, I must mention that the bill does not include all the provisions I would like to see. I had intended to offer several

amendments, but the committee has requested that Senators withhold to ensure speedy consideration and passage of this vital bill this year. I certainly want to cooperate in that effort and given assurances from the committee that the initiatives I was going to offer will be considered next year, I have decided to withhold.

The first amendment I had intended to offer would have privatized the collection of delinquent criminal debt. Mr. President, outstanding Federal criminal debt totals over $4 billion. A portion of that amount may be uncollectible because in many cases court assessments exceed the ability of the offenders to pay, but, I know of no one who disagrees that hundreds of millions of dollars in outstanding debt are quite collectible.

It's a simple reality that U.S. attorneys who are responsible for investigating and prosecuting Federal crimes assign a lower priority to the collection of delinquent debt. Privatizing such debt will ensure that more assessments and restitution orders are enforced, collected and deposited into the Crime Victim Fund or provided to the victim.

The second amendment I planned to offer was to declare offenders who willfully avoid their financial obligations, ineligible for Federal grants, contracts, licenses, or other nonmandatory Government assistance. Willful delinquency should be dealt with firmly. We should not provide Federal benefits to those who purposely evade their responsibilities.

Third, I had intended to offer an amendment to the Employee Retirement Income Security Act [ERISA] which would allow pension income to be garnished to pay outstanding restitution or criminal debt orders. Under current law, retirement benefits can only be attached to pay delinquent child support. The collection of victim compensation and criminal debt should be priorities as well.

The final amendment I had intended to offer would have increased the amount that the Federal Government is legally able to contribute to State victim compensation programs from the Crime Victim Fund. Currently, Federal payments are restricted to 40 percent of the amount that the State provides to its victim compensation fund. The pending bill will increase the Crime Victim Fund by doubling the special assessment against felons. We should increase the 40-percent ceiling so that the direct compensation programs can benefit from these increased resources.

Senator HATCH has informed me that the committee intends to take up a criminal debt enforcement bill next year, and that these four proposals will receive consideration at that time. I would like to ask the Senator if that is the committee's plan.

Mr. HATCH. The Senator from Arizona is correct. The committee intends to take up an enforcement bill next year. The initiatives you have outlined deserve serious consideration and I look forward to working with you on them.

Mr. MCCAIN. I thank the distinguished chairman of the Judiciary Committee and I look forward to working with him on enforcement legislation. Again, I congratulate Senator HATCH and the Judiciary Committee for their efforts to develop and pass the pending measure.

Mr. WARNER. Mr. President, I ask unanimous consent that all the debate time previously ordered be yielded back, the bill then be deemed read a third time and passed as amended, the motion to reconsider be laid upon the table, and that any statements on the bill appear at the appropriate place in the RECORD.

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

The substitute amendment was agreed to.

The bill (H.R. 665) was deemed read the third time and passed.

The title was amended so as to read: ''An Act entitled the Victims Justice Act of 1995.''

REQUIRING CONVEYANCE OF CERTAIN PROPERTY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Commerce be immediately discharged from further consideration of H.R. 1358 and that the Senate proceed to its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1358) to require the Secretary of Commerce to convey to the Commonwealth of Massachusetts the National Marine Fisheries Service laboratory, located on Emerson Avenue in Gloucester, Massachusetts.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3113

(Purpose: To provide for certain additional transfers of property, and for other purposes)

Mr. WARNER. Mr. President, I send a substitute amendment to the desk on behalf of Senators PRESSLER, KERRY, and STEVENS.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] for Mr. PRESSLER, for himself, Mr. KERRY, and Mr. STEVENS, proposes an amendment numbered 3113.

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

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

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. CONVEYANCES.

(a) NATIONAL MARINE FISHERIES SERVICE LABORATORY AT GLOUCESTER, MASSACHUSETTS.—

(1) IN GENERAL.—The Secretary of Commerce shall convey to the Commonwealth of Massachusetts, all right, title, and interest of the United States in and to the property comprising the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, Massachusetts.

(2) TERMS.—A conveyance of property under paragraph (1) shall be made—

(A) without payment of consideration; and

(B) subject to the terms and conditions specified under paragraphs (3) and (4).

(3) CONDITIONS FOR TRANSFER.—

(A) IN GENERAL.—As a condition of any conveyance of property under this subsection, the Commonwealth of Massachusetts shall assume full responsibility for maintenance of the property for as long as the Commonwealth retains the right and title to that property.

(B) CONTINUED USE OF PROPERTY BY NMFS.—The Secretary may enter into a memorandum of understanding with the Commonwealth of Masachusetts under which the National Marine Fisheries Service is authorized to occupy existing laboratory space on the property conveyed under this subsection, if—

(i) the term of the memorandum of understanding is for a period of not longer than 5 years beginning on the date of enactment of this Act; and

(ii) the square footage of the space to be occupied by the National Marine Fisheries Service does not conflict with the needs of, and is agreeable to, the Commonwealth of Massachusetts.

(4) REVERSIONARY INTEREST.—All right, title, and interest in and to all property conveyed under this subsection shall revert to the United States on the date on which the Commonwealth of Massachusetts uses any of the property for any purpose other than the Commonwealth of Massachusetts Division of Marine Fisheries resource management program.

(5) RESTRICTION.—Amounts provided by the South Essex Sewage District may not be used by the Commonwealth of Massachusetts to transfer existing activities to, or conduct activities at, property conveyed under this section.

(b) PIER IN CHARLESTON, SOUTH CAROLINA.—Section 22(a) of the Marine Mammal Protection Act Amendments of 1994 (Pub. Law 103–238; 108 Stat. 561) is amended—

(1) by inserting ''(1)'' before ''Not''; and

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

''(2) Not later than December 31, 1996, the Secretary of the Navy may convey, without payment or other consideration, to the Secretary of Commerce, all right, title, and interest to the property comprising that portion of the Naval Base, Charleston, South Carolina, bounded by Hobson Avenue, the Cooper River, the landward extension of the property line located 70 feet northwest of and parallel to the centerline of Pier Q, and the northwest property line of the parking area associated with Pier R. The property shall include Pier Q, all towers and outbuildings on that property, and walkways and parking areas associated with those buildings and Pier Q.''.

SEC. 2. FISHERIES RESEARCH FACILITIES.

(a) FORT JOHNSON.—The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct on land to be leased from the State of South Carolina, a facility at Fort Johnson, South Carolina, provided that the annual cost of leasing the required lands does not exceed one dollar.

(b) AUKE CAPE.—The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct a facility on Auke Cape near Juneau, Alaska, to provide consolidated office and laboratory space for National Oceanic and Atmospheric Administration personnel in Juneau, provided that the property for such facility is transferred to the National Oceanic and Atmospheric Administration from the United States Coast Guard or the City of Juneau.

(c) COMPLETION DATE FOR FUNDED WORK.—The Secretary of Commerce shall complete the architectural and engineering work for the facilities described in subsections (a) and (b) by not later than May 1, 1996, using funds that have been previously appropriated for that work.

(d) AVAILABILITY OF APPROPRIATIONS.—The authorizations contained in subsections (a) and (b) are subject to the availability of appropriations provided for the purpose stated in this section.

SEC. 3. PRIBILOF ISLANDS.

(a) IN GENERAL.—The Secretary of Commerce shall, subject to the availability of appropriations provided for the purposes of this section, clean up landfills, wastes, dumps, debris, storage tanks, property, hazardous or unsafe conditions, and contaminants, including petroleum products and their derivatives, left by the National Oceanic and Atmospheric Administration on lands which it and its predecessor agencies abandoned, quitclaimed, or otherwise transferred or are obligated to transfer, to local entities or residents on the Pribilof Islands, Alaska, pursuant to the Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.), as amended, or other applicable law.

(b) OBLIGATIONS OF SECRETARY.—In carrying out cleanup activities under subsection (a), the Secretary of Commerce shall—

(1) to the maximum extent practicable, execute agreements with the State of Alaska, and affected local governments, entities, and residents eligible to receive conveyance of lands under the Fur Seal Act of 1966 (16 U.S.C. 1161 et seq.) or other applicable law;

(2) manage such activities with the minimum possible overhead, delay, and duplication of State and local planning and design work;

(3) receive approval from the State of Alaska for agreements described in paragraph (1) where such activities are required by State law;

(4) receive approval from affected local entities or residents before conducting such activities on their property; and

(5) not seek or require financial contributions by or from local entities or landowners.

(c) RESOLUTION OF FEDERAL RESPONSIBILITIES.—(1) Within 9 months after the date of enactment of this section, and after consultation with the Secretary of the Interior, the State of Alaska, and local entities and residents of the Pribilof Islands, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Resources of the House of Representatives, a report proposing necessary actions by the Secretary of Commerce and Congress to resolve all claims with respect to, and permit the final implementation, fulfillment and completion of—

(A) title II of the Fur Seal Act Amendments of 1983 (16 U.S.C. 1161 et seq.);

(B) the land conveyance entitlements of local entities and residents of the Pribilof Islands under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(C) the provisions of this section; and

(D) any other matters which the Secretary deems appropriate.

(2) The report required under paragraph (1) shall include the estimated costs of all actions, and shall contain the statements of the Secretary of Commerce, the Secretary of the Interior, any statement submitted by the State of Alaska, and any statements of claims or recommendations submitted by local entities and residents of the Pribilof Islands.

(d) USE OF LOCAL ENTITIES.—Notwithstanding any other law to the contrary, the Secretary of Commerce shall, to the maximum extent practicable, carry out activities under subsection (a) and fulfill other obligations under federal and state law relating to the Pribilof Islands, through grants or other agreements with local entities and residents of the Pribilof Islands, unless specialized skills are needed for an activity, and the Secretary specifies in writing that such skills are not available through local entities and residents of the Pribilof Islands.

(e) DEFINITION.—For the purposes of this section, the term ''clean up'' means the planning and execution of remediation actions for lands described in subsection (a) and the redevelopment of landfills to meet statutory requirements.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated not to exceed $10,000,000 in each of fiscal years 1996, 1997, and 1998 for the purposes of carrying out this section.

Mr. PRESSLER. Mr. President, today I am pleased that we are considering H.R. 1358, legislation to authorize the conveyance of the National Marine Fisheries Service laboratory located in Gloucester, MA, to the Commonwealth of Massachusetts. This provision embodied in S. 1142, the National Oceanic and Atmospheric Administration (NOAA) Authorization Act of 1995, was reported by the Commerce Committee on August 10, 1995.

The amendment that I have offered, cosponsored by Senator STEVENS and Senator KERRY, adds several other noncontroversial sections of the reported NOAA bill to H.R. 1358. They include: the conveyance to NOAA of a pier located on the Charleston Navy Base in South Carolina; an authorization concerning the cleanup of NOAA property located on the Pribolof Islands of Alaska; and an authorization to construct and consolidate fisheries research facilities at Fort Johnson, South Carolina, and in Juneau, Alaska.

Mr. President, the provisions in this bill address a number of noncontroversial issues that have been reviewed and adopted by the Commerce Committee with bipartisan support. I have brought them to the floor in this fashion simply to expedite their passage.

I urge my colleagues to join me in the adoption of the amended bill.

Mr. KERRY. Mr. President, I speak today in support of the passage of H.R. 1358, legislation which conveys the Gloucester laboratory of the National Marine Fisheries Service [NMFS] to the Commonwealth of Massachusetts. Under H.R. 1358, the Gloucester lab, which was built in the 1960s and is now federal surplus, will receive a new mission, direction and purpose. Under budget-mandated federal consolidations, the NMFS activities formally carried out at the Gloucester lab have been transferred to newer facilities in other locations.

Loss of the NMFS programs will be mitigated by a plan to make productive use of the now unused laboratory site as home to a state marine fisheries laboratory and a new consortium of marine science programs from Massachusetts's colleges, universities, and high schools. Under the plan, the facility will be used primarily for education and research in the marine sciences. It will enable undertaking various marine science projects and initiatives, and continue ongoing efforts to address the problems that face the traditional fishing industry of Massachusetts and all New England. With its fishing heritage and close ties to the rhythms of the sea, the city of Gloucester is a natural location for such a facility.

The schools participating in the project include Salem State College, the University of Massachusetts, Essex Agriculture College, Boston University's City Lab program and Gloucester High School. Projects planned for the facility include shellfish safety research and testing, the development of aquaculture techniques, and introduction of high school students to sophisticated science such as DNA sequencing.

I would like to thank the chairman of the subcommittee, Senator STEVENS, the chairman of the Commerce Committee, Senator PRESSLER, and the Committee's ranking Democrat, Senator HOLLINGS, for preparing this bipartisan bill and bringing it to the floor.

I also would like to acknowledge the work by staff on both sides, including Penny Dalton and Lila Helms on the Commerce Committee minority staff and on the majority side, Tom Melius and Trevor McCabe. I would like to acknowledge the work of Kate English of my staff and Steve Metruck, a congressional fellow in my office.

This bill represents a win-win solution for Massachusetts and the taxpayers—it gives renewed life to a site the Federal Government no longer needs, and it makes available to State and local organizations laboratory facilities that are needed for research into important health, economic, and marine science issues. Consequently, I hope that we can complete action and send this legislation to the President for his signature as soon as possible.

Mr. WARNER. Mr. President, I ask unanimous consent that the amendment be agreed to.

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

So the amendment (No. 3113) was agreed to.

Mr. WARNER. Mr. President, I ask unanimous consent that the bill be deemed read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the measure be placed at the appropriate place in the RECORD.

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

So the bill (H.R. 1358), as amended, was deemed read the third time and passed.

PAROLE COMMISSION PHASEOUT ACT OF 1995

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1507, introduced earlier today by Senator HATCH.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1507) to provide for the extension of the Parole Commission to oversee cases of prisoners sentenced under prior law, to reduce the size of the Parole Commission, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, I rise today to introduce the Parole Commission Phaseout Act of 1995. I am pleased to be joined in this effort by the ranking member of the Judiciary Committee, Senator BIDEN, as well as by Senator THURMOND and Senator KENNEDY. This legislation, which is supported by both the administration and the Federal judiciary, provides for a reduction in size of the Parole Commission. At the same time, it will ensure that the Commission's duties, which are required by the due process and ex post facto clauses of the Constitution, will continue to be carried out.

Under the Sentencing Reform Act of 1984, Congress eliminated parole for persons convicted of offenses committed after November 1, 1987. Pursuant to amendments to the Sentencing Reform Act, the Parole Commission is currently scheduled go out of existence on November 1, 1997.

At that time, however, the Federal Government will retain custody over a significant number prisoners sentenced for crimes committed before 1987, and thus entitled to parole hearings. The Parole Commission estimates that as of November, 1997, there will be approximately 6,000 such so-called old law convicts remaining in prison. In addition, it is anticipated that another 6,000 such convicts will have been released on parole, subject to reincarceration for parole violations.

Presently, no other agency of the Federal Government can adequately assume the duties of the Parole Commission with regard to these old law prisoners. Yet, these prisoners are constitutionally entitled to parole consideration. Without the Parole Commission, these prisoners could claim that their sentences were being unconstitutionally lengthened by the application of a law enacted after their offense, and apply for immediate release. Thus, were the Commission allowed to terminate as scheduled, public safety could be endangered by the immediate release of dangerous criminals who have not served their sentences.

The parole Commission is also commendably seeking to reduce its size to better accommodate its smaller workload. As the number of ''old law'' prisoners continues to shrink, the need for the Commission, as presently constituted, will disappear, and remaining functions will be able to be transferred to another agency of the government.

This legislation accomplishes the prudent phaseout of the Commission be extending its mandate for an additional 5 years, until November 1, 2002. Simultaneously, the bill reduces the size of the Commission. The Commission's size would be reduced by one member immediately upon enactment, and by another member in October 1996. Thus, the size of the Commission would be reduced by one-third by October 1996, with significant savings to the American taxpayers.

I urge my colleagues to support this commonsense proposal, and look forward to the swift passage of this bill.

Mr. WARNER. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (S. 1507) was deemed read the third time and passed, as follows:

S. 1507

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 ''Parole Commission Phaseout Act of 1995''.

SEC. 2. EXTENSION OF PAROLE COMMISSION.

(a) IN GENERAL.—For purposes of section 235(b)(1) of the Sentencing Reform Act of 1984 (98 Stat. 2032) as it related to chapter 311 of title 18, United States Code, and the Parole Commission, each reference in such section to ''ten years'' or ''ten-year period'' shall be deemed to be a reference to ''fifteen years'' or ''fifteen-year period'', respectively.

(b) POWERS AND DUTIES OF PAROLE COMMISSION.—Notwithstanding section 4203 of title 18, United States Code, the United States Parole Commission may perform its functions with any quorum of Commissioners, or Commissioner, as the Commission may prescribe by regulation.

SEC. 3. REPEAL.

Section 235(b)(2) of the Sentencing Reform Act of 1984 (98 Stat. 2032) is repealed.

AUTHORIZING TESTIMONY AND REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 203, S. Res. 204 and S. Res. 205 submitted earlier today by Senators DOLE and DASCHLE; further, that the resolutions be considered, en bloc; that the resolutions be agreed to, en bloc; that the preambles be agreed to; that the motions to reconsider be laid upon the table; and that statements relating to the measures appear at the appropriate place in the RECORD.

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

So the resolutions (S. Res. 203, S. Res. 204, and S. Res. 205) were agreed to, en bloc.

The preambles were agreed to, en bloc.

The resolutions, with their preambles, are as follows:

S. RES. 203

Whereas, in the case of *Sheila Cherry* v. *Richard Cherry*, Case No. FM–18145–91, pending in the New Jersey Superior Court, a subpoena *duces tecum* for testimony at a deposition and for the production of documents has been issued to William Ayala, an employee of Senator Frank Lautenberg;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2) (1994), the Senate may direct its counsel to represent committees, Members, officers, and employees of the Senate with respect to subpoenas or orders issued to them in their official capacity: Now, therefore, be it

Resolved, That William Ayala is authorized to testify in the case of *Cherry* v. *Cherry*, except concerning matters for which a privilege or an objection should be asserted.

SEC. 2. That the Senate Legal Counsel is directed to represent William Ayala and Senator Lautenberg's office in connection with the subpoena issued in ths case.

Mr. DOLE. Mr. President, in the case of *Cherry* versus *Cherry*, a divorce proceeding pending in New Jersey Superior Court, the plaintiff has caused a subpoena to be served on an employee of Senator LAUTENBERG, seeking documents and testimony concerning the employee's performance of constituent services by contacting the IRS on behalf of the plaintiff. The plaintiff's attorney has not been able to demonstrate to Senator LAUTENBERG's office or to the Senate legal counsel how the office's casework assistance is relevant to the issues in controversy in the divorce suit. Accordingly, this resolution would authorize the Senate legal counsel to represent Senator LAUTENBERG's employee in this matter, and to seek to quash the subpoena in order to protect Senator LAUTENBERG's office from the burdens of complying with a discovery request of no relevance to the underlying dispute. This resolution also would authorize the employee to testify and produce documents in the event that the court determines that the employee does have any evidence somehow relevant to the divorce proceeding.

S. RES. 204

Whereas, in the case of *Charles Okoren, et al.* v. *Fyfe Symington, et al.*, No. CV–95–2527–

PHX–RCB, pending in the United States District Court for the District of Arizona, the plaintiffs have named the United States Senate as a defendant;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1)(1994), the Senate may direct its counsel to defend the Senate in civil actions relating to its official responsibilities: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the United States Senate in the case of *Charles Okoren, et al.* v. *Fyfe Symington, et al.*

Mr. DOLE. Mr. President, the plaintiffs in *Okoren* v. *Symington,* No. CV–95–2527–PHX–RCB (D. Ariz.), have brought a civil action in Federal district court in Arizona seeking two declarations from the court: first, a declaration that Arizona's indictment procedures violate the United States Constitution; and second, a declaration that the Civil Justice Reform Act of 1990 overrules the decision of the United States Supreme Court in *Younger* v. *Harris,* 401 U.S. 37 (1971), that federal courts will not enjoin pending state criminal prosecutions except under extraordinary circumstances.

In their suit, these plaintiffs have named, among others, the United States Senate as a party. The Senate is not, however, a proper party to this lawsuit. In fact, the plaintiffs assert no claim against the Senate. This resolution authorizes the Senate legal counsel to represent the Senate in this action.

S. RES. 205

Whereas, in the case of *United States of America* v. *Karl Zielinski,* Case No. F12187–94, a criminal action pending in the Superior Court of the District of Columbia, the United States Attorney has caused a trial subpoena to be served on Michael O'Leary, a Senate employee on the staff of the Committee on the Judiciary;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to requests for testimony made to them in their official capacities; Now, therefore, be it

Resolved, That Michael O'Leary is authorized to provide testimony in the case of *United States of America* v. *Karl Zielinski,* except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Michael O'Leary in connection with the testimony authorized by section 1 of this resolution.

Mr. DOLE. Mr. President, in the case of United States of America versus Karl Zielinski, the United States Attorney for the District of Columbia has charged the defendant with threatening to do bodily harm to occupants of the Hart Senate Office Building in violation of section 22–507 of the District of Columbia Code, during a visit in December 1994 to the offices of the Senate Judiciary Committee's Subcommittee on Patents, Copyrights, and Trademarks.

Michael O'Leary, an employee on the Judiciary Committee's staff, witnessed the incident and has been subpoenaed by the U.S. Attorney to testify at the trial.

This resolution would authorize Mr. O'Leary to testify at the trial, with representation by the Senate legal counsel.

SMITHSONIAN INSTITUTION SESQUICENTENNIAL COMMEMORATIVE COIN ACT OF 1995

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2627, which has just been received from the House.

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

The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2627) to require the Secretary of the Treasury to mint coins in commemoration of the sesquicentennial of the founding of the Smithsonian Institution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. WARNER. Mr. President, I ask unanimous consent that the bill be deemed read the third time, passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (H.R. 2627) was deemed read the third time, and passed.

PERMITTING USE OF THE CAPITOL ROTUNDA FOR A CEREMONY COMMEMORATING THE HOLOCAUST VICTIMS

Mr. WARNER. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of H. Con. Res 106, and further, that the Senate proceed to its immediate consideration.

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

The clerk will state the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 106) permitting the use of the Rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. WARNER. I ask unanimous consent that the concurrent resolution be considered and agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the concurrent resolution (H. Con. Res. 106) was agreed to.

AMENDING THE IMPACT AID PROGRAM

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1509, a bill introduced earlier today by Senators DASCHLE and PRESSLER to permit local educational agencies to apply for increased impact aid payments, that the bill be deemed read the third time, passed, the motion to reconsider be laid upon the table; further, that any statements on this measure appear in the RECORD at the appropriate place as though read.

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

So the bill (S. 1509) was deemed read the third time, and passed, as follows:

S. 1509

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

SECTION 1. HOLD-HARMLESS AMOUNTS FOR PAYMENTS RELATING TO FEDERAL ACQUISITION OF REAL PROPERTY.

Section 8002 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702) is amended by adding at the end the following new subsections:

''(g) FORMER DISTRICTS.—

''(1) IN GENERAL.—Where the school district of any local educational agency described in paragraph (2) is formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at any time such agency files an application under section 8005) for any fiscal year to have (A) the eligibility of such local educational agency, and (B) the amount which such agency shall be eligible to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school districts as such agency shall designate in such election.

''(2) ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—A local educational agency referred to in paragraph (1) is any local educational agency that, for fiscal year 1994 or any preceding fiscal year, applied for and was determined eligible under section 2(c) of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect on September 30, 1994.

''(h) HOLD-HARMLESS AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2)(A), the total amount that the Secretary shall pay a local educational agency under subsection (b)—

''(A) for fiscal year 1995 shall not be less than 85 percent of the amount such agency received for fiscal year 1994 under section 2 of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect on September 30, 1994; or

''(B) for fiscal year 1996 shall not be less than 85 percent of the amount such agency received for fiscal year 1995 under subsection (b).

''(2) RATABLE REDUCTIONS.—(A)(i) If necessary in order to make payments to local educational agencies in accordance with paragraph (1) for any fiscal year, the Secretary first shall ratably reduce payments under subsection (b) for such year to local educational agencies that do not receive a payment under this subsection for such year.

''(ii) If additional funds become available for making payments under subsection (b) for such year, then payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.

''(B)(i) If the sums made available under this title for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraph (1) after the application of subparagraph (A) for such year, then the Secretary shall ratably reduce payments under paragraph (1) to all such agencies for such year.

''(ii) If additional funds become available for making payments under paragraph (1) for such fiscal year, then payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.''.

SEC. 2. APPLICATIONS FOR INCREASED PAYMENTS.

(a) PAYMENTS.—Notwithstanding any other provision of law—

(1) the Bonesteel-Fairfax School District Number 26–5, South Dakota, and the Wagner Community School District Number 11–4, South Dakota, shall be eligible to apply for payment for fiscal year 1994 under section 3(d)(2)(B) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such action was in effect on September 30, 1994); and

(2) the Secretary of Education shall use a subgroup of 10 or more generally comparable local educational agencies for the purpose of calculating a payment described in paragraph (1), and the local contribution rate applicable to such payment, for a local educational agency described in such paragraph.

(b) APPLICATION.—In order to be eligible to receive a payment described in subsection (a), a school district described in such subsection shall apply for such payment within 30 days after the date of enactment of this Act.

(c) CONSTRUCTION.—Nothing in this section shall be construed to require a local educational agency that received a payment under section 3(d)(2)(B) of the Act of September 3, 1950 (Public Law 874, 81st Congress) (as such section was in effect on September 30, 1994) for fiscal year 1994 to return such payment or a portion of such payment to the Federal Government.

SEC. 3. MAXIMUM PAYMENTS.

Subparagraph (B) of section 8003(f)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(f)(3)) is amended to read as follows:

''(B) SPECIAL RULE.—The Secretary shall determine the maximum amount that a local educational agency described in clause (ii) or (iii) of paragraph (2)(A) may receive under this subsection in accordance with the following computations:

''(i) The Secretary shall multiply the average per-pupil expenditure for all States by 0.7, except that such amount may not exceed 125 percent of the average per-pupil expenditure for all local educational agencies in the State.

''(ii) The Secretary shall next multiply the product determined under clause (i) by the number of students who are served by the local educational agency and described in subparagraph (A) or (B) of subsection (a)(1).

''(iii) The Secretary shall next subtract the total amount of payments received by the local educational agency under subsections (b) and (d) for a fiscal year from the amount determined under clause (ii).''.

NOMINATIONS TO REMAIN IN STATUS QUO, WITH EXCEPTIONS

Mr. WARNER. Mr. President, as in executive session, I ask unanimous consent that all nominations received by the Senate remain in status quo, notwithstanding the provisions of Rule 31, paragraph 6, except the following:

Henry Foster; PN234–2, Thomas J. Flanagan; PN343–2, five Navy promotions to Captain and below (list begins with Christopher J. Remshak); PN632–2, Navy Promotion of Margaret V. Abrashoff; PN628–2, Navy appointment to Lieutenant—Richard Drake.

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

UNANIMOUS CONSENT AGREEMENT

Mr. WARNER. Mr. President, I ask unanimous consent that all items done by the Senator from Virginia, acting on behalf of the distinguished majority leader with the exception of those done in executive session, be deemed as having been done in morning business.

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

ORDERS FOR SATURDAY, DECEMBER 23, 1995 AND WEDNESDAY, DECEMBER 27, 1995

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 11 a.m., Saturday, December 23, for a pro forma session only, and, immediately upon convening, the Senate stand in adjournment until 1 p.m. Wednesday, December 27 and following the prayer on Wednesday, the Journal of Proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and that there then will be a period for morning business not to extend beyond the hour of 2 p.m., with statements limited to 5 minutes each.

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

PROGRAM

Mr. WARNER. Mr. President, the Senate could also be asked to consider any available appropriations bill, conference reports and other items cleared for action. However, rollcall votes are not anticipated during Wednesday's session and, at this point, do not look likely for Thursday's or Friday's session of the Senate.

I further ask unanimous consent that the cloture vote scheduled for today be postponed to occur at a time to be determined by the two leaders, but not before January 3, 1996.

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

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

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

LEGISLATIVE SESSION

Mr. WARNER. I ask unanimous consent the Senate now return to legislative session.

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

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

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 103–227, appoints the following individual to the National Skill Standards Board:

Upon the recommendation of the majority leader: Raymond J. Robertson, of Virginia, representing organized labor.

The Chair, on behalf of the President pro tempore and upon the recommendation of the majority leader, pursuant to Public Law 98–183, as amended by Public Law 101–180, reappoints Russell G. Redenbaugh, of Pennsylvania, to the U.S. Commission on Civil Rights.

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

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. WARNER. Mr. President, I ask unanimous consent that, in executive session, the Senate immediately proceed to consideration of the following Executive Calendar nominations, en bloc.

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

Mr. WARNER. Numbers 312, 323, 325, 329, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 349, 350, 351, 352, 353, 354, 355, 367, 368, 370, 371, 372, 373, 374, 375, 376, 377, 379, 380, 381, 382, 383, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 398, 399, 400, 401, 407, 408, 409, 429, 431, 432, 433, 435, 436, 437, 438, 440, 441, 442, and all nominations placed at the Secretary's desk.

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

Mr. WARNER. I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be placed upon the table en bloc, the President be immediately notified of the Senate's action, that any statements relating to any of the nominations appear at the appropriate place in the RECORD, and that the Senate then immediately return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

NUCLEAR REGULATORY COMMISSION

Greta Joy Dicus, of Arkansas, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 1998.

NATIONAL COUNCIL ON DISABILITY

Hughey Walker, of South Carolina, to be a Member of the National Council on Disability for a term expiring September 17, 1996.

NATIONAL MEDIATION BOARD

Ernest W. DuBester, of New Jersey, to be a Member of the National Mediation Board for a term expiring July 1, 1998.

DEPARTMENT OF THE INTERIOR

Patricia J. Beneke, of Iowa, to be an Assistant Secretary of the Interior.

UNITED STATES ENRICHMENT CORPORATION

Charles William Burton, of Texas, to be a Member of the Board of Directors of the United States Enrichment Corporation for the remainder of the term expiring February 24, 1996.

DEPARTMENT OF THE INTERIOR

Eluid Levi Martinez, of New Mexico, to be Commissioner of Reclamation.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Eli J. Segal, of Massachusetts, to be a Member of the Board of Directors of the Corporation for National and Community Service for the remainder of the term expiring February 8, 1999.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Marc R. Pacheco, of Massachusetts, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring October 3, 2000.

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

Mel Carnahan, of Missouri, to be a Member of the Board of Trustees of the Harry S Truman Scholarship Foundation for a term expiring December 10, 1999.

UNITED STATES INSTITUTE OF PEACE

Chester A. Crocker, of the District of Columbia, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 1999.

Max M. Kampelman, of the District of Columbia, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 1999.

Seymour Martin Lipset, of Virginia, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 1999.

DEPARTMENT OF EDUCATION

Thomas R. Bloom, of Virginia, to be Inspector General, Department of Education, vice James Bert Thomas, Jr.

EXECUTIVE OFFICE OF THE PRESIDENT

Kathleen A. McGinty, of Pennsylvania, to be a Member of the Council on Environmental Quality, vice Michael R. Deland.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Dwight P. Robinson, of Michigan, to be Deputy Secretary of Housing and Urban Development, vice Terrence, R. Duvernay, Sr.

Hal C. DeCell III, of Mississippi, to be an Assistant Secretary of Housing and Urban Development.

John A. Knubel, of Maryland, to be Chief Financial Officer, Department of Housing and Urban Development.

SECURITIES INVESTOR PROTECTION CORPORATION

Albert James Dwoskin, of Virginia, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1995, vice Frank G. Zarb, term expired.

FEDERAL DEPOSIT INSURANCE CORPORATION

Joseph H. Neely, of Mississippi, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation for a term of six years.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Kevin G. Chavers, of Pennsylvania, to be President, Government National Mortgage Association.

THE JUDICIARY

R. Guy Cole, Jr., of Ohio, to be United States Circuit Judge for the Sixth Circuit.

Barry Ted Moskowitz, of California, to be United States District Judge for the Southern District of California.

Stephen M. Orlofsky, of New Jersey, to be United States District Judge of the District of New Jersey.

John R. Tunheim, of Minnesota, to be United States District Judge for the District of Minnesota.

Susan J. Dlott, of Ohio, to be United States District Judge for the Southern District of Ohio.

DEPARTMENT OF JUSTICE

Juan Abran DeHerrera, of Wyoming, to be United States Marshall for the District of Wyoming for the term of four years.

DEPARTMENT OF LABOR

Susan Robinson King, of the District of Columbia, to be an Assistant Secretary of Labor.

Anne H. Lewis, of Maryland, to be an Assistant Secretary of Labor.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Elisabeth Griffith, of Virginia, to be a Member of the Board of Trustees of the James Madison Memorial Foundation for the remainder of the term expiring September 27, 1996.

UNITED STATES INSTITUTE OF PEACE

Theodore M. Hesburgh, of Indiana, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 1999.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

James Charles Riley, of Virginia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2000.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Walter Anderson, of New York, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2000.

DEPARTMENT OF AGRICULTURE

John David Carlin, of Kansas, to be an Assistant Secretary of Agriculture.

Michael V. Dunn, of Iowa, to be an Assistant Secretary of Agriculture.

COMMODITY CREDIT CORPORATION

Michael V. Dunn, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Louis L. Stevenson, of Pennsylvania, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring November 17, 1999.

THE JUDICIARY

Todd J. Campbell, of Tennessee, to be United States District Judge for the Middle District of Tennessee.

Kim McLane Wardlaw, of California, to be United States District Judge for the Central District of California.

E. Richard Webber, of Missouri, to be United States District Judge for the Eastern District of Missouri vice Edward L. Filippine, retired.

P. Michael Duffy, of South Carolina, to be United States District Judge for the District of South Carolina.

DEPARTMENT OF COMMERCE

Jane Bobbitt, of West Virginia, to be an Assistant Secretary of Commerce.

DEPARTMENT OF TRANSPORTATION

Nancy E. McFadden, of California, to be General Counsel of the Department of Transportation.

EXECUTIVE OFFICE OF THE PRESIDENT

Ernest J. Moniz, of Massachusetts, to be an Associate Director of the Office of Science and Technology Policy.

DEPARTMENT OF TRANSPORTATION

George D. Milidrag, of Michigan, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.

Gail Clements McDonald, of Maryland, to be Administrator of the Saint Lawrence Seaway Development Corporation for the remainder of the term expiring March 20, 1998.

MISSISSIPPI RIVER COMMISSION

Rear Admiral John Carter Albright, National Oceanic and Atmospheric Administration, to be a Member of the Mississippi River Commission.

DEPARTMENT OF COMMERCE

Phillip A. Singerman, of Pennsylvania, to be an Assistant Secretary of Commerce.

DEPARTMENT OF JUSTICE

D.W. Bransom, Jr., of Texas, to be United States Marshal for the Northern District of Texas for the term of four years.

Frank Policaro, Jr., of Pennsylvania, to be United States Marshal for the Western District of Pennsylvania for the term of four years.

STATE JUSTICE INSTITUTE

Joseph Francis Baca, of New Mexico, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1998.

Robert Nelson Baldwin, of Virginia, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1998.

David Allen Brock, of New Hampshire, to be a Member of the Board of Directors of the

State Justice Institute for a term expiring September 17, 1997.

Florence K. Murray, of Rhode Island, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1998.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Melissa T. Skolfield, of Louisiana, to be an Assistant Secretary of Health and Human Services.

DEPARTMENT OF THE TREASURY

Darcy E. Bradbury, of New York, to be an Assistant Secretary of the Treasury, vice Hollis S. McLoughlin.

David A. Lipton, of Massachusetts, to be a Deputy Under Secretary of the Treasury.

THE JUDICIARY

Joseph H. Gale, of Virginia, to be a Judge of the United States Tax Court for a term expiring fifteen after years he takes office.

Bruce D. Black, of New Mexico, to be United States District Judge for the District of New Mexico, vice Juan Guerrero Burciaga.

Hugh Lawson, of Georgia, to be United States District Judge for the Middle District of Georgia vice Wilbur D. Owens, Jr.

Patricia A. Gaughan, of Ohio, to be United States District Judge for the Northern District of Ohio vice Ann Aldrich.

DEPARTMENT OF STATE

Ralph R. Johnson, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Slovak Republic.

FEDERAL LABOR RELATIONS AUTHORITY

Donald S. Wasserman, of the District of Columbia, to be a Member of the Federal Labor Relations Authority for a term of five years expiring July 1, 2000.

DEPARTMENT OF THE TREASURY

Jeffrey R. Shafer, of New Jersey, to be an Under Secretary of the Treasury.

Joshua Gotbaum, of New York, to be an Assistant Secretary of the Treasury.

STATE JUSTICE INSTITUTE

Tommy Edward Jewell, III, of New Mexico, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1995.

Tommy Edward Jewell, III, of New Mexico, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1998.

SOCIAL SECURITY ADMINISTRATION

David C. Williams, of Illinois, to be Inspector General, Social Security Administration. (New Position)

THE JUDICIARY

Joan A. Lenard, of Florida, to be United States District Judge for the Southern District of Florida.

Barbara S. Jones, of New York, to be United States District Judge for the Southern District of New York.

Bernice B. Donald, of Tennessee, to be United States District Judge for the Western District of Tennessee.

C. Lynwood Smith, of Alabama, to be United States District Judge for the Northern District of Alabama.

IN THE COAST GUARD, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, PUBLIC HEALTH SERVICE

Coast Guard nominations beginning John D. Cook, and ending Charles T. Lancaster, which nominations were received by the Senate and appeared in the Congressional Record of September 5, 1995

Coast Guard nominations beginning James E. Bussey, III, and ending Scott L. Krammes, which nominations were received by the Senate and appeared in the Congressional Record of September 19, 1995

Coast Guard nomination of Jordan D. Isaac, which was received by the Senate and appeared in the Congressional Record of October 11, 1995

Coast Guard nomination beginning Kurt J. Colella, and ending George J. Rezendes, which nominations were received by the Senate and appeared in the Congressional Record of October 11, 1995

National Oceanic and Atmospheric Administration Nominations beginning Andrew M. Snella, and ending Jennifer D. Garte, which nominations were received by the Senate and appeared in the Congressional Record of October 13, 1995

Public Health Service nominations beginning Patricia A. Berry, and ending Catherine l. Woodhouse, which nominations were received by the Senate and appeared in the Congressional Record of June 26, 1995

NOMINATION OF JOSEPH H. GALE TO BE A JUDGE ON THE UNITED STATES TAX COURT

Mr. MOYNIHAN. Mr. President, it is with great pride that I rise to congratulate Joseph H. Gale of Virginia, who has just been confirmed by the Senate to be a judge on the United States Tax Court for a term of 15 years. Mr. Gale, who is well known to Members of the Senate, has been a good friend and trusted counsel to the Senator from New York for 11 years now. He joined my personal staff in 1985 as Tax Counsel, just in time for the fundamental restructuring of the tax code in the Tax Reform Act of 1986, with which he was intimately involved. Since then he has been a major force in the development and passage of literally every piece of tax legislation considered by the Congress.

In 1993, Mr. Gale became Chief Tax Counsel for the Senate Committee on Finance, and in that capacity took a leading role in the drafting, and ultimately in the enactment, of the Omnibus Budget Reconciliation Act of 1993. In 1995, he became our Minority Staff Director.

Three weeks ago, when Mr. Gale appeared before the Finance Committee for his confirmation hearing, Senators from both sides of the aisle praised him highly for his professionalism, his unmatched knowledge of tax law and the legislative process, and his dedication to public service. At least one Senator attended the hearing solely for the purpose of making a statement in support of Joe Gale's nomination, and Chairman ROTH took the opportunity to declare that only our former Chairman Lloyd Bentsen got through the Committee more easily.

Mr. President, I am pleased and gratified that the Senate has confirmed Mr. Gale to be a United States Tax Court Judge. He is superbly qualified for this position, and I know he will be an outstanding jurist. Finally, I thank Joe Gale for his 11 years of distinguished service to the Senate, and I wish him well in his new career as a member of the Federal judiciary.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

RECESS UNTIL 11 A.M. TOMORROW

Mr. WARNER. Mr. President, if there is no further business to come before the Senate, I first wish my colleague from Kentucky a merry Christmas.

Mr. FORD. Mr. President, may I also wish my distinguished friend and colleague from Virginia a merry Christmas, a happy new year, and a successful 1996.

Let me say, Mr. President, also, that we thank you for being here. It is late. Everybody else basically has gone home. We are here trying to do the Government's and the institution's business.

Let me thank the staff because if they were not here and dedicated we would have a difficult time getting through.

So I want the record to show that we appreciate the staff and all their work.

I thank my friend.

Mr. WARNER. Mr. President, I further join with my friend in expressing appreciation to the staff present in the Chamber, and throughout the Senate, the considerable infrastructure that is required, as we well know.

I now ask that the Senate stand in recess, under the previous order.

There being no objection, the Senate, at 6:54 p.m., recessed until Saturday, December 23, 1995, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate December 22, 1995:

DEPARTMENT OF ENERGY

ALVIN L. ALM, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF ENERGY (ENVIRONMENTAL MANAGEMENT), VICE THOMAS P. GRUMBLY.

THE JUDICIARY

EDMUND A. SARGUS, JR., OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO, VICE CARL B. RUBIN, DECEASED.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 22, 1995:

NUCLEAR REGULATORY COMMISSION

GRETA JOY DICUS, OF ARKANSAS, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF FIVE YEARS EXPIRING JUNE 30, 1998.

NATIONAL COUNCIL ON DISABILITY

HUGHEY WALKER, OF SOUTH CAROLINA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1996.

NATIONAL MEDIATION BOARD

ERNEST W. DUBESTER, OF NEW JERSEY, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 1998.

DEPARTMENT OF THE INTERIOR

PATRICIA J. BENEKE, OF IOWA, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR.

UNITED STATES ENRICHMENT CORPORATION

CHARLES WILLIAM BURTON, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES ENRICHMENT CORPORATION FOR THE REMAINDER OF THE TERM EXPIRING FEBRUARY 24, 1996.

DEPARTMENT OF THE INTERIOR

ELUID LEVI MARTINEZ, OF NEW MEXICO, TO BE COMMISSIONER OF RECLAMATION.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

ELI J. SEGAL, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR THE REMAINDER OF THE TERM EXPIRING FEBRUARY 8, 1999.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

MARC R. PACHECO, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION FOR A TERM EXPIRING OCTOBER 3, 2000.

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

MEL CARNAHAN, OF MISSOURI, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 1999.

UNITED STATES INSTITUTE OF PEACE

CHESTER A. CROCKER, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1999.

MAX M. KAMPELMAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1999.

SEYMOUR MARTIN LIPSET, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1999.

DEPARTMENT OF EDUCATION

THOMAS R. BLOOM, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF EDUCATION.

EXECUTIVE OFFICE OF THE PRESIDENT

KATHLEEN A. MCGINTY, OF PENNSYLVANIA, TO BE A MEMBER OF THE COUNCIL ON ENVIRONMENTAL QUALITY.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DWIGHT P. ROBINSON, OF MICHIGAN, TO BE DEPUTY SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

HAL C. DECELL III, OF MISSISSIPPI, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

JOHN A. KNUBEL, OF MARYLAND, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

SECURITIES INVESTOR PROTECTION CORPORATION

ALBERT JAMES DWOSKIN, OF VIRGINIA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 1995.

FEDERAL DEPOSIT INSURANCE CORPORATION

JOSEPH H. NEELY, OF MISSISSIPPI, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF SIX YEARS.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

KEVIN G. CHAVERS, OF PENNSYLVANIA, TO BE PRESIDENT, GOVERNMENT NATIONAL MORTGAGE ASSOCIATION.

DEPARTMENT OF LABOR

SUSAN ROBINSON KING, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF LABOR.

ANNE H. LEWIS, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF LABOR.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

ELISABETH GRIFFITH, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FOUNDATION FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 27, 1996.

UNITED STATES INSTITUTE OF PEACE

THEODORE M. HESBURGH, OF INDIANA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1999.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JAMES CHARLES RILEY, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM OF SIX YEARS EXPIRING AUGUST 30, 2000.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

WALTER ANDERSON, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 2000.

DEPARTMENT OF AGRICULTURE

JOHN DAVID CARLIN, OF KANSAS, TO BE AN ASSISTANT SECRETARY OF AGRICULTURE.

MICHAEL V. DUNN, OF IOWA, TO BE AN ASSISTANT SECRETARY OF AGRICULTURE.

COMMODITY CREDIT CORPORATION

MICHAEL V. DUNN, OF IOWA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

LOUISE L. STEVENSON, OF PENNSYLVANIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION FOR A TERM EXPIRING NOVEMBER 17, 1999.

DEPARTMENT OF COMMERCE

JANE BOBBITT, OF WEST VIRGINIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE.

DEPARTMENT OF TRANSPORTATION

NANCY E. MCFADDEN, OF CALIFORNIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION.

EXECUTIVE OFFICE OF THE PRESIDENT

ERNEST J. MONIZ, OF MASSACHUSETTS, TO BE AN ASSOCIATE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

DEPARTMENT OF TRANSPORTATION

GEORGE D. MILIDRAG, OF MICHIGAN, TO BE A MEMBER OF THE ADVISORY BOARD OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION.

GAIL CLEMENTS MCDONALD, OF MARYLAND, TO BE ADMINISTRATOR OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION FOR THE REMAINDER OF THE TERM EXPIRING MARCH 20, 1998.

MISSISSIPPI RIVER COMMISSION

REAR ADMIRAL JOHN CARTER ALBRIGHT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION.

DEPARTMENT OF COMMERCE

PHILLIP A. SINGERMAN, OF PENNSYLVANIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

MELISSA T. SKOLFIELD, OF LOUISIANA, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES.

DEPARTMENT OF THE TREASURY

DARCY E. BRADBURY, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY.

DAVID A. LIPTON, OF MASSACHUSETTS, TO BE A DEPUTY UNDER SECRETARY OF THE TREASURY.

THE JUDICIARY

JOSEPH H. GALE, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES TAX COURT FOR A TERM EXPIRING FIFTEEN YEARS AFTER HE TAKES OFFICE.

DEPARTMENT OF STATE

RALPH R. JOHNSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SLOVAK REPUBLIC.

FEDERAL LABOR RELATIONS AUTHORITY

DONALD S. WASSERMAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS EXPIRING JULY 1, 2000.

DEPARTMENT OF THE TREASURY

JEFFREY R. SHAFER, OF NEW JERSEY, TO BE AN UNDER SECRETARY OF THE TREASURY.

JOSHUA GOTBAUM, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY.

SOCIAL SECURITY ADMINISTRATION

DAVID C. WILLIAMS, OF ILLINOIS, TO BE INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

R. GUY COLE, JR., OF OHIO, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

BARRY TED MOSKOWITZ, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

STEPHEN M. ORLOFSKY, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY.

JOHN R. TUNHEIM, OF MINNESOTA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA.

SUSAN J. DLOTT, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO.

DEPARTMENT OF JUSTICE

JUAN ABRAN DEHERRERA, OF WYOMING, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF WYOMING FOR THE TERM OF FOUR YEARS.

THE JUDICIARY

TODD J. CAMPBELL, OF TENNESSEE, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF TENNESSEE.

KIM MCLANE WARDLAW, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA.

E. RICHARD WEBBER, OF MISSOURI, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI.

P. MICHAEL DUFFY, OF SOUTHERN CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA.

DEPARTMENT OF JUSTICE

D.W. BRANSOM, JR., OF TEXAS, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS.

FRANK POLICARO, JR., OF PENNSYLVANIA, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF PENNSYLVANIA FOR THE TERM OF FOUR YEARS.

STATE JUSTICE INSTITUTE

JOSEPH FRANCIS BACA, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1998.

ROBERT NELSON BALDWIN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1998.

DAVID ALLEN BROCK, OF NEW HAMPSHIRE, TO BE MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1997.

FLORENCE K. MURRAY, OF RHODE ISLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1998.

THE JUDICIARY

BRUCE D. BLACK, OF NEW MEXICO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO.

HUGH LAWSON, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA.

PATRICIA A. GAUGHAN, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO.

STATE JUSTICE INSTITUTE

TOMMY EDWARD JEWELL, III, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1995.

TOMMY EDWARD JEWELL, III, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1998.

THE JUDICIARY

JOAN A. LENARD, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA.

BARBARA S. JONES, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK.

BERNICE B. DONALD, OF TENNESSEE, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE.

C. LYNWOOD SMITH, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

PUBLIC HEALTH SERVICE

PUBLIC HEALTH SERVICE NOMINATIONS BEGINNING PATRICIA A. BERRY AND ENDING CATHERINE L. WOODHOUSE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 1995.

IN THE COAST GUARD

COAST GUARD NOMINATIONS BEGINNING JOHN D. COOK, AND ENDING CHARLES T. LANCASTER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 5, 1995.

COAST GUARD NOMINATIONS BEGINNING JAMES E. BUSSEY, III, AND ENDING SCOTT L. KRAMMES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 19, 1995.

COAST GUARD NOMINATION OF JORDAN D. ISAAC, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 11, 1995.

COAST GUARD NOMINATIONS BEGINNING KURT J. COLELLA, AND ENDING GEORGE J. REZENDES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 11, 1995.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NOMINATIONS BEGINNING ANDREW M. SNELLA, AND ENDING JENNIFER D. GARTE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 13, 1995.

THE LOBBYING DISCLOSURE ACT OF 1995

NOTICE FROM THE SECRETARY OF THE SENATE AND THE CLERK OF THE HOUSE OF REPRESENTATIVES

The Lobbying Disclosure Act of 1995, Public Law 104-65, was signed by the President on December 19, 1995, and takes effect on January 1, 1996. The Federal Regulation of Lobbying Act of 1946 (2 USC 261 et seq.) is repealed on January 1, and certain other laws that regulate lobbying activities are amended, including the Foreign Agents Registration Act of 1938 (22 USC 611 et seq) and the 1989 Byrd Amendment (31 USC 1352).

FOR FURTHER INFORMATION: For further information, forms, and instructions concerning the Lobbying Disclosure Act, contact the House Legislative Resource Center, 1036 Longworth House Office Building, Washington, DC 20515, (202) 225-1300, or the Senate Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510, (202) 224-0758.

DESCRIPTION OF LAW

In general, the Lobbying Disclosure Act (''Act'') establishes broad requirements that individuals and entities who seek to influence the Federal government register with the Secretary of the Senate and the Clerk of the House of Representatives, and disclose their clients, issues, fees, and interests of foreign entities. All registrations and reports filed under the Act are public records. The key provisions of the Act are summarized below; however, lobbyists, their employers, clients, and other interested persons should always consult the full text of the new law.

REGISTRATION

The Act requires registration of: 1) **lobbying firms** that employ **lobbyists** for **clients**; and 2) **organizations** that employ **in-house lobbyists**. Registration with both the Secretary and the Clerk is required no later than 45 days after a lobbyist first makes a **lobbying contact** or is employed or retained to do so, **whichever is earlier** (e.g., a lobbyist who has a retainer agreement with a client in effect on January 1, 1996, must register on or before February 14, 1996). **Lobbying firms must file separate registrations for each client**, subject to limited exceptions.

NOTE: **Individuals and organizations currently registered under the Federal Regulation of Lobbying Act should file their final quarterly reports under the former law with the Clerk and the Secretary by January 10, 1996, to prevent a gap in the records. However, registrations under the former law will no longer be effective, and all lobbyists active after January 1, 1996, must register under the new Lobbying Disclosure Act.**

Registration forms and instructions will be available from the House Legislative Resource Center and the Senate Office of Public Records in early January 1996.

REPORTS

Lobbying firms are required to file semiannual reports of income, and **organizations** employing **in-house lobbyists** are required to file semiannual reports of expenditures, by **August 14** (covering the period January 1 thru June 30) and **February 14** (covering the period July 1 thru December 31). **The first reports under the new Act will be due by August 14, 1996. Lobbying firms must file separate reports for each client.** Forms and instructions will be available from the House Legislative Resource Center and the Senate Office of Public Records.

MAIN DEFINITIONS

A **LOBBYIST** is an individual who is employed or retained for compensation to make more than one **lobbying contact**, and whose **lobbying activities** constitute at least 20 percent of his or her services performed for that **client** during a six month period.

A **LOBBYING FIRM** means a person or entity that has one or more employees who are **lobbyists** on behalf of a **client**, other than that person or entity, and also includes a self-employed individual.

A **CLIENT** is any person or entity that employs another person for financial or other compensation to conduct **lobbying activities** on behalf of that person or entity. A person or entity whose employees act as **lobbyists** on its own behalf is both the **client** and employer of such individuals. In the case of a coalition or association that employs or retains other persons to conduct **lobbying activities**, the client is the coalition or association, not its individual members. Under the Act, there is no requirement that coalitions or associations disclose contributions or dues from the individual membership of such groups.

A **LOBBYING CONTACT** means any oral or written communication (including an electronic communication) to a **covered executive branch official or a covered legislative branch official** that is made on behalf of a **client** with regard to:

(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);

(ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;

(iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or

(iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

The law provides for 19 specific exceptions from the definition of **lobbying contacts** (e.g. for contacts that are not considered lobbying, are routine in nature, are inherently confidential, are subject to formal procedural safeguards, or are the subject of a separate public record).

LOBBYING ACTIVITIES are **lobbying contacts** and efforts in support of **lobbying contacts,** including preparation and planning activities, research and other background work that is intended at the time it is performed for use in contacts and coordination with the **lobbying activities** of others.

COVERED EXECUTIVE BRANCH OFFICIALS include the President, Vice President, employees of the Executive Office of the President, Level I-V of the Executive Schedule, Members of the Uniformed Services at a pay grade above 0-7, or any officer or employee in a position of a confidential, policy-determining, policy-making, or policy-advocating character.

COVERED LEGISLATIVE BRANCH OFFICIALS include Members of the House of Representatives and Senate, their staffs, elected officers of either House of Congress, committee and leadership staff, joint committee staff, a working group

or caucus organized to provide legislative services or other assistance to Members of Congress, and all legislative employees required to file Financial Disclosure Reports under the Ethics in Government Act.

IDENTIFICATION OF CLIENTS

Any lobbyist making an *oral* **lobbying contact** with a **covered legislative branch official** or **covered executive branch official** is required, on request of the official, to state whether his or her **lobbying firm** or organization is registered, to identify the client, and to disclose any foreign interest regulated by the Act. A lobbyist making a *written* **lobbying contact** to a covered official for foreign interests regulated by the Act must disclose that fact in the writing.

EXEMPTIONS

A **LOBBYING FIRM** is exempt from registration with respect to a particular **client** if total income from that **client** for **lobbying activities** does not exceed or is not expected to exceed $5,000 in a six month period.

An **ORGANIZATION** whose employees engage in **lobbying activities** on its own behalf is exempt from registration if total expenses in connection with **lobbying activities** do not exceed or are not expected to exceed $20,000 in a six month period.

PENALTIES

Whoever knowingly fails to—

(l) correct a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House, or

(2) fails to comply with any other provision of the Act,

is subject to a civil fine of not more than $50,000.

KELLY D. JOHNSTON
Secretary of the Senate

ROBIN H. CARLE
Clerk of the House of Representatives