United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, THURSDAY, MAY 2, 2002 No. 53

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JON S. CORZINE, a Senator from the State of New Jersey.

PRAYER

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

Almighty God, on this National Day of Prayer, our hearts overflow with gratitude for Your goodness to America. All that we have and are is a result of Your amazing generosity.

Today, we rededicate ourselves to be one Nation under You. In You we trust. You have begun a spiritual awakening in our land and have taught us that repentance is to make a U-turn and return to You. We reaffirm our accountability to You, the absolutes of Your Commandments, and to do justice in our society. Awaken every American to receive Your love and to seek to do Your will.

Since September 11, we have discovered again that You truly are our refuge and strength, an ever-present help in trouble. In the battle against terrorism, we will never give up or give in because with Your help we will win.

Bless our President, the Cabinet, Congress, and all State and local leaders with supernatural power. We commit ourselves to be faithful to You as Sovereign of our land and Lord of our lives. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JON S. CORZINE led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 2, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JON S. CORZINE, a Senator from the State of New Jersey, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. CORZINE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

A HAPPY DAY FOR THE SENATE CHAPLAIN

Mr. REID. Mr. President, while our good Chaplain is still in the building, I note that this is a happy day for him and the entire Senate family, as I have received word that his wife, Mary Jane, after 3 weeks in intensive care, has now been taken out of intensive care. She still has a long way to go toward recovery, but at least that is a significant step forward after having spent so much time in the intensive care ward of the hospital. She has now been moved to a private room.

So we are very happy for the Chaplain, who does such a good job watching over each of us, and we are grateful that his prayers, and those of others, have been answered. His wife is out of intensive care.

SCHEDULE

Mr. REID. Mr. President, today we are going to proceed immediately to a period of morning business, and then I am told we will hear from Senator BAUCUS, who has not yet had the opportunity to give his opening statement on the trade bill. He is the manager of this legislation, as is Senator GRASSLEY. They are both going to give opening statements, I believe, this morning.

There is an amendment pending. Senator DORGAN indicated to me he wants a vote on it as quickly as possible. So those people who have any information that they want to give the Senate regarding the Dorgan amendment should do it as soon as they can; otherwise, we will vote on it.

We expect a very busy day. As you know, we have a Senate retreat tomorrow a number of us will be attending. Therefore, we will not be in session tomorrow. We have a lot of business to accomplish today. We want to make progress on this trade bill. We expect to hear from a number of Senators on the resolution dealing with Israel. That will be brought before the Senate sometime today. We also hope to have an opportunity to work on the farm bill conference today. So we have a lot of work to try to accomplish today.

We expect the House to take up the farm bill this morning at 10 o'clock. So if we are fortunate, that bill should be over here at 1 or 2 this afternoon.

We want to work something out so it can be brought before the Senate. Although I am not from a farm State, I have been told it is extremely important to complete that legislation so that the farmers in those States have some knowledge of what they are supposed to do with the crops this year.

Mr. President, as I have indicated several times this morning, we have a lot to do. I ask unanimous consent that the half hour for morning business begin to run now.

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

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

Printed on recycled paper.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:06 a.m., with the time to be controlled by the majority leader or his designee.

The Senator from Massachusetts is recognized.

COLLEGE LOANS AND THE COST OF HIGHER EDUCATION

Mr. KENNEDY. Mr. President, I want to bring to the attention of the Senate and the American people one of the great challenges this country is facing again, and the failure of the Bush administration to respond to this challenge, and that is the cost of higher education. I don't think there is anyone or any family who is watching the U.S. Senate this morning who isn't concerned about what the cost is for higher education—for their children, who are in college at the present time, or parents whose children have gone to college and endured the debt.

It is absolutely extraordinary to me, at this time of real crisis, in terms of availability of college for working, middle-income families that the Bush administration has now suggested a way that will make the cost of college education even higher and the debts even deeper. I draw again to the attention of the Senate this AP story from last week, where the White House suggested $5.2 billion in savings from Federal student loans.

White House Budget Director Mitch Daniels proposed savings to House Speaker DENNIS HASTERT. Among Daniels' proposed savings is to require college students and graduates who wish to consolidate their Government-backed education to use variable interest rates. That means that the Bush administration is saying to college students, rather than being able to take advantage of the low-interest rates at the present time, they will have to take their chances on the variable interest rates.

What is that going to cost for the average student and the average family? The average family in this country who borrows ends up with a $17,000 debt. In my State, it is about $23,000 or $24,000. The best estimate is that it is going to cost that family at least $3,000; if it is going to be over a 30-year period, it will be an additional $10,000. Do families understand this proposal of the Bush administration?

Now, we are, as Democrats, extraordinarily concerned. We have sent a letter to the administration. Our committee, the Education Committee, has invited Mr. Daniels to testify on this particular issue, so that we can better understand what the reasons and the rationale are—other than that the Federal Government can effectively take back that money from the students and use it for the tax cut for the wealthiest individuals. This is a tax increase on working families that are going to school.

Now what has been the administration's response? The Democrats are virtually unanimous. There are 46 of our Democratic colleagues who have said they will stand in the way and will not permit it. We will have a legislative fix, and we will not permit it. We are telling the administration that.

What has been the reaction of the administration? If we look at the reaction of the administration, according to Deputy Education Secretary William Hansen, they yesterday dismissed the Democratic criticism as incredibly disingenuous.

It is not the Democrats who are disingenuous. It is the Bush administration's proposal to raise the cost of going to higher education.

Is this something that we say is the cost of higher education? I refer again to a story that is in the New York Times—and there is a similar story in the Washington Post this morning—''Greater Share of Income is Committed to Education.''

> Poor and middle class families have had to use a steadily larger portion of their income to attend the Nation's public universities over the last 2 decades as State spending for higher education has lagged behind. All of these trends are unhealthy for the future of educational opportunity in this country, says Patrick Callan, President of the National Center for Higher Education.

That is not a Democratic Senator. This is the president of the National Center for Higher Education in San Jose, CA, which commissioned the study with the support of the Ford Foundation and the Pew Charitable Trust. These are independent studies. These are independent studies, and still the administration stays the course and says, well, even in spite of this fact, we are going to even make it more difficult and more complex.

We reject that at the outset. I bring to the attention of the Members a response that Ari Fleischer had yesterday from the White House when he was asked about fixed versus variable rates. Mr. Fleischer's response:

> Well, we are just going to continue to work with Congress to find a solution. The idea was always a voluntary one, never a mandatory one.

Mr. Fleischer better understand what this whole proposal is about because this is poppycock. What is mandatory, according to the administration, is they get the variable rate. What they are taking away from the student is the opportunity to take advantage of the low rate. It is still a live consideration, and I do not know who Mr. Fleischer is talking to in the Congress to find a solution.

He also makes reference to the fact about what the administration is doing in funding and education. I, again, remind the Senate about where the administration is on its budget now and in the future on education. This year the President is requesting $50 billion in discretionary appropriations for the Department of Education, an increase of $1.4 billion, or 2.8 percent. That is what the administration is suggesting.

If we look at last year's budget conference report, on page 51, they outline the baseline estimates which do not reflect any specific policy except for defense. President Bush's budget authority for the year 2002—this report assumes that discretionary function levels grow by inflation.

What is that saying? That over the next 9 years, this is the Bush proposal on funding education: zero. This is what they say.

Now, we are shortchanging the children in this country. If we look back at this last year, primarily at the behest of the Democrats, we saw an increase in the elementary and secondary education. The proposal of the Bush administration is zero in the outyears and is now attempting to tamper with the interest rates to make it more costly. Now, that is an intolerable position for the Bush administration to have.

There is a failure to fund the elementary and secondary education adequately, and they are putting an additional tax on every family in this country sending their children to school. Sixty-three percent of the students who attend higher education are borrowing at this time. The average cost across the Nation is $17,000. Every family, if their proposal goes forward, is going to pay at least $3,000 more.

We are not going to tolerate it. It is difficult for many of us, who thought we were going to see a strong commitment in the area of education, to understand in a budget of over $2 trillion why the administration has to target working families and middle-income families. I do not understand that.

They say education is important. They have over a $2 trillion budget and they cannot find the funding in the areas of education. I want to let our colleagues know we are going to do everything in resisting this proposal. From an educational point of view, it makes no sense. From a national interest point of view, investing in education and our children is investing in our future.

I see my colleague and friend, the Senator from Michigan, who is doing such an outstanding job on bringing to the attention of the Senate the importance of prescription drugs. I commend her for her eloquence, persistence, and leadership in this area. I tell her that on behalf of all the people of Massachusetts. We are enormously grateful to her for bringing these facts to the attention of the membership. I hope she will address the proposal we had from the House Republicans yesterday on the issue of prescription drugs. I think myself it is more of a series of platitudes rather than a core program. They

refuse to commit the resources which are necessary. It seems to me that a bus ticket to Canada will probably save seniors more than the Republican proposal. I am going to be interested in her reaction to that, and her statements about the importance of assuring our senior citizens that a prescription drug program be a part of our Medicare system.

I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Michigan.

Ms. STABENOW. Mr. President, first, I wish to thank the senior Senator from Massachusetts for his continued advocacy on behalf of all of the issues that directly affect our families every day. Speaking first to the issue of education as the mother of a 26-year-old who has completed college—I feel as if I own a part of one of the buildings at that great university, the University of Michigan—and my daughter who is now in college, I completely understand and share the deep concerns Senator KENNEDY has about the proposals that will essentially put another $10,000 of tax on middle- and low-income families over the course of taking out student loans to put their children through college.

It seems to me, as we are talking about the national interest, the importance of national security, that a critical piece is an educated workforce and an educated citizenry. I cannot imagine who was thinking up this proposal at the White House, but I hope they understand we are going to stand together to stop any effort that will add costs to families who are working to put their children through college.

PRESCRIPTION DRUGS

Ms. STABENOW. Mr. President, I rise to speak specifically to another proposal on principles that was released yesterday in the House of Representatives. We have been urging now, since I came to the Senate over a year ago, and certainly before that time, that our colleagues from the other side of the aisle join with us to act to get action in two areas related to critical health care and prescription drugs: One, a comprehensive Medicare prescription drug benefit. Modernize Medicare, update it. Everyone knows that it was written in 1965 and covers the way health care was provided in 1965. It needs to be updated to cover prescription drugs, the primary way that we provide health care today.

Second, we know there are important actions we can take right now to lower the cost of prescription drugs for every family, not only for our seniors who use the majority of prescriptions—on average 18 different prescriptions a year—but also for those families who have a disabled child or another family member who is ill. We need to lower the costs now. We need to lower them for small businesses. We need to lower them for larger businesses. Our farmers are struggling with higher costs. We can do that.

Certainly we appreciate that our colleagues have come together with fanfare to talk about four principles: One is lowering the cost of prescription drugs now. I suggest that putting those words on paper does not lower the cost of one pill. It does not make one more prescription available to our seniors.

I welcome the words, but our seniors and our families have had enough words. They are interested in action. We have to be working in a bipartisan way. We come as Democrats to say: Work with us; let's get beyond the words, beyond the principles and get something done.

We are interested in lowering the cost of prescription drugs, and we have numerous proposals. I will speak to those for a moment before speaking about Medicare prescription drug coverage.

We know, for instance, if we allow the normal course of patents to run out and for the process to work where lower cost generic drugs can be used, we can dramatically cut costs immediately. We have colleagues—Senator SCHUMER and Senator MCCAIN—who are putting forward an important bill to close loopholes that the drug companies have used to block generic drugs from going on the market and to block the lowering of the cost of drugs. We can pass that bill right now and drop the cost. We can open our borders to Canada. Senator DORGAN, of North Dakota, has introduced a bill; he is in the Chamber, and I am sure he will speak to that shortly. I am pleased to join him.

This is an effort in which I have been involved since being in the U.S. House of Representatives. I have taken two bus trips to Canada with our seniors to demonstrate that by working through the Canadian Medical Society we can lower the cost of prescription drugs. It is astounding. These are American-made drugs. I am proud they are made in America. I am proud we have invested in the research and technology—taxpayers, private companies, biotech companies, biomedical companies, drug companies. But when all is said and done, if no one can afford to get the medicine, what have we done?

We now find ourselves in a situation where we subsidize and pay for the research from which the world benefits; yet our borders are closed and our own people cannot go across the border to get the same drug at half the price.

Mr. KENNEDY. Will the Senator yield for a question?

Ms. STABENOW. I will be honored to yield.

Mr. KENNEDY. Is the Senator aware that under the House Republican plan, senior citizens would have to spend $670 before they received a dime of benefits? This is the cost of the premiums of $420, and the deductible which is $250. That comes to $670 before they get a dime of benefit.

Is the Senator familiar with the fact that the average senior citizen's income is only $15,000, and the average prescription drug need is $2,200?

Ms. STABENOW. Yes.

Mr. KENNEDY. We all want to find common ground and work together. Requiring the seniors to pay $670 before they get a dime of benefits does not seem to me to fulfill the commitment this country made to our seniors when we passed Medicare and said: Pay in, and we are going to help relieve the anxiety you have about quality health care. I am interested in whatever comment the Senator wishes to make.

Ms. STABENOW. I thank the Senator. As the Senator from Massachusetts has indicated, the Medicare proposal that we believe is coming—again, we only have principles. We do not have the specifics. We are piecing together from news stories and other sources what it appears to be. In fact, going beyond what the Senator from Massachusetts has said, not only are we talking about the premium, the deductible, the copays—and there are two different levels of copays—but nothing is covered once you reach $2,000 until you have spent $5,000. So there is a huge gap in the middle.

If we take the example of a senior who is spending $300 a month on prescription drugs—and that is not unusual. It might be a breast cancer patient who is purchasing tamoxifen, which in Michigan is $136 a month. If you add to that blood pressure medication or cholesterol medication or another drug, the amount could easily come to $300 a month. If you add that up and look at all that it appears from that proposal, Mr. President, of the $3,600 a year that one would be paying out of pocket, one would still spend $2,914.

If someone is paying $300 a month now in prescription drug costs, less than 20 percent of that would be covered under the Republican proposal.

Mr. KENNEDY. Will the Senator be good enough to yield for another question? Does not the Senator think then we have to deal with the substance and the reality rather than the cliches and the slogans?

Ms. STABENOW. Absolutely.

Mr. KENNEDY. I am sure we are going to hear from the other side: We have a prescription drug proposal. Does the Senator agree with me that is really a misrepresentation? If we accept that as a concept, it will do people in my State little good.

I understand the Senator is a strong supporter, and I see in the chair the Senator from Georgia who has worked very closely with the Senator from Florida on an excellent program, and I commend him for it.

Does the Senator agree if we are going to do something, let's help our seniors and not misrepresent what we are trying to do for them?

Ms. STABENOW. Absolutely. I add also, one of my deep concerns is that in order to pay for this, they are talking about Medicare ''reforms.'' Unfortunately, the reforms we are hearing about are proposals such as adding the cost of home health care, requiring a

copay for home health care. Our seniors who are now struggling to live at home, families who are struggling to make sure someone can live in dignity in their home as long as possible, have home health care. Part of that is their prescription drugs, and to pay less than 20 percent of the cost of prescription drugs, one of the things they are talking about is a copay for home health care. So they will be adding other costs to this process as well.

I suggest: Beware of what is coming. It is very clear when the only people who are advocating for the proposal put forward by the House Republicans are the drug companies, that should tell us something. When they have fought every proposal for comprehensive prescription drug coverage, every proposal to lower the cost of prescription drugs, whether it is expanding generic drugs, opening the borders, lowering advertising costs—every single effort to get some control and accountability in this system so that our seniors can afford prescription drugs they have opposed.

Mr. KENNEDY. Will the Senator yield one more time and give me her reaction?

Ms. STABENOW. I will be happy to yield.

Mr. KENNEDY. Is the Senator aware that the Bush budget allocates only $190 billion over the next 10 years for prescription drugs and Medicare reform, and the House Republican budget allocates $350 billion, but the cost of drugs for senior citizens during this same period will be $1.8 trillion—$1.8 trillion? Does the Senator conclude from that, this is going to be a very inadequate response to a major health challenge for our seniors?

Ms. STABENOW. I absolutely agree. With all due respect to our colleagues on the other side of the aisle, the math does not add up. It is time to get beyond principles and rhetoric and say to those watching this morning sitting at their kitchen table, seniors who are sitting down right now deciding, Do I eat today or take my medicine, that we are going to step up to the plate, do what is right, and do what is long overdue.

I see my colleague from North Dakota. I would very much like to yield to him. He has been such a leader on this issue. We share, as border States, the frustration of citizens from our States who can easily go on a short trip across the border and pay lower prices for American-made drugs.

The Senator has been a real leader in this effort.

Mr. DORGAN. Mr. President, how much time remains in morning business?

The PRESIDING OFFICER. Six minutes 20 seconds.

Mr. DORGAN. May I be recognized?

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I appreciate the conversation about the prescription drug issue. It is important. There are two pieces to it. One is coverage for those who do not have access or the resources to get the prescription drugs they need. These are lifesaving medicines that can only save lives if you have access and can afford them.

The second issue is price. That is an important issue. If we talk only of coverage, and not price, we break the bank. Connecting the hose between the prescription drug and the Federal tank means we will suck money out of the tank forever. We will break the bank if we do not do something about prices.

Last year, the cost of prescription drugs increased 17 percent in this country. Year after, the cost increases have been double digit. There has been both utilization and price inflation, double-digit increases in the cost of prescription drugs for 5 years in a row. It will continue into the future unless we do something.

We have to deal with coverage. We also have to be concerned about price: What kinds of approaches can we implement that put downward pressure on prices?

I ask unanimous consent to show bottles on the floor of the Senate that have contained prescription drugs.

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

Mr. DORGAN. Mr. President, I have introduced a bipartisan piece of legislation supported by Republicans and Democrats that allows pharmacists, licensed distributors, and wholesalers in our country to access prescription drugs in Canada—same drug, in the same bottles, made by the same company, sold in Canada and North Dakota, with radically different prices.

This is a drug called Celebrex, which is used for arthritis. It is sold in identical bottles, except one cap is blue and one is white—same pill, put in the same bottle, made by the same company, sold in Canada and the United States. The Canadian pays 79 cents per tablet, and the American pays $2.20 per tablet—same drug, same company, same pill bottle, but a huge difference in prices.

Here are two additional examples. Most everyone knows that Lipitor lowers cholesterol. But we have two different prices for the same pill, put in the same bottle, and made by the same company. It is $1.01 wholesale in Canada and $1.86 per tablet to the United States consumer.

One more example is Paxil which is used to treat depression. Paxil is packaged in a bottle that is identical whether you get it in Canada or in the United States. The only difference with Paxil is the difference in price—as in the case of most drugs. It costs 97 cents per tablet for the Canadian, $2.20 per tablet for the American consumer. The U.S. consumer pays the highest prices in the world for the prescription drugs. It is the same pill, made by the same company, put in the same bottle, for which there is a radical difference in cost.

I use one other example without a bottle. It is called tamoxifen, which is used to treat breast cancer. For every 10 cents charged to a Canadian, $1 is charged to an American consumer. If you are buying tamoxifen, you can buy it in Canada for one-tenth the price charged in this country.

With respect to these prices, there is a little town in North Dakota called Michigan, not so far from the Canadian border. At the end of a meeting one night, a woman, perhaps in her late seventies, came to me and said: Mr. Senator, can you help me? I said: What is the problem? Her eyes began to well with tears, and her chin began to quiver. She said: I have heart disease and diabetes; my doctor prescribes a great deal of medicine I must take, and I don't have the money to purchase the drugs. The doctor says I must have these drugs in order to continue to live a good life.

That is the problem. We need prescription drug coverage. We also need restraint on pricing. The two, together, can help the American people access lifesaving drugs. Miracle drugs can only provide miracles if people can afford them. That is why we are fighting to make some sense of this policy.

What I have tried to do, on a bipartisan basis, with Republicans and Democrats supporting this reimportation bill that we have now introduced, is to allow pharmacists and distributors to access those same drugs that are sold at much lower prices in our neighboring country of Canada.

I yield for a question.

Mr. SCHUMER. I thank my colleague from North Dakota for his eloquent exposition.

We are working on the same track. The Senator from North Dakota has a bill to lower prices by allowing reimportation. Senator MCCAIN and I have a bill to extend generic drugs. We have to deal with both: Getting prescription drugs as part of Medicare, but also lowering the cost. As the Senator from North Dakota has said over and over again, we are not going to get the one without the other.

I bring to his attention and ask if the Senator saw an article in the Wall Street Journal on the front page, another way the drug companies are going way overboard. They are getting lists from pharmacists of people who have a prescription for a certain drug and then are writing those people and saying: Why don't you switch to this drug? Do you know why they ask them to switch? The generic drug is coming on board for their original drug, and now they are trying to manipulate the generic drug law.

The drug company is extending the dosage, going for a weekly pill rather than a daily pill.

Mr. DORGAN. I ask unanimous consent for 5 additional minutes, and I yield to the Senator from New York.

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

Mr. SCHUMER. The drug company's applying for a new patent because the daily pill—same medicine—expires.

The drug industry has some good arguments. I don't disagree with their argument that they need money for research. And these new pills have helped people. But faced with all of these blockbuster drugs that are going off patent, and the companies being so used to the high rate of return they have had—higher than any other American industry—they are pushing the envelope way too far in terms of trying to keep that level of profitability.

They ought to understand—and I ask my colleague from North Dakota to comment on this—their job is to go back into the laboratories, come up with real new drugs, and work on those—not extend the patent—or, in the case of what the Senator from North Dakota has discussed, make the U.S. price above all the other prices. This involves lots of work and lots of focus.

Every time I read one of these articles, it makes my blood boil. When I came here, I was not regarded as a hardliner on this issue. I have a great deal of respect for companies that research and produce these drugs. However, the limits they are going to, with the advertising on television—and I know my colleague from Michigan is working on this—with the huge price differential where the United States consumer pays for all the research, yet around the world the costs are much lower—I know my colleague from North Dakota is looking into this—to the manipulation of the generic drug law, which Senator MCCAIN and I are looking at, something is rotten in Denmark.

I thank my colleague his remarks and his persistent leadership on this issue and ask him what he thinks of what is going on, and has he seen this change over the years?

Mr. DORGAN. Mr. President, I chaired a hearing recently at which Senator SCHUMER testified and Senator MCCAIN, as the ranking member, attended. Generic drugs are a very important issue.

I push for price restraint because I think it is very important with respect to what is happening to price increases of prescription drugs. However, I bear no ill will toward this industry. I think the drug industry is a remarkable industry. It does some remarkable things. We should compliment them for some of the programs they have initiated in recent weeks, for the low income senior citizens. That is a good step. They do some awfully good work. Tamoxifen costs one-tenth the price in Canada; you pay 10 times more if you are an American, that drug resulted from public funding and public research at the National Institutes of Health.

So I worry very much that what is happening is that the public is paying for research in some areas and, when the drugs are privatizing, a price is affixed to them that is way out of bounds.

I bear no ill will towards this industry. I want them to do well and to continue to search for lifesaving drugs. But I think it is important to point out that, when we talk about miracle drugs, Americans who need them will get their lifesaving benefits only if they can have access to them, and can afford them. There are so many Americans who cannot chase double-digit price increases every year. That is why we deal with this issue. The issue I have been concerned about is reimportation from Canada. Not because I want anybody to have to go to Canada to buy prescription drugs, that is not my goal. My goal, of course, is the repricing of those drugs in this country because, if distributors and pharmacies can go to Canada and access the same drugs, it will force a repricing of those drugs here.

I want to have a prescription drug benefit in the Medicare Program but I don't want to break the bank. If we do that and do nothing about price restraint and downward pressure on prices we will break the bank of this Government. We must address both issues, coverage and price.

Ms. STABENOW. Will the Senator yield for a moment? I just wanted, as we conclude this time, to thank my colleagues for their continued leadership and to, once again, call upon our colleagues across the building, in the other Chamber, the Speaker of the House of Representatives and his colleagues, to go beyond the principles that were put out yesterday and join with us in the concrete proposals that we have.

We have the ability to act now. We could do it this month if they are willing to join with us. We ask them to get beyond the words and let's get together and let's do the right thing.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I commend the Senator from North Dakota who organized the preceding discussion with respect to the high price of drugs and unavailability of prescription drugs. I asked the General Accounting Office to do a study of coverage of prescription drugs in my home State of Montana. The conclusions were for those seniors in our State who are not covered by health insurance, those seniors pay more for prescription drugs than do seniors anyplace else on the face of this Earth. That is more than any other part of the United States and certainly more than people overseas, as has been demonstrated ably by the Senator from North Dakota. The same drug by the same company is less expensive to someone overseas as compared with the United States.

This is a critical issue. I thank my friend from North Dakota as well as the Senator from Michigan, Ms. STABENOW, and others.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired. Morning business is closed.

ANDEAN TRADE PREFERENCE EXPANSION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 3009, which the clerk will report.

The assistant legislative clerk read as follows:

An act (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

Pending:

Daschle amendment No. 3386, in the nature of a substitute.

Dorgan amendment No. 3387 (to amendment No. 3386), to ensure transparency of investor protection dispute resolution tribunals under the North American Free Trade Agreement.

Mr. BAUCUS. Mr. President, yesterday the Senate began debate on the Trade Act of 2002. This legislation includes three bills reported by the Senate Finance Committee last year: No. 1, an extension of fast track negotiating authority—also known as trade promotion authority; No. 2, an expansion and improvement of the Trade Adjustment Assistance Program and No. 3, the Finance Committee's version of the Andean Trade Preferences Act, or ATPA. As the debate moves forward, I suspect other international trade matters may also appropriately be attached to this bill.

The Trade Act of 2002 will be the first major rewrite of international trade legislation in 14 years. If passed, it will be, as the National Journal has said, ''a historic breakthrough.''

Why are we taking up a trade bill? What does this bill—and the expanded trade that will follow—mean for this country? Trade means jobs. Twelve million Americans—one out of every ten workers—depend on exports for their jobs. These are jobs that pay more—thousands of dollars more per year—than jobs unrelated to trade. Trade supports jobs in all sectors. We often think of trade as helping big multi-national companies. In fact, firms with fewer than 20 workers represent two-thirds of American exporters; and U.S. agriculture exports support more than 750,000 jobs. Trade also means choice. It means more affordable products and more variety for American families. It means that hard-earned paychecks go further.

In many ways, new trade agreements are like a tax cut for working families. Studies have suggested that the average family of four sees annual benefits of between $1,300 and $2,000 because of the agreements we negotiated in the last decade. And according to a recent University of Michigan study, if we complete the next round of negotiations under the World Trade Organization, it could increase that benefit by as much as $2,500—per family, per year.

But trade is about more than simple economics. When we trade with countries, we do not just export corn and cars, we export our ideas, we export our values. We export freedom, in a

sense. Trade between nations creates opportunities for both parties—it can help lift countries out of poverty, while strengthening our relationships around the world.

I think Adlai Stevenson probably said it best 50 years ago:

> It is not possible for this nation to be at once politically internationalist and economically isolationist.

Look at our agreement with Jordan as one example. It has a relatively small effect on our economy—our trade with Jordan is only about $600 million per year. But it has an important impact on Jordan's economy—and it has cemented our relationship with a key Middle East ally.

Similarly, part of this legislation provides trades benefits to Andean countries. The main benefit of this legislation will be to help move workers out of the illegal drug business, and into legitimate lines of work. It is not going to solve the problem entirely, but it will help. But to do that, they need more access to our market.

So that is what's at stake in this debate. Let me turn to the bill itself.

The most talked-about provision of this legislation, of course, is the extension of fast track trade negotiating authority to the President. At its core, the fast track grant in this legislation is very similar to the legislation that first granted fast track to President Ford in 1974.

I am often asked why we need fast track—and why now? In essence, fast track is a contract between Congress and the administration. It allows the President to negotiate trade agreements with foreign trading partners with a guarantee that Congress will consider agreement as a single package—no amendments and a guarantee of an up-or-down vote by a date certain.

In return, the president must pursue a number of negotiating objectives that Congress has outlined in the legislation. And he must make Congress a full partner in these negotiations, fully consulting with Members as the talks proceed.

Now make no mistake, fast track is a significant grant of congressional power to the President. But it is excruciatingly difficult to negotiate the best possible multilateral trade agreements unless our trading partners know that Congress will vote on the agreement negotiated.

Indeed, it was our experience in the 1970s—when the Europeans refused to negotiate with us after Congress failed to implement an agreement—that led to the creation of fast track. Without fast track, our trading partners learned that they could anticipate one round of negotiations with the President and a second with Congress.

The reverse is not true. Other countries, because of their parliamentary forms of government, have a single legislative body where the majority of the legislative body is also the government, so we did not have that problem with them.

Fast track also demonstrates that the President and Congress go into negotiations with clearly defined and unified objectives. Again, that is critical. If our trading partners are uncertain that the deal will stick, they won't put their best deal on the table.

Is it possible to negotiate some agreements without fast track? It is certainly possible with simple bilateral agreements, as was the case with Jordan. But, while Jordan is a landmark agreement in many areas, it has to be put in context when talking about fast track procedure.

The Jordan Agreement, as I noted earlier, was a relatively easy agreement. It involved only two countries and affects a very small amount of trade—roughly $600 million.

Major multilateral agreements can affect many more countries and billions in trade. The FTAA is an agreement involving 34 countries; the WTO involves nearly 150. For these agreements, fast track remains a necessity.

Even bilateral agreements will go much more smoothly with fast track. In the case of Chile, for example, we are still talking about a much more complex agreement than Jordan. It will affect approximately $6 billion in trade, ten times more than the Jordan Agreement. And improving the chances of agreements like Chile is vital to our economy.

Let me give you one example. Canada has already signed free trade agreements with several countries, including Chile. That has an impact on U.S. competitiveness. As a result of the Canada-Chile agreement, Chile eliminated its tariffs on Canadian wheat. U.S. wheat exports to Chile, on the other hand, still face tariffs as high as 30 percent, making Canadian wheat much more attractive to Chilean buyers. We must negotiate these agreements if we are going to compete, and fast track will make it easier.

People often note that we don't have fast track for treaties, such as nuclear arms treaties. That is true. And while these treaties are important, they are often less complex in the sense that they don't involve literally thousands of interrelating trade-offs and concessions as trade agreements do.

I remember the last arms treaty that came before the Senate. There were two or three annexes in it but not all of the host of other complications involved in trade agreements.

But let me turn to the bill itself, and specifically to the negotiating objectives on a number of topics.

With regard to agriculture, a topic near and dear to many in this body, and certainly one of my highest priorities—the legislation directs the President to seek new markets for American agricultural products and to continue to work to lower the trade-distorting subsidies of our trading partners. That is vitally important for American agriculture.

On a more traditional topic, the legislation also directs the President to continue to negotiate the reduction and elimination of tariffs, while recognizing the sensitivity of tariffs in a few sectors. The United States has already lowered its average tariff rate to about 3 percent. Generally, tariffs are similarly low in major developed countries. In a few important cases, however, such as Japanese tariffs on wood products, and Europe's tariffs on semiconductors, tariffs remain a significant trade barrier. And in many developing countries, tariffs remain at levels that stifle trade, in some cases 100 percent or more.

The bill also directs the President to address some of the new issues, such as e-commerce. By acting to negotiate agreements now, before protectionism has taken root, hopefully trade in e-commerce can remain relatively free.

Each of these objectives is critically important. However, most of the debate in the other body and in the press has focused not on the important issues I have listed, but on three trouble spots in trade negotiations: No. 1, labor rights and environmental issues in trade agreements; No. 2, protection of the right of the U.S. to promulgate environmental and other regulations in connection with so-called investor-state dispute settlement provisions, commonly know as ''Chapter 11'' provisions; and, No. 3, the integrity of US trade laws.

Let me turn to those difficult issues now.

First, labor rights and environmental protection issues: These issues have now firmly and irreversibly made their way on to the trade negotiating agenda. They are here. The world has changed. Those who continue to ignore that reality are simply burying their heads in the sand.

The appropriate manner to address those issues, however, is not obvious, and it has been the subject of heated debate for more than a decade. The dispute over this issue has kept the Congress deadlocked on fast track for nearly a decade.

Fortunately, U.S. trade negotiators have made some important progress. In negotiating a free trade agreement with Jordan, the United States brought labor rights and environmental protection into the core of the trade agreement.

Two central approaches were taken on these issues. First, both parties agreed to strive for the labor standards articulated by the International Labor Organization, and for similar improvement in environmental protection. Second, both countries agreed to faithfully enforce their existing environmental and labor laws and not waive them to gain a trade advantage. That is in the agreement.

In addition, both parties to the Jordan Agreement agreed to pursue a number of cooperative efforts to improve labor rights and environmental protection. In my opinion, these provisions of the Jordan Agreement provide a concrete demonstration of the way to

break the deadlock on labor rights and the environment.

Last year, I encouraged some of my colleagues in the other body to pursue Jordan-like provisions as the basic model for a fast track bill. In drafting the fast track legislation, the House New Democrats and Republicans wisely agreed to use those provisions as a model for the language in the fast track legislation.

In the Senate bill, we accepted the legislation on this topic and made clear in the report that the legislation fully adopts the Jordan standard on labor and environment matters.

Unfortunately, some in the House opposed this language as not going far enough and urged legislation to force compliance with ILO labor standards. I support the ILO, and I believe the Jordan-based approach moves the trading regime in the right direction; that is, looking to the ILO for guidance on appropriate labor standards.

With due respect, however, I believe that those who advanced this proposal and those who may later advance it in the Senate debate are simply going too far. The ILO standards are a starting point, but they were not meant to be used in this manner.

It may be that through experimentation we can strengthen the linkages between trade agreements and the ILO. Indeed, that is the ultimate goal of this legislation. But trying to accomplish this in one fell swoop will only set back both agreements and the ILO.

Quite frankly, whatever the intentions of the authors, proposals like this are likely to be fatal both to fast track and future trade negotiations.

Another environment-related issue that has arisen in recent months pertains to investor-state dispute settlement, also known as ''Chapter 11,'' in reference to the provisions of this topic in NAFTA.

The genesis of Chapter 11 is the legitimate concern of some U.S. investors that other countries often do not provide adequate protections of their investments. Investors have had many experiences of being poorly treated and having little recourse to air their legitimate concerns.

NAFTA's Chapter 11, and similar provisions in other agreements, are designed to address this problem. They define a basic set of investor rights under international law. The concepts are comparable to basic rights under U.S. law. They include the right to just compensation when the government takes your property, and the right to be treated fairly and equitably by the government.

Significantly, Chapter 11 provides an alternative to local courts for the adjudication of complaints about a government's actions. Investors are allowed to challenge such actions before special arbitration panels. It is appropriate to pursue such provisions in trade agreements. But investor rights are not the only concern. Unfortunately, some of the complaints brought under chapter 11 have clearly been aimed at stifling legitimate regulations. The challenge by the Canadian company Methanex against a legitimate California regulation on a gasoline additive is the most visible case in point.

Defenders of Chapter 11 note that most of these cases have not resulted in panel rulings against regulatory authorities. This is correct. But it is also part of the problem.

Chapter 11 panels have demonstrated no ability to rapidly dismiss frivolous cases. This results in extended litigation on claims that should simply be thrown out, such as the Methanex case.

These legitimate concerns must also be addressed. The bill before us today attempts to balance the needs of U.S. investors with the legitimate needs of regulatory agencies, and the concerns of environmental and public interest groups.

The bill directs trade negotiators to seek provisions that keep Chapter 11-type standards in line with the standards articulated by U.S. courts on similar matters. It urges the creation of a mechanism to rapidly dispose of and deter frivolous cases. And it urges the creation of a unified appellate body to correct legal errors and ensure consistent interpretation of key provisions.

I know some would like to go further in striking a new balance on investor-state issues. As the debate proceeds, I look forward to working with them on the issue. But I urge my colleagues to keep in mind there are several legitimate interests that need to be balanced; that if we go too far in one direction, it is going to upset the balance in another. But I very much want to work with Senators who have other amendments on this issue.

The second difficult issue within fast track is how we ensure fair trade. After being involved in international trade policy for more than two decades, I am struck by how often the issues that shape congressional thinking on trade are not trade negotiations but rather are the administration's effort to enforce trade laws.

Although the point is often lost, the United States is the most open market in the world. That has to be remembered. Our tariffs are quite low, and there are very few nontariff barriers to trade in the United States. There are some, but they are few. We do not wear white hats. We are not totally pure. Other countries do not wear dark hats. They are not Darth Vaders. But it is true the shade of gray of our hat is a lot lighter than the shade of gray of other countries; that is, we are more open compared to other countries.

Despite complaints from some of our trading partners, the U.S. market is clearly far more open than that of our major trading partners, such as Japan and Europe—both of which cast stones at the United States from behind titanic barriers of their own to agricultural trade.

To keep the playing field relatively equal and battle foreign protectionism in the form of subsidies and dumping—selling at cut-throat prices—the United States and most other developed countries maintain antidumping and countervailing duty laws.

Another critical U.S. law is section 201. It aims to give industries that are seriously injured by import surges time to adapt. Section 201 was recently employed to good effect to provide the steel industry with that breathing room, but it has previously been used on a range of other products, from lamb meat to motorcycles. Indeed, that is why Harley-Davidson is doing well today. They were given a breather.

Although the exact percentages can vary from year to year, over the last two decades, these laws collectively have applied duties to less than 1 percent of total imports; that is, our trade laws, when enforced, when in action, have applied duties to less than 1 percent of total imports. And they are completely consistent with U.S. obligations under the WTO—a point that must be remembered by all Americans who are a little concerned about some of these actions our Government, I think in most cases, legitimately takes to protect the United States of America because other countries' trade laws and barriers are so heinous by comparison and so unfair to Americans.

Yet somehow the United States has lost the public relations war on this topic. Somehow our trading partners and importers have convinced some editorial writers that these laws are protectionist. Nothing could be further from the truth. They are not protectionist.

Antidumping and countervailing duty laws combat trading practices that have been condemned for a century. Subsidies and dumping are too frequently used by foreign countries and companies to devastate U.S. industries. Consider the U.S. semiconductor industry in the mid-1980s and the U.S. lumber industry today. Rather than being protectionist, these laws are the remedy to protectionism. That dumping, those subsidies, are trade barriers. They are trade barriers. They are barriers to free trade. So our trade laws are meant to remedy that protectionism, remedy those trade barriers, by knocking down those trade barriers. That is what our trade laws do. It is a very important point for all of us to remember.

On a political level, these laws also serve as a guarantee to U.S. industries and U.S. citizens. They say that trade will be fair as well as free, and that temporary relief is available if imports rise to unexpected levels. Without those critical reassurances, I suspect the already sagging public support for free trade would evaporate and new trade agreements would simply become impossible.

Our trade laws help us, not hurt us, and help other countries, too. It keeps them honest and keeps them on their toes.

To address this issue, the bill takes two important steps: First, it identifies

several recent dispute settlement panels under the WTO that have ruled against U.S. trade laws and limited their operation in unreasonable ways. These decisions clearly go beyond the obligations agreed to in the WTO and undermine the credibility of the world trading system. If they are not addressed, I suspect public support for trade will erode further. That is why our concerns regarding these cases are identified at the very outset of the bill as findings and why the administration is directed to develop a strategy to counter or reverse these decisions or lose fast track.

This bill also directs negotiators not to negotiate new trade agreements that undermine U.S. trade laws. We cannot do that. I am, frankly, concerned that this administration has already put itself in a position in which U.S. trading partners will push hard to weaken U.S. trade laws in WTO negotiations.

We cannot put ourselves in that situation. This issue is serious enough that I carefully weighed whether the benefits of new trade agreements are worth that risk. I went forward only because I believe there are strong majorities in both Houses of Congress to block efforts to weaken U.S. trade laws.

I am concerned that additional steps on U.S. trade laws may go too far, but I hope the administration's trade negotiators take careful note of these directions; otherwise, they are headed for conflict with the Congress.

Mr. President, that describes the fast-track portions of this bill. They are not perfect. Were it not for the need to address the concerns of Senators on the other side of the aisle, I would have gone further in several areas. There are also provisions I think are unnecessary. That, after all, is the nature of bipartisan compromise. In the end, though, the Finance Committee reported the fast-track bill by a vote of 18 to 3, indicating to me that we are close to finding that balance.

One final point, especially for my friends on the left. This is the most progressive fast-track bill that Congress has ever moved to pass, by far. It is a vast improvement over past grants of fast track on many of the issues I have just highlighted. It is not perfect, but it is a good bill. I urge my colleagues not to allow the perfect to become the enemy of the good.

When I began my remarks, I noted that many people have asked a simple question: Why a trade bill? Why now? A big part of the reason is that we now have the unique opportunity to expand and approve trade adjustment assistance—not TPA, trade promotion authority, but trade adjustment assistance. Quite frankly, this would be impossible absent fast track. We can only do this in the context of a larger trade bill.

So let me turn now to what I view as the most important part of this legislation—and certainly the part I am most proud of—trade adjustment assistance.

Trade adjustment assistance, sometimes known as TAA, is a program with a simple but admirable objective: to assist workers injured by imports to adjust and find new jobs. It is that simple. This is an objective I suspect almost all Americans support.

TAA was created back in 1962 as part of an effort to implement the results of the so-called Kennedy round agreement to expand world trade. That is its genesis, 1962.

President Kennedy and the Congress agreed there were significant benefits to the country as a whole from expanded trade. They also recognized, however, that workers and firms would inevitably lose out to increased import competition.

TAA was then created as part of the new social compact that obliged the Nation to attend to the legitimate needs of those who lose from trade as part of the price for enjoying the benefits from increased trade.

Unfortunately, we have not always upheld the bargain in pursuing new trade agreements because, over the years, we have failed to provide adequate funding for TAA. We have scaled back some benefits. We have tightened eligibility requirements. We have neglected to recognize the need for expanded training and health care assistance. We have not kept up our part of the deal.

This legislation aims to fulfill the bargain struck in 1962. It does not, as some voices have asserted, make TAA more attractive than having a job. That is just not accurate. I think anybody would rather have a job, that is clear. But in the end, TAA recipients must still get by on about $250 per week while receiving retraining for a new job.

But it does make several important changes in the TAA program to make it more effective. First, it extends the period for which TAA pays out income support from 52 weeks to 74 weeks. It is extended. This allows TAA recipients to stay in the program long enough to complete training for new jobs. It also remedies a shortcoming in the current program that many observers, including the General Accounting Office, have pointed out.

Second, this legislation expands eligibility for TAA benefits to so-called secondary workers. This has been a controversial provision, so I will explain it. Secondary workers are secondary only in the minds of some of the bureaucrats administering TAA. These are workers who have lost their jobs due to imports just as surely as those receiving TAA benefits now, but they have the misfortune of working for a company or a plant that supplies input products to a plant that closed or reduced production because of trade. They are so-called secondary workers.

The shortcomings of current law are demonstrated in this example: If an auto plant must close down because of competition from Japanese imports, the workers at that plant would be covered by TAA. That is clear. The workers down the road, however—those who make windshield wipers or tires for the now closed plant—would be secondary workers and not covered. This is simply unjust, and it is why so many, including the GAO and the Trade Deficit Review Commission, which included two members of the Bush Cabinet, have advocated expanding TAA to cover secondary workers.

When Congress passed the NAFTA in 1994, President Clinton agreed to expand TAA to secondary workers for imports from NAFTA countries. We also agreed to extend TAA when a U.S. manufacturing plant moves abroad to one of the NAFTA countries. These limited applications demonstrate that both provision on secondary workers and plant shifts are workable. They have been the law and are working. It was the expectation at the time that we passed NAFTA that these provisions would be expanded to all trade. As Mickey Kantor, who was USTR at the time, has said:

> At the time [that NAFTA was passed] it was everyone's expectation that these programs would be extended to non-NAFTA countries.
>
> And that makes sense—workers who lose their jobs because of imports from Europe, for example, are just as deserving of assistance as workers who lose their jobs because of imports from Canada. The legislation before the Senate harmonizes these programs. This is long overdue.

Third, this legislation expands benefits for TAA workers. This legislation authorizes $300 million for training workers receiving TAA—nearly tripling the program. The legislation will also extend assistance in obtaining healthcare insurance to TAA recipients. Now, the call for extending healthcare insurance assistance has proven the most controversial aspect of this legislation.

But it is important for all Senators to understand that this concept was originally advanced by the bipartisan Trade Deficit Review Commission—a group that had many prominent Republican members, including Ambassador Robert Zoellick, Secretary of Defense Donald Rumsfeld, and former USTR Carla Hills. They recommended health insurance benefits for dislocated workers.

I would emphasize that the recommendation for transitional health insurance was supported unanimously by the Commission. In our bill, we have tried to find an appropriate middle ground.

For workers who are eligible for COBRA, this bill would provide a 73 percent tax credit for those payments. For workers not eligible for COBRA, this bill would provide a 73 percent tax credit for the purchase of certain State-based group coverage options. The tax credits for both categories of workers would be fully advanceable and refundable. In addition, in recognition of the fact that it may take States some time to get these group-coverage

options up and running, we provide interim assistance through the NEG program.

Fourth, this legislation also extends TAA programs specifically targeted to family farmers, ranchers, and fishermen. The legislation aims to correct some problems in the current legislation that have kept farmers and fishermen—who are typically self-employed—from benefitting from TAA. The provision on farmers is taken from legislation introduced by Senator CONRAD and the ranking member of the Finance Committee, Senator GRASSLEY. The provisions on fishermen were prepared by Senator SNOWE, who has contributed immensely to this legislation.

Finally, this bill creates what amounts to a pilot program on wage insurance. Wage insurance is essentially an alternative approach to addressing worker adjustment. In essence, wage insurance provides a Government payment to older workers who lose their jobs because of trade and decide to take a lower paying job rather than go through training. The Government payment would run for up to two years and would make up half of the difference between the new wage and the old wage. The concept is that workers may actually be able to adjust more quickly if they move back into the workforce and learn new skills on the job. Experience suggests that the workers that do take a lower paying job are often able to make up much of the difference between the new wage and the old wage as they gain experience.

There are those who would like to abandon traditional TAA entirely in favor of wage insurance. If this experiment succeeds, that may be just the course we decide to take in a few years. At this point, however, there are just too many questions to be answered to turn TAA entirely into a wage insurance program. That would not be right.

One final point on cost. I should note—we often talk about the vast benefits of trade: more jobs, higher paying jobs, cheaper products. I indicated earlier that the average family of four sees annual benefits in the thousands of dollars. Yet I am sure that some of my colleagues on the other side of the aisle will complain that TAA costs too much. But the reality is, it would cost the average family of four about $12. It is an inexpensive way to build support for trade.

All told, this bill amounts to a major expansion and a historic re-tooling of TAA—a step that is long overdue. It attempts to adopt the positive experiences we have had with expanding TAA to secondary workers in the NAFTA, adopt the recommendations of the GAO and the Trade Deficit Review Commission, adopt good ideas from the academic world, and generally turn TAA into a program that truly works.

I suspect when we look back on this legislation in 20 years it will be these provisions on TAA, which attempt to fulfill the promise made by President Kennedy nearly 40 years ago, that are found to be truly historically significant.

Finally, this legislation also extends and expands the trade preferences given to the Andean countries—Peru, Bolivia, Colombia, and Eduador. The United States had extended these preferences to our friends in Andean America until they expired last year because we wanted to provide the citizens of those countries with an alternative to the illegal drug trade and to shore up our relationship with important allies.

In the legislation we are considering today, the Finance Committee chose to expand ATPA to new products, such as textiles and apparel and canned tuna. I know these expansions are controversial, but they are critical to the beneficiary countries.

Fighting the war on drugs is an uphill battle for these countries. It is tough. They cannot fight that battle unless legitimate, value-added sectors of their economies are encouraged and developed. This bill expands ATPA in a responsible way.

The legislation also creates a petition process to give interested parties a channel for bringing to the administration's attention issues that may warrant limitation of a country's benefits. That could happen. This will ensure that the United States pays adequate attention to other issues in these relationships, such as labor rights and enforcement or arbitral awards.

Finally, this legislation includes technical changes from the committee mark, including an exclusion of certain footwear products.

Let me end by talking about the importance of trade in my home State of Montana. As in most States, trade plays a critical role in Montana's economy.

From 1993 to 2000, Montana's exports grew by 126 percent—nearly double the 68 percent growth in total U.S. exports of goods. We have expanded proportionately faster than has the Nation. According to the U.S. Department of Commerce, nearly 6,000 Montana jobs depend on exports of manufactured goods. And more than 730 companies, mostly small- and medium-sized businesses, export from Montana. Farmers and ranchers are also increasingly dependent on trade and continuing to open foreign markets. One in every three U.S. acres is planted for export—making U.S. farmers 2½ times more reliant on trade than the rest of the economy.

Unfortunately, barriers to U.S. agriculture products remain extremely high. Agriculture tariffs average more than 60 percent worldwide. By comparison, average tariffs on industrial goods are less than 5 percent. Non-tariff trade barriers, like quotas, have all but vanished from trade in manufacturing, but these barriers remain common in agriculture. U.S. agriculture exports have suffered as a result of these barriers. Indeed, because agriculture is the most distorted sector of the global economy, it is also the sector most in need of trade liberalization. Some existing agreements have provided significant improvements. NAFTA—while far from perfect—has resulted in increased agriculture exports to Mexico and Canada.

In 1993, the year that NAFTA was passed, Montana's agriculture exports to Mexico totaled $1.2 million. In 2000, that number had increased to nearly $4.7 million. Montana's agriculture exports to Canada have increased even more dramatically—from roughly $12 million in 1993 to $110 million in 2000.

The U.S. must make agriculture a priority in future negotiations, and in fact, agriculture is the highest priority for new global trade negotiations under the WTO. Countries have agreed to work toward phasing out all export subsidies; make improvements in market access; and eliminate disguised trade barriers such as in the beef hormones dispute with the Europe Union. These negotiations can only help in leveling the playing field for American farmers and ranchers and open markets overseas since 60 percent of the tariffs are in agriculture and 5 percent are in manufacturing.

Trade is clearly important for Montana's farmers, ranchers, and workers. Support for Montana ranchers and small businesses is important for our people. Yet support for trade in Montana—as in the rest of the Nation—I think has faded in recent years. Part of that is because people are more aware of the downside of trade rather than the upside of trade.

When workers are laid off as a result of imports, that is highly publicized and widely noticed. Yet few people realize that trade agreements have provided, by some accounts, benefits to families worth thousands of dollars annually. We have not done enough in this country to help those workers displaced because of trade. That is why a comprehensive bill—one that includes both fast track and TAA is so important.

This legislation is certainly controversial. As I have noted, fast track alone has proven so divisive that it has been deadlocked in the Congress for most of the decade. I know some of my distinguished colleagues—Senators BYRD and HOLLINGS, for example—have both substantive and procedural concerns. I deeply respect their views, and I value their insight. They are very good people. We disagree, however, about trade. But their concerns are heard. I will address their concerns more fully as this debate continues.

In the end, though, it can be said that everybody would like to see changes in this bill, in one direction or the other. But I believe strongly that this legislation represents a sound balance on all fronts.

Forty years ago, President Kennedy asked Congress to grant him new trade negotiating authority. It was a much simpler bill, at a time when trade issues were more narrowly defined. But it was still quite controversial, for

many of the same reasons that trade remains controversial today.

President Kennedy emphasized the importance of trade for our economy, for our workers, and for American leadership. Yet he recognized even then that trade also creates dislocation and that a new program, trade adjustment assistance, was needed to aid workers adversely affected by trade.

President John F. Kennedy, urging support for his proposal, said this:

> At rare moments in the life of this Nation, an opportunity comes along to fashion out of the confusion of current events a clear and bold action to show the world what we stand for. Such an opportunity is before us now.

Congress seized that opportunity and passed the Trade Expansion Act of 1962.

Today, we too can show the world—and America—what we stand for. Building not only on the vision of President Kennedy, but on the efforts of the Presidents who followed him, we can show the world that America can lead the way in building a new consensus on international trade. We, too, must seize this opportunity.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, we have attempted to really get the process going on trade promotion authority for a week now, with little or no success. I think today we moved completely in the wrong direction. I am, for the first time, becoming concerned that we may not be successful in our effort. I wanted to come to the floor today to talk about it.

Had we brought the trade promotion authority bill to the floor of the Senate on Tuesday, the bill that was reported on an overwhelmingly bipartisan vote—I think 18 to 3 out of committee—and if we could have had an up-or-down vote on it, my guess is that some 70 Members of the Senate would have voted for trade promotion authority. And the vote ought to be 100.

If there is anything I think we have learned in the history of mankind, it is that trade works, that trade promotes economic growth, it promotes better jobs, it expands freedom, it is something that all enlightened opinion speaks in favor of; yet it is something that, throughout history, has been under assault. It is hard to understand trade, and it is so easy to argue against it.

Every special interest can cloak itself in the American flag and argue against trade. It reminds me of the writing of a French economist, who, as individual industries were getting protection from foreign competition in France while England was blossoming economically through free trade—a famous French economist wrote a petition to the economic ministry that was granting all these exceptions for one industry after another, basically arguing that they had to protect dairy products because they had so many jobs tied to it—tending the cattle, and all of the people who service the industry—and they had to protect this industry to protect that. So this famous economist wrote a petition on behalf of candlemakers, arguing that they were disadvantaged in selling their products because of the Sun, which had an unfair competitive advantage: It seemed to produce light for nothing—in overwhelming quantities.

Anyway, to make a long story short, he goes into this elaborate argument about how France could become rich from all the people who would be employed in making candles if they would just pass a law requiring people to pull their shutters closed during the day and to pull down their shades so that they would have to buy more candles. What was interesting about his petition was that it made exactly as much sense as all the other petitions that had been granted.

The point is that trade doesn't help every individual producer under every individual circumstance, but it helps the whole, it helps society.

We live in a golden age today. We live in an age where consumer goods, relative to our wages, are the cheapest they have ever been in the history of mankind. The other day I put a shovel in a truck, and someone had gone somewhere in the truck. I needed the shovel, but I had a limited amount of time. So I went to the hardware store to buy another shovel—complaining about how stupid I had been for leaving it in the truck. I should have paid attention. I had only one day to do what I was going to do. So I went there to buy a shovel, and I bought a shovel for $4.52. I submit that never, since man first emerged from the Garden of Eden, has any citizen anywhere bought a quality shovel for less than I paid for it at the hardware store.

Today, we all benefit from world trade. I never will forget, as a boy, as an economic student, when the professor explained comparative advantage and the gains from trade. It didn't take me long to figure out these were powerful ideas that people didn't understand. It is so easy for a Member to stand up and say: We buy products from some country, but they don't buy that product from us. But I could say that I buy groceries from Safeway, but they don't buy anything from me. I have a totally one-way trade with Safeway. I could claim that that was unfair trade. I could stop buying groceries from grocery stores since they don't buy anything from me. I could plant my little backyard in vegetables. But the price I would pay would be poverty.

The point is, there is no issue we have debated in this Congress, or any Congress, related to the material well-being of our people—which I separate from things like our political freedom—there is no issue that we have debated that is more important than trade. Trade won the cold war. Trade and the wealth that it created, the wealth machine it generated rebuilt Japan and Europe after World War II. Trade created wealth in Taiwan and Korea where it had never existed. In the process, it destroyed the Soviet Union. It gave more freedom to more people than any victory in any war in the history of mankind. The first point I am trying to make is, trade is very important and trade promotion authority, giving our President the tools he needs to negotiate and create more good jobs in America through trade, is something that every Member of the Senate ought to be for, and thank goodness, a large number of our Members are for it.

If that had been the issue before us, we could have finished our business on Tuesday. But for some reason, the majority decided they were unwilling to let the Senate vote on trade promotion authority alone and that they were going to add other legislation to it, most importantly, trade adjustment assistance. Whereas the trade promotion authority bill came out of the Finance Committee on a strong bipartisan vote, the trade adjustment assistance bill actually passed the committee after the expiration of the two-hour rule. It was totally a partisan procedure, and it is a very contentious bill.

I could go into great length about what is in it, but the point I wish to make today is that we have been negotiating, I believe, in good faith in trying to come up with an agreement that would let us move forward and pass this most important legislation—trade promotion authority.

In the midst of these negotiations, yesterday Senator DASCHLE offered this amendment. The astounding thing is that a huge amount of this amendment represents material that not only is not in the trade promotion authority bill but is not in the trade adjustment assistance bill. And there are totally new issues that have not been discussed in the context of fast track before. These represent basically an undercutting of the whole process of trying to negotiate a compromise.

I understand that to legislate, it requires a compromise. Nobody gets everything they want. I do not think it is asking too much to have a straight up-or-down vote on trade promotion authority, something as important as that, but now we find hidden in this amendment a provision whereby to get trade promotion authority, we are going to have to cover legacy costs for the steel industry.

This provision was not part of trade adjustment assistance, but suddenly out of nowhere, if you are part of the legacy cost to the steel industry, you are going to get a brand new entitlement benefit under this program. Never in our negotiations has there been talk about wage insurance. Let me explain this concept and let me explain how trade adjustment assistance works.

First, under the current law, if I lose my job because lightening strikes the building I am in and destroys the Capitol or a terrorist attack destroys the

business, I get unemployment insurance until I can find a new job. But if foreign competition can be blamed for me losing my job, I get a totally different set of benefits, far richer, far more valuable.

Quite frankly, I never understood why Americans ought to be treated differently based on why they lose their jobs. If they are Americans and they lose their jobs and Government provides programs, it seems to me they ought to get the same benefits. I do not understand treating people differently, but I long ago have concluded that my view is hopelessly in the minority on that issue.

Now we are talking about adding new benefits to the differential, and I want to talk about two issues in particular.

The first I mentioned is this whole steel legacy issue, and it really boils down to the following thing: Sad as it is, painful as it is, the American steel industry promised benefits that they never intended to pay, that they never had the resources to pay, and now, having negotiated all of these gold-plated benefits, principally to their retirees, when the bill has come due, these companies, many of them still in business, many of them that have equity values on the New York Stock Exchange are saying: Look, we cannot pay these benefits; we agreed to them, but we cannot pay them, so we want the taxpayers to pay them.

Now we have a proposal out of the clear blue sky added to the ransom that we are supposed to pay to get trade promotion authority passed. We have this requirement that these steel legacy costs come under trade adjustment assistance. I say to my colleagues, when you are in the business we are in, you never say never; you never say that something is not going to happen. But let me put it this way: We may adopt a bill that funds steel legacy costs as tribute or bribery or ransom to get trade promotion authority, but it is not going to happen soon and it is not going to happen easily. Within every limit of every rule of the Senate, I assure my colleagues, we are going to fight this. And if in the end, God forbid, but if in the end it were a choice between trade promotion authority, which we need, which is vitally important and which I am 100 percent committed to, if I had to choose between trade promotion authority and paying steel legacy costs to get it, the answer is no, it is not worth it. It is absolutely not worth it.

If we were talking from now until Jesus came back, I do not know that I would be so quick to make that statement. But we know we are going to have a new Congress next year. We might actually have a Republican majority in that Congress. To simply come in and ask the taxpayers to pick up all these legacy costs for operating American businesses that promised benefits they could not and they never intended to pay, in many cases, is so outrageous it is piracy on such a scale that, in my opinion, it is not worth paying, not even for trade promotion authority.

Let me talk about wage insurance. I remind everybody that currently in our trade promotion authority bill only about one out of every four Americans who lose their jobs where it can in any way be related to trade claim benefits under trade promotion authority. About three-fourths of them simply go on about their business and get other jobs, but about one out of every four take trade adjustment assistance benefits.

Under this bill, we create a brand new benefit which will guarantee that almost everyone will participate in the program. As a result, the cost of the program will skyrocket. This is a brand new entitlement, and what it says is, if you earn less than $40,000 a year when you lose your job, when that can be in any way related to trade, the Government is going to guarantee your wage, and so you will take a new job and the Government will come along and pay a portion of the difference between the wage you had in your old job and the wage you have in your new job.

This is a brand new entitlement program, potentially explosive in its costs.

The idea we are suddenly going to start insuring people's wages represents a step toward Government domination of the marketplace that we have never seen before. This is a provision that cannot be in any final compromise.

I will sum up because I know the distinguished ranking member of the committee is present. I know he wants to speak.

I do not think we are moving in the right direction. I thought it was a mistake, I believe it is a mistake, and I believe many of my colleagues will not support tying trade adjustment assistance with all of these new entitlement programs to trade promotion authority. Now we are having all of these new benefits in the trade adjustment assistance bill, benefits the cost of which no one knows.

I hear my colleagues say we are running a deficit, we are spending the Social Security trust fund, what an outrage it is, but yet today we have an amendment before us offered by the majority leader that would create massive new entitlements that, clearly, would end up costing billions, perhaps tens of billions of dollars, and no one seems the least bit concerned. No one seems concerned that we are creating all these new entitlements that will change worker behavior, that will induce people not to move to new jobs, that will disrupt the economy and in the process create this incredible situation where people who are working have no guarantee of wages but people who are unemployed do; people who are working do not have a guarantee of health insurance but people who are unemployed have a Government guarantee.

How can we tax people who are working, who have no wage guarantee and who have no health insurance, how can we justify taxing them to pay benefits to people who are unemployed who are not working? I do not see how such a guarantee can be made.

Ultimately, what we are talking about is a European-type system, where we are going to guarantee health coverage ultimately to everybody, where we are going back and bailing out the steel industry to simply get the right to vote on trade promotion authority, and where we are beginning to write guaranteed wages into the American economy.

The President of the U.S. Chamber of Commerce today in the paper said it well, I think, that we are reaching the point where the price we are being asked to pay for trade promotion authority is simply too high; it is unacceptable.

So I urge my colleagues to—and let me speak to my colleagues on my side of the aisle. I am never going to support these provisions. I am never going to support bailing out the steel industry as a price for trade promotion authority. I am not going to support a wage insurance program. Every country in the world that has such a program, that has the least bit of economic development, is trying to get out of it.

Europe has not created a job in 30 years because of their wage insurance program and the inflexibility that produces. So if you ever get a job, you are protected, but in Europe people do not get new jobs unless somebody dies or retires. That is not what we want in America. So I think this has to be rejected. I do not think this represents any kind of good-faith offer. I think this undercuts what we have been trying to do, and I think we are moving in the wrong direction.

We are going to hear today from many of my colleagues who have been involved in this debate. I am for trade promotion authority, and I understand piracy. I understand that often in the legislative process one has to do a lot of things they do not want to do to do some good, but the price we are being asked to pay in the Daschle amendment is too high. Not even trade, as great as it is, is worth the tribute we are being asked to pay in this amendment.

I yield the floor.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Iowa.

Mr. GRASSLEY. Madam President, does the assistant majority leader have a statement he wishes to make?

Mr. REID. I appreciate the Senator asking. What we are going to do, as soon as the Senator completes his statement, we are going to work out a time agreement where Senator DORGAN's amendment will be voted on at or around 12:30 today. So Members should be aware that is what we are working toward. As soon as the Senator completes his statement, we will propound a unanimous consent request. I have checked with the Senator and I have

checked with the manager on our side and that seems to be OK with both of them.

Mr. GRAMM. Madam President, will the Senator yield to me for a moment?

Mr. GRASSLEY. Yes.

Mr. GRAMM. I appreciate the Senator yielding.

There is not going to be a unanimous consent agreement on the Dorgan amendment. We are not going to do a time limit on it. We are not going to vote on it today.

Mr. REID. I say to my friend, there are other ways we can vote.

Mr. GRAMM. That is fine. I am saying we are not going to have a unanimous consent agreement today on that amendment or any other amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. The majority leader yesterday finally brought to the Senate legislation that contains trade promotion authority, a second part called trade adjustment assistance, and a few other items, all very important but not getting as much attention as those two.

I am pleased that the Finance Committee's bipartisan trade promotion legislation is now before the Senate. I believe strongly this legislation, more than any other, will promote America's constructive leadership of the international trading system. Nevertheless, my enthusiasm for the trade promotion authority component of the majority leader's legislation is tempered by the dismay that I have about how this process has been carried on.

Even though I believe strongly trade promotion authority is badly needed, and surely it ought to be passed by the Congress and signed into law, I regret we are being forced by the Democrat leadership's unnecessary counterproductive, sort of take it or leave it approach—it is kind of a partisan attitude in the taking up of trade promotion authority and doing it in this fashion.

When we passed trade promotion authority from the committee 4 months ago, the vote was 18 to 3. We did it in an open, cooperative, bipartisan spirit. I was greatly heartened by the bill itself and by the process in which we achieved a result that was good for America. But this bill before us, the one laid down by the Senate majority leader, is a much different story. I had hoped after bruising, partisan fights on economic stimulus, the Jordan trade bill, judicial nominations, and other issues, finally after those other issues that are very partisan, because we had an overwhelming vote in committee then in favor of trade promotion authority, that we would be able to show America's farmers, ranchers, agricultural producers, our workers in America's families and tens of millions of American consumers who benefit from free trade that we were beyond partisanship, able to do in a successful and short manner what the Senate has done on trade in the past, to be able to give the President the authority in this bill that Presidents since President Ford have had.

I hoped the Senate could put aside partisan differences and we could move forward for the good of the country and this bipartisan spirit would carry over into the consideration of trade promotion authority.

Unfortunately, because of the bill laid down last night, I am very sad to say I was wrong. Even after the Finance Committee approved trade promotion authority 18 to 3, it took 4 months before the Senate Democrat leadership would agree to bring this critically important bipartisan bill to the Senate floor. It took 4 months just to get a bill which passed out of committee by 18 to 3, to the floor, even though the President said time and again that the lack of trade negotiating authority was hurting his ability to lead at the negotiating table.

When we finally seemed to be making progress in getting trade authority legislation to the floor, we were told the only way we could have this debate—a debate that the American people deserve to have, particularly the jobs created by trade—was if we agreed to partisan trade adjustment assistance legislation with which many Members on our side of the aisle disagree.

I support trade adjustment assistance. I support an enhanced, updated, and fine-tuned trade adjustment assistance program. I have said that many times. In fact, the trade adjustment assistance legislation I support will more than double overall program spending because what I support will vastly increase spending on training to help the dislocated workers. My program adds health care coverage for the first time ever. It will assist so-called secondary workers for the first time ever.

What I find difficult to agree to, and many Members on my side of the aisle will not agree, is the partisan, ''my way or the highway'' approach taken in the bill laid down by the Democrat leadership. The bipartisan way is the best way to get things done in Washington. Somehow the Democrat leadership is not listening to either the people on my side of the aisle or the people on his side of the aisle who I know agree that we need a bipartisan approach. Others have been ignored, even beyond this body, groups representing tens of thousands of farmers, ranchers, and hard-working American families, those workers who have jobs related to trade, those jobs that will be created because we pass this bill and have enhanced trade.

I briefly quote from a letter to the majority leader printed as a full-page advertisement on April 11 in the Roll Call newspaper. This letter to the Senate majority leader was from the Agricultural Coalition for the Trade Promotion Authority, representing 80 food and agricultural groups dedicated to the passage of TPA.

In part, it says:

The strong bipartisanship that has historically prevailed in the Senate on trade matters must be reestablished to allow rapid action on trade promotion authority. We urge that this bipartisanship extend to work on other trade-related legislation that may need to move in tandem with trade promotion authority so that the U.S. can regain its position as world leader for free and fair trade, and in so doing open a world of opportunity for U.S. agriculture.

That plea for bipartisanship on trade adjustment assistance is being ignored. My pleas for bipartisanship are being ignored, and so were those of many other Senators.

We have a divisive partisan product, laid down last night, a product deliberately designed to emphasize differences, not to build bridges between Republicans and Democrats, among people of different viewpoints. It was meant not to seek common ground, not to restore the traditional nonpartisan approach to international trade and foreign policy that characterized so much of America's history but otherwise put down to simply score partisan political points.

As disappointed as I am by the process that took place last night, I am still hopeful and commit myself to work for a genuine compromise. I happen to think it can still come together. I believe we can compromise and come together because America's global leadership is at stake. In other words, this is a very important bill.

I don't for 1 second believe any Senator would deliberately want to diminish America's standing in the world community. Stakes are very high. But that is what will happen if we don't restore the President's credibility at the negotiating table. And this bill that came out of the committee does that—not the bill before the Senate. The merits of the Finance Committee bipartisan trade promotion authority bill are so compelling that I believe we will ultimately be able to compromise on trade adjustment assistance.

I summarize the need for the Finance Committee TPA bill simply by saying the United States must be in a strong position to pursue our Nation's interests at the bargaining table. Without trade promotion authority, we are not in a strong position to accomplish that goal, it is just that simple.

Already the United States has been pushed to the sidelines, pushed to a point where a great deal of activity on the trade front has taken place bilaterally, it has taken place regionally, and now globally in new trade negotiations underway through the regime of the WTO.

There are many examples of how the United States is being left behind. The Andean community and Mercosur, for example, have moved closer to creating a South American free trade zone comprising 310 million people. Mercosur and the Andean community together have about $128 billion in annual exports. If they have a free trade zone, it will strengthen tremendously the economic power of Latin America and be negative towards the United States. If

we fail to give our President trade promotion authority and progress on negotiations of the free trade area of the Americas slows as a result, or comes to a halt as a result—and this is now the case—then major U.S. exporters will be at a major disadvantage in these important Latin American markets compared to exporters in countries that do have such trade agreements.

American suppliers seeking to sell in these Latin American countries are going to have a heck of a time to have a market for their goods that come from the United States. They will face other difficulties as well. Just one example from my State of Iowa, the Bandag company, in Muscatine, IA, makes and sells retreaded tires. That company is an enormously successful company, also in the international market. At one point in time, Bandag products went to Uruguay, Paraguay, and Argentina from our country. American workers made those products.

However, when the Mercorsur agreement was put into effect between Brazil and those other three countries, it became more viable for Bandag to ship product from a plant that Bandag built in Brazil. Those jobs and that investment as well did not stay in my State of Iowa or somewhere else in the United States. In fact, out of economic necessity, it went to Brazil. That is what happens if the United States is not credible at the negotiating table. That is what happens when the United States cannot lead in opening new markets and reducing tariffs overseas.

Without trade promotion authority, it is a story that will be told over and over again. This is our challenge, then. If we fail in this challenge, if we do not seize this opportunity to grant the President trade negotiating authority, I believe the process of opening global markets through bilateral, regional, and especially global negotiations—the process that has been the pattern for the last 50 years—will be set back for years.

If that happens, then the future prosperity of millions of Americans and the future prosperity of many of this Nation's most competitive businesses, and our farmers as well, will be put in doubt.

Even though this was a flawed process, and regrettably an unnecessarily divisive process, laying this bill down last night, it is never too late for us to do the right thing. Let us use the commitment to good faith that I believe we all share to reach a genuine and fair political compromise on trade adjustment assistance and to finally resolve the few remaining trade adjustment assistance issues—and maybe a few other issues—that are out there.

We can get this done. Senator BAUCUS and I have shown 98 other Senators that working together we can accomplish a great deal of good. He has been doing that with me. But I think the process last night detracts from it. Maybe it was not meant to hurt what we are trying to do, but I think it has done that.

I am glad that I will have the opportunity, regardless of this act, to continue to sit down with my colleague and work out differences. That is what I want all the other 98 Senators—or at least hopefully an overwhelming number, 70 or so—to do, work with us in this process. I think there are that many people in this body who know trade promotion authority is the right thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I come to the floor this morning to speak in behalf of an amendment laid down by my colleague from North Dakota, Senator DORGAN, as it relates to a particularly growing concerning that we have about a provision within the North American Free Trade Agreement. Because we are now on the floor of the Senate with trade issues that are so important to our country, we thought this the appropriate place to offer this amendment.

Representing a State such as Idaho, I know the words ''made in Idaho'' or ''buy Idaho'' have become a rather important but familiar refrain across my State for the last good number of years. What is unique about that is it has now become a refrain around the world, as products built in my State, as in other States, are now trafficking in world commerce and are a growing part of the Idaho economy. Whether it is the potato chip, for which we are well known, or the computer chip, with which we now dominate world markets because of quality and efficiency, Idaho's trade has grown phenomenally in the last decade, increasing and improving and diversifying our economy, and at the same time supplying increasing numbers of jobs that are important to all Idahoans.

So whether it is trade adjustment or whether it is trade promotion authority, all of those become important items that we clearly need to debate. I, like the ranking member of the Finance Committee, am extremely frustrated by the process and the character of the process that has been given to us by the majority leader. We cannot look at these different trade issues separately and in a clean fashion and debate them in a way that allows us to focus individually on these issues from the importance of displaced worker health care, of course, to the importance of our President having the authority to negotiate trade agreements.

All of that said, what is most important in any trade agreement is the transparency of the process so all of us can understand what our negotiators are doing and why they are doing it and the advantages those negotiations will bring to us as citizens, as workers, as producers within this economy.

The Dorgan amendment does just that for an agreement that is already in place, the North American Free Trade Agreement—that I happened to oppose when it came to the floor some years ago.

I had been a supporter of the Canadian Free Trade Agreement originally. But as the Bush administration and then the Clinton administration put the final touches to the North American Free Trade Agreement, there clearly were provisions within it that I thought would not only be troublesome to enforce but this country more likely would not enforce, and the Canadian Government, on the other side of the border, would enforce, making it most difficult for commerce to flow evenly in both directions, which would create disadvantages for our producers and for our consumers, while creating advantages for the producers of Canada.

Guess what. I was right in many instances. Many of my farmers and ranchers in Idaho today do not agree that the Canadian Free Trade Agreement was, in fact, a positive move for our country. This administration, though, has shown its willingness to enforce trade remedy law. With the steel agreement of a few months ago, and now a soft wood Canadian timber agreement just penned by the Department of Commerce, and being heard by the International Trade Commission as we speak today, we see the willingness on the part of this President to use law, current law, in a way that will not only force but stabilize markets and create level playing fields for producers and create a fair trade environment that some of my producers do not think exists.

While trade is so important to my State, tragically enough some of my producers and workers are beginning to believe that free trade means that it all comes here and is sold in America, displacing our workers and changing our economy because we have had administrations in the past that were not willing to enforce trade remedy situations and level the playing field and create fair and equitable environments.

I know the positive nature of trade and the importance of it. At the same time, chapter 11 of the North American Free Trade Agreement does something that is increasingly important as it relates to what are called Investor Protection Tribunals. That means when one government takes an action that may cause a dislocation of a product within the commerce of another country under the North American Free Trade Agreement, there is a procedure, a process by which it can be determined whether that was a fair and equitable process.

The tragedy of that is the tribunals have been closed and the public has not been allowed to see them. I must tell you, this administration recognizes it, understands its problems. It is important we try to deal with those as rapidly as we can.

Last July, our U.S. Trade Representative, Bob Zoellick, together with his Canadian and Mexican trade counterparts, discussed the secretive nature of

these unique dispute tribunals. They recognized that these tribunals needed to be more open and they announced they would take steps to open up the deliberations of the tribunals.

On July 31, they issued an interpretation of chapter 11 stating that tribunals should operate as transparently as possible. That very wording, tragically enough, gave those who operate the tribunals an opportunity to operate in a less than transparent environment.

As a result of that, Senator DORGAN and I have brought this amendment to the floor—I am a cosponsor of it—simply saying that this is a requirement, that the President needs to move in this direction, to certify that these tribunals are open, and to respond as quickly as possible in a time certain. We believe that is critically important.

If we are going to get the American producer, the American worker, and the American consumer to understand the international character of our commerce and the international character of our economy, they also have to know that on the government side of the process—and there is a government side to trade when you move across international borders and when you move across political jurisdictions—that the government's side of it will be aggressive, balanced, fair, and that the proceedings of that government be transparent so that the public can understand why a certain action is taken and why a certain remedy is produced. We think that is all very critical and very necessary.

I suggest that the Dorgan amendment is in fact a perfecting amendment to the North American Free Trade Agreement.

We believe it was the intent originally that these dispute tribunals be allowed to be open, and appropriately so. Yet it has not occurred. All of them have been secretive in the past.

We had a tribunal against MTBE because of the action of the State that dramatically impacted the producing company in Canada. At the same time, it was the right of the State of California to do what they did.

Regulatory activity that changes a market environment needs to be understood, and the transparency of those tribunals simply allows that to happen. That is, in my opinion, the importance of the Dorgan amendment.

The Washington Times has recognized this problem, as have other publications, as it relates to, again, the kind of transparency that we think is important.

In the character of the tribunal, Bill Moyers—I don't always agree with him and what he says on PBS, but I think in this instance we agree—talked about the balance and the importance. Other publications have recognized that this is a growing problem within the North American free trade environment—that what we do is not as open and transparent as it ought to be.

It is my understanding that we are going to have an opportunity to vote on this issue sometime in the immediate future. I hope my colleagues, recognizing that this is a perfecting amendment which directs the President to move in a positive direction to certify the openness and the transparency of these actions within the North American Free Trade Agreement and within the tribunals of jurisdiction, will do so under what we call the chapter 11 tribunal.

With those comments, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I ask unanimous consent that I may proceed for 7 minutes as if in morning business.

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

(The remarks of Mr. SPECTER pertaining to the introduction of S. 2446 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SPECTER. I yield the floor

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I would like to say a few words about the pending amendment offered by my good friend from North Dakota, Senator DORGAN. It was offered yesterday evening.

His amendment calls for greater transparency in dispute settlement under NAFTA chapter 11—that is the so-called investor-State dispute settlement. I think that is a very important objective.

I agree that lack of transparency is one of the major flaws in how chapter 11 has operated. It is clear that it makes no sense whatsoever that when the United States is negotiating or companies are negotiating or trying to resolve a dispute with a Canadian company, the proceedings are, in effect, secret, that they are not open to the public. That makes no sense.

I might say, too, that the issues in dispute before chapter 11 tribunals clearly implicate essential functions of Government, including protection of the environment. They raise issues concerning public health and safety. I think any body deliberating on such important questions—it is axiomatic; it is a priority—should be open to the public. That is just a given.

Moreover, interested parties must be able to convey their views in such a body, as is the case in our judicial process, where an interested party can file a brief, say, an amicus curiae brief, say, with the Supreme Court.

Fortunately, this is a matter under which I think there is a growing consensus. I note that last year the United States, Canada, and Mexico adopted an interpretive note that provides for greater transparency in chapter 11 proceedings. The parties agreed, "to make available to the public in a timely manner all documents submitted to, or issued by, a Chapter eleven tribunal," subject to redaction of confidential material. The United States, Canada, and Mexico did agree, in an interpretive note, to provide for greater transparency, at least with respect to making public documents more available.

I think this interpretive note is a good start, but it is clear it is only a start. We have far more to do in opening up proceedings.

I might say, I raised this issue with European negotiators at the infamous Seattle administerial on trade not so long ago, and I was surprised at the resistance I received, particularly from European negotiators. They did not seem to be automatically agreeing that, yes, that is good for the process. To me, it indicates we are going to have to move further and work a little more aggressively to help accomplish our objective, and that is transparency. For that reason, the Finance Committee bill currently on the floor included in the TPA bill a detailed negotiating objective precisely on this subject.

Let me read it. These are the primary negotiating objectives contained in the bill: provide for ensuring that all requests for dispute settlement, and all proceedings, submissions, findings, and decisions in dispute settlement are promptly made public; ensuring that all hearings are open to the public; and establishing a mechanism for acceptance of amicus curiae briefs from businesses, unions, and nongovernmental organizations.

It is a huge step, frankly. It is very clear that this is a primary negotiating objective on the part of the U.S. Government.

I think we in America sometimes take it for granted that important decisions—that is, judicial decisions, legislative, and executive decisions—are made openly, made in public, with adequate opportunity for all sides to be heard. I think we take that for granted; it is so common in our country.

I think the same ought to be true when important Government regulations are being considered in international dispute settlements. I firmly believe the trade bill makes that objective clear.

Having said that, I must say I have some concerns about the amendment of my friend from North Dakota. And that is because his amendment would mandate that the President pursue negotiations with Canada and Mexico and require that the Trade Representative certify that the negotiations have been accomplished within 12 months.

There is no mandating language in this bill—for good reason. First, it is unconstitutional. The courts will strike it because the legislative branch cannot mandate the executive branch what to do in negotiating agreements. It is unconstitutional. That is No. 1.

No. 2, even if it were constitutional, if we mandate in one area, we necessarily give up significantly in other areas. One other area would be the agricultural provisions. We are trying to get Canada, for example, to dismantle

its trading commission, the Wheat Board. It is an unfair trade barrier and hurts our American farmers. If you mandate transparency, what will happen?

First, the Canadians will say, if you want us to do that, we will ask you to give up someplace else or we will not be as amenable to your suggestion that we give up on the Canadian Wheat Board. It does not make good sense in trying to get good, solid trade agreements.

We have avoided using mandates in the bill. Rather, in the tradition of these kinds of measures, we laid out negotiated objectives and agreed to consider implementing legislation under special rules; that is, if the President makes progress in achieving these objectives.

I think it should give all Senators some concern that this mandate also requires the President to, in 1 year, certify that the USTR has fulfilled the requirements set forth in this section. I don't know how in the world the President of the United States in 1 year will be able to certify that the mandate called for in this amendment is fully implemented; that is, full transparency. It is just not going to happen. It is unconstitutional anyway because the legislative branch, under the Constitution, cannot mandate to the executive branch what to do in negotiating agreements with other countries. That is an unconstitutional provision.

I very much hope my friend from North Dakota will work to modify the amendment. I strongly agree with the intent and the import of what he is trying to do. This puts me in a very difficult position because I do agree with what he is trying to do. But the goal here is to be effective. The goal here is to get the job done.

Frankly, I would like to ask the Senator from North Dakota if he would yield for a question; that is, if there is some way we can modify this amendment to make it effective, because the current draft is unconstitutional and also because of the flaws of the mandating approach and the impracticality of getting this accomplished within 1 year. I ask my good friend from North Dakota if he is willing to modify given those flaws?

Mr. DORGAN. In response to the Senator from Montana, I certainly respect his view, but I don't share his view that this amendment would in any way be unconstitutional. I believe the amendment, if I modify it, would be less likely to achieve its purpose. If I don't modify it, I think it is a stronger initiative that says to the administration, this is what the Congress aspires to achieve with respect to changing the secrecy by which dispute tribunals in NAFTA are now conducted. I would prefer we not modify it in order that it be a stronger initiative.

I do not see this as in any way being unconstitutional. It is in perfect concert with our constitutional responsibilities.

Mr. BAUCUS. I thank my good friend, but it is just a matter of judgment. It clearly is unconstitutional because Congress cannot mandate to the President telling the President what he must do in negotiating agreements with other countries. That is clearly an unconstitutional mandate of authority. I must say, I doubt this provision will survive in conference for those reasons.

I fully understand the Senator. The goal here is to be as effective as we possibly can because the Senator and I agree with the same objective. The objective is full transparency in these proceedings. That is clearly going to be in the public interest. It is going to help Americans and help people all around the world.

I thank my good friend and yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from North Dakota.

Mr. DORGAN. Madam President, my colleague, Senator CRAIG from Idaho, spoke in support of the amendment. It is an amendment we offered jointly. I ask unanimous consent that others in the Senate who have asked this morning be added as cosponsors: Senators BYRD, DAYTON, and DURBIN.

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

Mr. DORGAN. Let me describe again what it is we are attempting to achieve. We have now, under NAFTA, dispute tribunals or tribunals that are created for the purposes of resolving disputes. Regrettably, those tribunals are conducted in secret. They are secret tribunals. The American people are excluded from knowing what they have done, what they are doing, what they are going to do, how they reached a decision. We are not entitled to review any of the information they have or the information they might have used to reach a decision. They lock the door, and behind locked closed doors, they discuss this country's future with respect to international trade disputes.

We ought not be a party to that. That is not what we signed up for. That is not what the U.S. Government is about—secrecy, closed, locked doors in some foreign land. That is not what we ought to be about. This amendment says: Let's stop that. Let's not have the dispute tribunals be secret.

Let me give an example of why this is important: what is happening with respect to NAFTA and a fuel additive called MTBE. This is all under something called chapter 11. You might think chapter 11 has to do with bankruptcy. It does not. Chapter 11 was put in NAFTA at the request of negotiators thinking that U.S. investors in Mexico might have their assets seized by the Mexican Government or Mexican regulators and the Mexican legal system probably wouldn't provide sufficient protection. So U.S. negotiators actually asked to have chapter 11 included in NAFTA. It was. It was designed to create tribunals that would consider claims from foreign investors that they had property taken by Government regulation.

By design, these tribunals were given leeway to operate in secrecy. They were bound only by international arbitration rules. That allowed the tribunals to act however they saw fit. If any of the parties to the claim wanted to keep the proceedings secret, the briefs would not be disclosed and the hearings would be closed. And that is exactly what has happened.

Let me describe what has happened here with respect to chapter 11 and the tribunals and what this Government, what the United States of America, is part of. It involves Methanex, a Canadian company that makes MTBE, a fuel additive. We have been talking about MTBE recently in the debate over the energy bill so most Members are familiar with this fuel additive.

In 1999, California decided to ban MTBE because they began to find it in their ground water and drinking water. All of a sudden they began to measure this fuel additive, which is harmful to human health in their water system. They decided they better ban MTBE. And so California did that. Fourteen other States are considering limitations to the use of MTBE. It was 1990, in fact, when California first discovered traces of MTBE in the drinking water.

In 1995, 71 percent of Santa Monica's drinking water was shut down. Their supply was shut down due to the presence of MTBE. In 1996, MTBE was discovered in Lake Tahoe. In 1998, an EPA blue-ribbon panel called for substantial reduction in the usage of MTBE.

Then California decided, in 1999, they were going to ban MTBE altogether. A Canadian corporation that makes it called Methanex heard about the California decision, and they realized they stood to lose a lot of money. If California bans MTBE, this corporation stands to lose money. So Methanex filed a chapter 11 claim against the United States for $970 million. Think of this. Methanex, a Canadian corporation, files a $970 million claim against the United States of America because California decided to ban MTBE because it was discovering it was showing up in drinking water and ground water and that it is harmful to human health. So a foreign corporation sues our country because we are taking action to protect human health in this country.

This claim has had an incredibly chilling effect on environmental regulatory activity. If a State wants to keep poisons out of its rivers and streams, it now has to worry about a chapter 11 complaint being filed. The producers of that poison will file a chapter 11 claim and claim a billion dollars in injury against the United States. But, then, that claim, when considered under a tribunal in chapter 11, will be resolved in secret.

Let me restate this so people will understand it. A State finds a poison in its drinking water and in its ground

water. It takes action to ban the use of that fuel additive that creates it and which has allowed it to show up in the drinking water; and a foreign company that produces it sues us for almost $1 billion because that is the injury that will exist to that company. By the way, they would sue us and go to chapter 11, and they will have an advantage in a three-person tribunal under chapter 11 of having secret proceedings. The American people are told it is none of your business. It is none of our business when we take action to stop poisons from finding their way to our drinking water? That is none of our business?

Well, I am using one example—MTBE. This amendment says it shall not be secret any longer, that the dispute resolution under chapter 11—the tribunals, their behavior, actions and their considerations—shall not be secret. You cannot keep that information from the American people. We will not allow it. Our amendment says the President shall negotiate a change with Canada and Mexico to the conditions under which these tribunals meet and shall report back to Congress within 1 year; that these tribunals shall be held in the open; that the secrecy has ended, and that transparency will exist. That is our amendment.

My colleague from Montana said the amendment is unconstitutional. If I might, without providing a lecture on the Constitution, I will put up a chart. Article I, section 8 of the Constitution says the Congress shall have the power to regulate commerce with foreign nations. It doesn't say Ambassador Zoellick shall have the power, or President Clinton or President Bush shall have the power; it says the Congress shall have the power.

We have a lot of people here who have forgotten that or have decided to ignore it. But that is what the Constitution of the United States says—Congress shall have the power. Fifty-five people wrote that over 200 years ago. This Congress, well over two centuries later, has apparently decided that it wishes to consider giving the President the authority on trade with something called fast track. So it is apparently not unconstitutional in the minds of some to give the President this authority, despite the fact that the Constitution says it is the Congress's authority. They would say it is not unconstitutional to give the President the authority to do this, but it is unconstitutional to direct the President to end secrecy in the tribunals. I don't understand that. That doesn't make any sense to me. Of course, we have a right to direct our trade negotiators to direct this administration to negotiate an end to the secrecy in these tribunals. Of course, we have a right to do that. Are we kidding? The Constitution says we have the right.

This isn't some idle piece of paper. It is the Constitution of the United States. I don't want to hear that we don't have the authority to do this. Of course we do.

The question for the Senate is this: In the future, both in this case and the next one, when one of our States, or our Government, takes action to protect our citizens against someone poisoning our water or polluting our air, and somebody files a large claim against the United States for protecting its citizens, saying, by the way, you have violated our trade laws and injured us; do you want the consideration of that dispute to be resolved in deep secrecy, behind closed doors, perhaps in a foreign land, with three people who will not tell you what they are doing, what they have done, or why they have done it? Is that what you want for this country? I don't think so.

If you believe in open government, and in democracy, and in fair trade, and in the Constitution, then you have to believe in this amendment. This is not rocket science. This is common sense. Often, common sense finds a difficult road here in the Congress because it attracts comments by people who say, well, I know it sounds good, but it is not as easy as it sounds. This is as easy as it sounds, believe me. It is as easy as it sounds. All this country has to do, with respect to Canada and Mexico, is to say with respect to our trade agreement that we will not be involved in secret tribunals. That is not the American way and not something Congress will any longer support.

Why do we have to do this in this legislation? Because we have had our Trade Representative, Mr. Zoellick, already tell us that he would like to end the secrecy.

Trade ministers from the U.S., Canada, and Mexico last year tried to impose greater openness on a procedure under NAFTA that allows companies to sue governments for millions in monetary damages, but the effort has so far failed.

That is according to the Washington Times last month.

Charges of secrecy have dogged the chapter 11 process since its inception. Many NAFTA supporters now concede that the closed tribunals have contributed to public distrust of the agreement, and advocate greater openness for the procedure.

Our Trade Representative, Mr. Zoellick, has spoken on this issue. He wants more openness. But the fact is, these tribunals ignore it. The openness doesn't now exist. There is still a veil of secrecy. That dis-serves the interests of this country. That is why this amendment is necessary, and that is why the amendment is necessary now. No, it is not unconstitutional—not at all.

This Congress has every right to speak on this subject. In fact, this Congress has a responsibility to speak on this subject. We know it is wrong to have a foreign corporation suing our Government because our Government is taking action to protect our consumers against poison in the water. And then to throw that into a tribunal and tell the American people, by the way, it is none of their business; they can't see it, hear it, or be a part of it, we know that is wrong. Everybody in this Chamber knows that is wrong.

So we are going to vote on this amendment. As I said when I started, it is a bipartisan amendment. I have been joined by Senator CRAIG from Idaho, from the other party. I appreciate his cosponsorship and his work with me on it. I think he believes, as I do—in fact, he expressed that a few minutes ago on this floor—that we must take action to end this secrecy. This is the place to do it and this is the time to do it. We are now considering international trade. We are considering fast-track trade authority. This is the place and time to add this amendment.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Madam President, I move to table the Dorgan amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Kentucky (Mr. BUNNING), and the Senator from Utah (Mr. BENNETT) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''no'' and the Senator from Kentucky (Mr. BUNNING) would vote ''yea.''

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

The result was announced—yeas 29, nays 67, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—29

Allen	Frist	McCain
Bond	Gramm	McConnell
Breaux	Grassley	Miller
Brownback	Gregg	Nickles
Chafee	Hagel	Santorum
Cochran	Hatch	Stevens
DeWine	Hutchison	Thompson
Domenici	Kyl	Voinovich
Enzi	Lott	Warner
Fitzgerald	Lugar	

NAYS—67

Akaka	Corzine	Inouye
Allard	Craig	Jeffords
Baucus	Crapo	Johnson
Bayh	Daschle	Kennedy
Biden	Dayton	Kerry
Bingaman	Dodd	Kohl
Boxer	Dorgan	Landrieu
Burns	Durbin	Leahy
Byrd	Edwards	Levin
Campbell	Ensign	Lieberman
Cantwell	Feingold	Lincoln
Carnahan	Feinstein	Mikulski
Carper	Graham	Murkowski
Cleland	Harkin	Murray
Clinton	Hollings	Nelson (FL)
Collins	Hutchinson	Nelson (NE)
Conrad	Inhofe	Reed

Reid	Shelby	Thomas
Roberts	Smith (NH)	Thurmond
Rockefeller	Smith (OR)	Wellstone
Sarbanes	Snowe	Wyden
Schumer	Specter	
Sessions	Stabenow	

NOT VOTING—4

Bennett	Helms
Bunning	Torricelli

Mr. REID. Madam President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I have been informed by staff—I hope I have been informed wrongly—that we are now not going to be allowed to vote on the underlying amendment, the Dorgan amendment.

Normally what happens here is that when a motion to table is defeated and the amendment is there, and it is such an overwhelming vote, it is just adopted by voice. But I have been told the minority will not allow us to do this.

I am troubled for a number of reasons, not the least of which is what happened when the majority leader had breakfast with the President yesterday. I believe it was yesterday. It could have been the day before, but I am almost certain it was yesterday. At that breakfast, the President told the majority leader and those other people assembled that his No. 1 priority was this trade bill.

On the first amendment we offered, there is a filibuster.

If there is something in this bill that someone doesn't like, let him move to strike that portion of the bill. There are all kinds of things that can be done. But for us to be told that we cannot vote on this says there is a filibuster taking place. I suggest—certainly the decision is not mine, but I think the majority leader would have to strongly consider filing a motion to invoke cloture. Certainly, when the motion is defeated by such an overwhelming margin and we are now told we cannot adopt the measure, it seems it is totally unfair.

Mr. DORGAN. Will the Senator from Nevada yield?

Mr. REID. I yield to the Senator from North Dakota, for a question, without losing the floor.

Mr. DORGAN. Madam President, I inquire whether the Senator has been informed of the delay here being a delay because someone needs more time to speak on this amendment. That is certainly reasonable.

I spoke on the amendment yesterday. I spoke on it this morning. Others spoke on it this morning. Senator CRAIG, who is a cosponsor, spoke on it.

Unless there are others who wish to speak on the amendment—certainly that is reasonable. But if that is not the reason, we have had plenty of time on this amendment. I thought we had. Then there was a tabling motion. We should be ready to adopt the amendment. After all, 67 people voted against tabling. One would expect there would be a pretty strong expression here with respect to this amendment.

Was the Senator informed about the manner of the delay? Is it because there needs to be more discussion on the underlying amendment or is there some other reason?

Mr. REID. I say to my friend from North Dakota in answer to his question, we have just been through 6 or 7 weeks on the energy bill. On that bill, we had a series of amendments pending. I think we got up to maybe 15 or 16 amendments pending where people would offer amendments and then there would be no resolution of that amendment. It made it very difficult to work through that bill.

I say to my friend from North Dakota, who had the wisdom and foresight to offer this amendment, that it appears clear we have an effort to stop the bill. I commented as the Senator from Texas was giving his statement this morning, I have great respect for him. He obviously was a great professor. We know he has a Ph.D. in economics. His statement was one that gave me the desire to listen to what he had to say.

As I was going through this, I said to myself: If I were on the other side and I didn't like this, I would simply move to strike part of it. But the Senator has made his decision, and I respect that. As a result of that—I think it is too bad—I say to my friend from North Dakota, I think the majority leader this afternoon should strongly consider invoking cloture on this bill.

AMENDMENT NO. 3389 TO AMENDMENT NO. 3387

Madam President, while I have the floor, on behalf of Senator LIEBERMAN I call up an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. LIEBERMAN, for himself, Mr. DASCHLE, Mr. SMITH of Oregon, Mr. ALLARD, Mr. BROWNBACK, Mr. BUNNING, Mrs. CARNAHAN, Mr. CLELAND, Mrs. CLINTON, Ms. COLLINS, Mr. DEWINE, Mr. HATCH, Mr. KYL, Mr. MCCONNELL, Mr. SANTORUM, Mr. SMITH of New Hampshire, Mr. STEVENS, Mr. WARNER, Mr. BAUCUS, Mrs. BOXER, Mr. WYDEN, Mr. CORZINE, Mr. DURBIN, Mr. GRAHAM, Ms. LANDRIEU, Mr. HARKIN, Mr. JOHNSON, Mrs. MURRAY, Mrs. LINCOLN, Mr. NELSON of Florida, Ms. MIKULSKI, Mr. REED, and Mr. SCHUMER, proposes an amendment numbered 3389 to amendment No. 3387.

Mr. REID. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To express solidarity with Israel in its fight against terrorism)

At the appropriate place, insert the following new section:

SEC. ____. EXPRESSING SOLIDARTIY WITH ISRAEL IN ITS FIGHT AGAINST TERRORISM.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States and Israel are now engaged in a common struggle against terrorism and are on the frontlines of a conflict thrust upon them against their will.

(2) President George W. Bush declared on November 21, 2001, ''We fight the terrorists and we fight all of those who give them aid. America has a message for the nations of the world: If you harbor terrorists, you are terrorists. If you train or arm a terrorist, you are a terrorist. If you feed a terrorist or fund a terrorist, you are a terrorist, and you will be held accountable by the United States and our friends.''.

(3) The United States has committed to provide resources to states on the frontline in the war against terrorism.

(b) SENSE OF CONGRESS.—The Congress—

(1) stands in solidarity with Israel, a frontline state in the war against terrorism, as it takes necessary steps to provide security to its people by dismantling the terrorist infrastructure in the Palestinian areas;

(2) remains committed to Israel's right to self-defense;

(3) will continue to assist Israel in strengthening its homeland defenses;

(4) condemns Palestinian suicide bombings;

(5) demands that the Palestinian Authority fulfill its commitment to dismantle the terrorist infrastructure in the Palestinian areas;

(6) urges all Arab states, particularly the United States allies, Egypt and Saudi Arabia, to declare their unqualified opposition to all forms of terrorism, particularly suicide bombing, and to act in concert with the United States to stop the violence; and

(7) urges all parties in the region to pursue vigorously efforts to establish a just, lasting, and comprehensive peace in the Middle East.

Mr. REID. I extend my appreciation to the Senator from Connecticut for the work he has done on this amendment.

During the time we have served together in the Senate, we have become friends. But from my own perspective, I have come to rely on the Senator from Connecticut as someone who never does anything in a hurry. He is very deliberate, thoughtful, and this amendment is in the style of LIEBERMAN. So I want him to understand how much I appreciate—and I think I speak for the whole Senate—the work he has done on this very difficult matter that is going to be brought before the Senate. I hope we can have some debate and vote very quickly.

I think the people of our country are expecting a good strong vote on this issue, and they will get a good strong vote. There are a lot of reasons, not the least of which is the work done by the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank my friend and colleague from Nevada, whose words were unexpected. They are unnecessary. But they are deeply appreciated—in general and on the specific thanks for his support of this resolution.

I am proud to stand and urge adoption of this amendment, which embodies a resolution expressing solidarity with Israel in its fight against terrorism.

This amendment is a statement of fundamental principles. It is cosponsored by Senator SMITH of Oregon, with

whom it has been a pleasure to work. The underlying resolution is also cosponsored by the majority leader, Senator DASCHLE, and the Republican leader, Senator LOTT. At last count, we had well over a majority of Members of the Senate cosponsoring the resolution which has now become this amendment and, notably and encouragingly, with just about equal support from both Democrats and Republicans.

It is a fundamental principle of our foreign policy that terrorism is evil. It is not an acceptable form of political expression. It is also a fundamental tenet of our policy that a government, a society, should and must protect itself against violent terrorism. Those policies underlay most of recent memory, since the ugly head of terrorism reared itself in our history.

We have felt it with a particular intensity, pain and resolve, since September 11 when we in America were brutally attacked by terrorists and lost the lives of more than 3,000 of our fellow Americans and family members in that attack.

After that attack, President Bush came before Congress with a very stirring, strong, and principled speech. Among other things, he enunciated a series of principles which have come to be known as ''The Bush Doctrine.''

To state it as simply as I can, as I recall those words, the President spoke to the Joint Session of Congress in September. He said to the nations of the world:

> Either you are with us, or you are with the terrorists.

Then on November 22, 2001, the President said:

> We fight the terrorists, and we fight all those who give them aid. America has a message for the nations of the world. If you harbor terrorists, you are terrorists. If you train or arm a terrorist, you are a terrorist. If you feed a terrorist, or fund a terrorist, you are a terrorist, and you will be held accountable by the United States and our friends.

The intention of this amendment, which Senator SMITH, I, and others have worked on—and which we have tried to fashion in a way to encourage the broadest statement by this Senate representing the American people—is to embody and express those last words that I quoted from President Bush: If you support a terrorist in any way, you will be held accountable by the United States and by our friends.

Israel is and has been a great friend of the United States. The United States has been a great friend to Israel. Our two nations are tied together by common values, by a common political system—democracy—by common strategic interests, and by the closest of relationships between our military and intelligence systems.

Our friend, Israel, has been under siege from a systematic and deliberate campaign of suicide and homicide attacks by terrorists. Their essence is identical to the attacks on our country on September 11. Those suicide bombers striking innocent Israelis in supermarkets, buses, public squares, pizza restaurants, schools, and religious observances are cut from the same cloth of evil as the terrorists who turned airplanes into weapons and struck the United States on September 11.

So our country is engaged now with Israel and other allies in a common struggle against terrorism. But Israel, in particular, among our allies has found itself now on the front lines of a conflict thrust upon it against its will. In the absence of action by the Palestinian Authority to suppress these acts of terrorism—in particular the abhorrent and inhumane practice of suicide and homicide bombings—the Israeli Government has acted to protect its homeland, just as we have acted in so many ways, so courageously, so proudly, and so effectively since September 11, to protect our homeland and our people in America.

The intention of this amendment is to put the Senate of the United States on record in support of Israel's right to self-defense.

To state it in words that are direct, Congress stands in solidarity with Israel—a front-line state in the war against terrorism—as it takes necessary steps to provide security to its people, by dismantling the terrorist infrastructure in the Palestinian areas, and remain committed to Israel's right to self-defense.

I welcome the easing of a recent standoff between Israel and the Palestinians achieved in the last few days, thanks in good measure to effective diplomacy by the Bush administration.

It is my fervent hope now that Chairman Arafat and Palestinian leaders will use this opportunity, as this amendment states, to ''dismantle the terrorist infrastructure in the Palestinian areas and to pursue vigorously efforts to establish a just, lasting and comprehensive peace.''

That is what the majority of Israelis want. I continue to hope and believe that is what the majority of Palestinians want—that the established leadership of the majority of the Palestinian people, whose lives have been so difficult, will take back the legitimate cause of Palestinian statehood from the suicide bombers and terrorists who have hijacked it.

A just, lasting, and comprehensive peace is also clearly what we in America want. It has been our national policy for years now—certainly since the Declaration of Principles that originated in Oslo and which was signed on the White House lawn in September of 1993. The hope of our policy has been that we could be pro-Israel and pro-Palestinian, but united together against terrorism. That is the thrust of this amendment.

I also call on other friends in the region—in the Arab world particularly—to work with us, to use all their best efforts to help bring about an end to the violence and a dismantling of the infrastructure of terror, not only in the Palestinian territories but also the elements in their own countries that have aided and abetted terrorists, or that give militant, extremist, hateful ideas legitimacy.

America will never countenance terrorism. We stand with those who oppose terrorism and against those who support it in any form. That is the message of this amendment—a message which I hope will have the overwhelming support of the Members of this body.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I am privileged to stand on the Senate floor today with my colleague from Connecticut, Senator LIEBERMAN, as a cosponsor of this amendment. He and I stand here against the wishes of the administration that we—the Congress, and specifically the Senate—would involve ourselves at this delicate time. And we are not here to be indelicate. We are here because the Founders of this country set up a framework in which the Congress—the Senate specifically—has responsibilities when it comes to foreign affairs.

I remember during the Clinton administration we would often do this, and it would upset their apple cart.

I am proud as a Republican to be here to do this and upset the apple cart of the Bush administration—not with any malignancy but because of a principle I feel very personally and deeply about; that is, we as elected Members of this body have a right, and indeed an obligation, to stand up and be counted right now at this critical hour no matter what apple cart is overturned in the process.

Most of us who serve in this body are of an age when our earliest memories of life are of a black and white television set with flickering pictures. I recall as a little boy seeing accounts of the 20th century—my century. I was born in this meridian. I remember the pictures indelibly impressed on my mind of the Holocaust that occurred in Europe.

I remember seeing the pictures of the bodies of the children of Israel being bulldozed into mass graves. And I remember, at an early age, as somebody who has always been interested in public life, feeling pride that my country stood by as an ally to the children of Israel as they sought to establish a homeland in their ancestral land.

Many people can differ on interpretations of Scripture. I remember in the Presidential election, JOE LIEBERMAN was once asked a question. I loved his answer. He was asked: Senator, if you could interview anybody in history, who would it be? And he said: I would interview Moses, and I would interview Jesus. And he as a Jew and I as a Christian, I think, would answer the same way. I would like to interview Moses. I would like to interview Jesus to better understand this great conflict that has the whole world consumed by it.

I am pleased to stand in this Chamber in support of this amendment because we need to be on record as a nation, as a Senate, as a body here, in unity with Israel at this critical hour.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by George Will in this morning's Washington Post. It is entitled ''Final Solution,' Phase 2.''

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

[From the Washington Post, May 2, 2002]

''FINAL SOLUTION,'' PHASE 2

(By George F. Will)

Such is the richness of European culture, even its decadence is creative. Since 1945 it has produced the truly remarkable phenomenon of anti-Semitism without Jews. How does Europe do that?

Now it offers Christian anti-Semitism without the Christianity. An example of this is the recent cartoon in La Stampa—a liberal Italian newspaper—depicting the infant Jesus in a manger, menaced by an Israeli tank and saying ''Don't tell me they want to kill me again.'' This reprise of that hardy perennial, Jews as Christ-killers, clearly still strikes a chord in contemporary Italy, where the culture is as secular as a supermarket.

In Britain the climate created by much of the intelligentsia, including the elite press, is so toxic that the Sun, a tabloid with more readers than any other British newspaper, recently was moved to offer a contrapuntal editorial headlined ''The Jewish faith is not an evil religion.'' Contrary to what Europeans are encouraged to think. And Ron Rosenbaum, author of the brilliant book ''Explaining Hitler,'' acidly notes the scandal of European leaders supporting the Palestinians' ''right of return''—the right to inundate and eliminate the state created in response to European genocide—''when so many Europeans are still living in homes stolen from Jews they helped murder.''

It is time to face a sickening fact that is much more obvious today than it was 11 years ago, when Ruth R. Wisse asserted it. In a dark and brilliant essay in Commentary magazine, she argued that anti-Semitism has proved to be ''the most durable and successful'' ideology of the ideology-besotted 20th century.

Successful? Did not Hitler, the foremost avatar of anti-Semitism, fail? No, he did not. Yes, his 1,000-year Reich fell 988 years short. But its primary work was mostly done. Hitler's primary objective, as he made clear in words and deeds, was the destruction of European Jewry.

Wisse, who in 1991 was a professor of Yiddish literature at McGill University and who now is at Harvard, noted that many fighting faiths, including socialism and communism, had arisen in the 19th century to ''explain and to rectify the problems'' of modern society. Fascism soon followed. But communism is a cold intellectual corpse. Socialism, born and raised in France, is unpersuasive even to the promiscuously persuadable French: The socialist presidential candidate has suffered the condign humiliation of failing to qualify for this Sunday's runoff, having been defeated by an anti-Semitic ''populist'' preaching watery fascism.

Meanwhile, anti-Semitism is a stronger force in world affairs than it has been since it went into a remarkably brief eclipse after the liberation of the Nazi extermination camps in 1945. The United Nations, supposedly an embodiment of lessons learned from the war that ended in 1945, is not the instrument for lending spurious legitimacy to the anti-Semites' war against the Jewish state founded by survivors of that war.

Anti-Semitism's malignant strength derives from its simplicity—its stupidity, actually. It is a primitivism which, Wisse wrote, makes up in vigor what it lacks in philosophic heft, and does so precisely because it ''has no prescription for the improvement of society beyond the elimination of part of society.'' This howl of negation has no more affirmative content than did the scream of the airliner tearing down the Hudson, heading for the World Trade Center.

Today many people say that the Arabs and their European echoes would be mollified if Israel would change its behavior. People who say that do not understand the centrality of anti-Semitism in the current crisis. This crisis has become the second—and final?—phase of the struggle for a ''final solution to the Jewish question.'' As Wisse said 11 years ago, and as cannot be said too often, anti-Semitism is not directed against the behavior of the Jews but against the existence of the Jews.

If the percentage of the world's population that was Jewish in the era of the Roman Empire were Jewish today, there would be 200 million Jews. There are 13 million. Five million are clustered in an embattled salient on the eastern shore of the Mediterranean, facing hundreds of millions of enemies. Ron Rosenbaum writes, ''The concentration of so many Jews in one place—and I use the word 'concentration' advisedly—gives the world a chance to kill the Jews en masse again.''

Israel holds just one one-thousandth of the world's population, but holds all the hopes for the continuation of the Jewish experience as a portion of the human narrative. Will Israel be more durable than anti-Semitism? Few things have been.

Mr. SMITH of Oregon. I would like to read briefly a couple of paragraphs from his article because I think they encapsulate why it is so important that America not waiver at this critical hour. Writes Mr. Will:

Today many people say that the Arabs and their European echoes would be mollified if Israel would change its behavior. People who say that do not understand the centrality of anti-Semitism in the current crisis. This crisis has become the second—and final?—phase of the struggle for a ''final solution to the Jewish question.'' As [Ruth] Wisse said 11 years ago, and as cannot be said too often, anti-Semitism is not directed against the behavior of Jews but against the existence of the Jews.

If the percentage of the world's population that was Jewish in the era of the Roman Empire were Jewish today, there would be 200 million Jews [in the world]. There are [only] 13 million. Five million are clustered in an embattled salient on the eastern shore of the Mediterranean, facing hundreds of millions of enemies. Ron Rosenbaum writes, ''The concentration of so many Jews in one place—and I use the word 'concentration' advisedly—gives the world a chance to kill the Jews en masse again.''

I say, Mr. President, that the pride I felt as a young boy in Harry Truman's defense of Israel in its infancy is pride that I feel as an American today. And I call upon our Government not to waiver but to make sure that since the Holocaust, on America's watch, when America is a leader in the world, we never stand idly by and see the children of Israel subjected to another Holocaust.

JOE LIEBERMAN and I have crafted an amendment that I think fairly calls upon all the parties to produce a just and lasting peace. But it does state, without equivocation, we stand with Israel on the front line in the war against terrorism, and we support it in taking ''necessary steps to provide security to its people by dismantling the terrorist infrastructure in the Palestinian areas. . . .''

We would do no less if terrorists came into our country, into our shopping malls, into our schools, and murdered our children. And we should demand nothing less of Israel's Government.

Yes, we do condemn the Palestinian suicide bombers. But we call upon both sides to pursue efforts to establish a just and lasting peace in the Middle East. But America must stand firmly, and we must be unique among the nations of the world in rejecting anti-Semitism and standing by the ancestral home of the children of Judah.

Mr. President, I urge all of my colleagues to come and vote for this amendment, and with conviction, so that when the Prime Minister of Israel comes here next week, he will know that he has friends in high places in this Government.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Oregon for the work we have done together on this amendment, but really, for the moment, for the statement he has just made, which is a statement of moral clarity and principles that are consistent with the highest ideals of our country.

That is exactly what this amendment is about: The moral clarity of our own war against terrorism, and the understanding that gives us of the right of self-defense that the Israelis have, but the universalist principles that have been at the foundation of the American experience from the very beginning in the Declaration of Independence, when those rights to life, liberty, and the pursuit of happiness were declared as self-evident truths, from where endowed were not from the Founders, not from any philosophers of the Enlightenment, but from the Creator. And that unity that flows from that, the humanity that flows from that, the principles and policies that flow from that are exactly the ones that are upheld in this amendment and have been eloquently expressed by my friend from Oregon.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I thank my colleagues, Senator LIEBERMAN and Senator SMITH, for bringing this amendment forth. They are serving an important purpose today to bring clarity back into the debate—a clarity

which has eluded some pundits and some talking heads and others who appear on the news and as result of which confuses the situation at a time when it requires a very clear-eyed approach by the United States.

Like it or not, we are in a position where everyone calls upon us to help solve problems of the world, including this most intractable problem in the Middle East. But as it turns out, we are in a unique position to influence matters in the right way, if we look at the situation clearly.

What I appreciate about this amendment being brought to the floor today is that it brings us back to the first principles. It says, let's get back to where we started in our war on terror in analyzing where others are, where they should be.

It makes the point that the United States and Israel are on the front line in this war on terrorism, that our goals and objectives are the same, and that therefore the United States is not only obligated to recognize Israel's rights for its sake but also for the sake of the war we are conducting.

It brings us back to a position of clarity in the way we analyze the situation, which is why the amendment is so important today.

I appreciate their bringing it forth and look forward to expressing my support through voting for it as well.

I am so disappointed, in talking with some close friends and watching the news to see the kind of confusion that creeps into the debate when propagandists, who have their own agenda, and people without a clear understanding combine to create disinformation and misimpressions about what really is at stake.

When I see talk about a cycle of violence, when I see a great emphasis placed on the question of when the Israelis are going to withdraw, to the exclusion of any expressed concern about the horror of the terror that is being visited upon the Israeli people, when I see questions about why we would not allow the United Nations to come in and investigate a massacre—an alleged massacre—without any seeming concern for the obvious massacre, which is essentially undenied, that has occurred week after week after week for the last 18 months, there seems to be such a distortion of the picture here that it almost boggles the mind. It requires an amendment of this sort to bring us back to the reality of what is happening. It is almost as if there is a clouded lens in front of some people's eyes and an amendment such as this is necessary to remove that cloud so that we can clearly see what is happening. And what is happening is that just as the United States was attacked by terrorists, Israel has been attacked by terrorists.

The President has said whatever grievance one might have, terrorism is an illegitimate response which the whole world must rise up to defeat and those who temporize with it, those who rationalize it are just as bad as those who support it and harbor it because they allow it to continue. They allow a great confusion to exist which makes it more difficult for us to do what has to be done in fighting the war on terror.

That is why this measure which brings us back to the clarity of purpose is so timely and why it is so important.

Mr. President, I conclude with this thought: The United States is not right in everything, but one reason that most of the world has looked up to us most of the time is because of the moral clarity of our positions. People will disagree with us, they will be uncomfortable with what that moral clarity requires them to do, they will find reasons not to join us in these activities, but at the end of the day, if you give people a choice of whether you would like to come to the United States of America to live, ''What do you think about the moral positions of the United States,'' more often than not people would have to admit, at least in their heart of hearts, that the United States pursues its action out of what we fundamentally believe is right for the reasons that do not have so much to do with our own vested interests as they do with the good of humanity, of mankind.

When the President commits the United States to conducting this war on terror, it is not just for the American people, but it is to help rid the world of a form of evil which can afflict all people of the world. The President is able to galvanize not only American public support but support around the world because of the moral clarity of that purpose.

Terrorism is evil. It has to be defeated. There is no compromise with it. Therefore, at some point in time you have to choose to be with us or against us in fighting it. You cannot remain on the sidelines. You cannot be neutral about something that is so terrible.

Therefore, it is critical for leaders in the United States to keep reminding people of the fundamental, clear rationale for American action. When we get back to that clear, fundamental rationale of good versus evil, then we can see clearly how the principle applies in other situations. The other situation that we are referring to today is the situation in the Middle East in which certain terrorists, who are Palestinian by and large, are attacking innocent civilians who, by and large, are Israeli citizens in a way which is clearly evil: Terrorism against innocent people.

No amount of testimony temporizing or rationalizing or expression of grievance or pointing of fingers or anything else can change that fundamental fact. Unless we are able to look at this that clearly, it is possible to become confused, to begin to support compromises, to begin to suggest negotiations of fundamental principle. All of those things are a slippery slope which lead to disaster, which do nothing but ultimately demonstrate to terrorists that there is hope for them in their terror.

As was pointed out by former Prime Minister Netanyahu, the key to fighting terrorism is to remove the hope that terrorists have that by conducting this evil enterprise, they can actually succeed in what they are attempting to achieve. Once that hope is removed, then reasonable people can discuss reasonable solutions to the real problems of Palestinians and Israelis, a Palestinian State can be created and all of the things that right-thinking people in the region hope for can come to pass. But that is not possible as long as a small group of people believe and hope that they can achieve their radical aims through the means of terror.

That hope has to be removed. It will not be removed if leaders of the world temporize and suggest that you can reach accommodations with these people for one reason or another, in one way or another. That hope can only be realized if there is a continuing commitment to a clear principle that terrorism is wrong; you cannot compromise with it. You have to face up to it. Tough. Deal with it. And if that means that the United States has to support the Government of Israel in rolling back the terror that it has been faced with, then so be it. That is our goal as much as it is Israel's goal.

This amendment gets back to that first principle and expresses the United States commitment not only to fight the war on terrorism but to join others who are doing so, such as our good friend and ally, Israel. That is what this amendment brings us back to—moral clarity, as the Senator from Connecticut just said.

We have to be clear-eyed in our fight here or the rest of the world is not going to support us. They will view our effort as unclear, as compromisable, and, therefore, one which is not assured of victory. It will only be assured of victory if we hold this beacon out here that we are going to continue to pursue, which is clear, which is unassailable from its moral perspective. If we remain true to that, then we will be victorious in this war of terror and the good people of Israel will be happy for that future as well.

I commend my colleagues for bringing this amendment to the floor, and I very much look forward to supporting it with my vote.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Chair.

I want to commend my colleagues, the Senator from Connecticut, Mr. LIEBERMAN, and the Senator from Oregon, Mr. SMITH, for putting together this amendment. I will say first, I want to take my hat off to both of them. There have not been two Senators who have been more stalwart and more farsighted and stronger in their support of what is right in the Middle East. I think it is great that we are considering this amendment. I think it is timely, and I really do again wish to commend both Senator LIEBERMAN and

Senator SMITH not only for this amendment but for their strong, unwavering support on this issue.

Let me say first that I read the amendment and I said, finally. Because it is almost as if the rest of the world sees the Middle East through a kaleidescope that changes everything upside down: right becomes wrong, wrong becomes right; defending yourself is worse than committing the offense; terrorism is explainable, and you sympathize with it. And yet you can justify—and so many do, not just Palestinians but in the rest of world—shooting a 5-year-old girl in her bed, taking a bomb and bringing it to a discotheque filled with teenagers, filled with life and hope, and it seems the rest of the world is bending itself and contorting itself to understand why that has happened instead of looking at the world as it is and saying the beleaguered nation here is Israel.

That is the bottom line. That is what this amendment talks about in part. That is the truth.

I was at a department store a few weeks back and two gentlemen came over to me and said: Senator SCHUMER, we like your policies, but we really don't agree with Israel. When we got into it, they said: Why would young people kill themselves unless they were truly aggrieved? I said to them: Do you believe that about Mr. Atta and the 19 hijackers; do you believe that about Osama bin Laden and all of those he asks to kill themselves? Just because somebody will take extreme means does not mean they are right. And to some, particularly some of my friends at the far left side of the political spectrum, there is almost a knee-jerk reaction in that regard. This amendment sets things straight. Let me make a couple of points about it.

First, the war on terrorism is the world's war on terrorism. We cannot make an exception. Once we make one exception, there are others.

What is terrorism? We all know what it is. It is deliberately killing innocent civilians within a nation's homeland. The bottom line is simple: If you condemn terrorism in Afghanistan, if you condemn terrorism in Europe, and if you condemn terrorism in Asia, it is inexorable; to be consistent, you must condemn it when it is exacted against Israel.

I do not know why so many—the Arab world and particularly some in Europe—seem to have a double standard and seem to believe that terrorism is intolerable in the rest of the world and when directed at them, but it is OK to be directed at Israel.

My second point is, we have to face a hard truth, I say to my colleagues, and that is this: A vast majority of Israelis want peace and want to live side by side in peace—no violence—with the Palestinians. Unfortunately, I do not think it is true on the other side.

A majority of Palestinians—there is a minority who do—do not believe in the State of Israel. They have been taught by the Palestinian Authority and Yasser Arafat that all of Israel is theirs. The Palestinian Authority textbooks show not just Jerusalem, but Tel Aviv, Ashdod, Ashqeion, cities on the coast, as belonging to the greater Palestine. Add that to the fact they believe terrorism is a proper means to achieve their goal, and peace is almost impossible.

Unless that attitude is pushed back, as this amendment attempts to do, I do not think you can achieve peace.

Third, as this amendment states, Israel has every right to defend herself. Who would ask any nation when every day the bombs were going off in pizza shops, on buses, in streets, to understand and sit down and talk with the very people who, if they did not create the bombings, allowed it to occur and were joyous when they did occur—who would ask any nation to do that? No. Why are some—thank God not too many in this country—why are some saying that is OK?

This amendment tries to restore some balance. When Israel defended herself against these suicide bombings—and thank God thus far it seems successful; there are still some, but not every day, not with the same horrible consequences of the earlier ones—she did so in a careful way. She did not bomb from the air. Even in Jenin, the Israeli soldiers knocked on doors: Is there anyone here? Please get out; you may be in danger. I do not know of many countries that would do that, and that does not seem to even get recognized.

Another point is the U.N. The U.N. sets itself up as an arbiter of peace when it wants to and then resumes its one-sided actions. We have one Israel and one United States and just about no one else in the United Nations understanding the fairness and balance that need to be done. But when Israel says she does not want the United Nations to set itself up as an impartial arbiter, who can blame Israel? I know Mr. Kofi Annan, but I have been terribly disappointed in his failure to be evenhanded as he proceeds.

I have one criticism of this amendment. I am fully supportive of it. I am a cosponsor. But I think the amendment is missing six letters—A-R-A-F-A-T. We should be naming Yasser Arafat in this amendment because the bottom line is, Yasser Arafat, as everyone admits, as our own President has spoken, is not an implement to peace; he is an obstacle to peace.

Dennis Ross, President Clinton's previous adviser who labored so hard to produce a peaceful solution, afterward said—and he said it repeatedly and now has said it publicly—that their biggest mistake was relying on Yasser Arafat.

Yasser Arafat is in charge of the Al Aqsa brigade which our country has branded a terrorist organization. Yasser Arafat cheers the homicide bombers who blow themselves up and take innocent people with them. Yasser Arafat had to be told by our Secretary of State to say the same thing in Arabic and English. If that is not saying you speak with duplicity and forked tongue, what is?

He has to be asked to step up to the plate, and I hope that as this amendment wends its way through the process, we will explicitly mention him by name because, at the very minimum, he is like the Taliban, and probably he is more like al-Qaida itself. We cannot let him slip away from this inexorable equation that terrorism is bad and if you are not against it, you are not on our side. With Arafat it is even worse, because he is for it and uses it as an instrument to policy.

This is a fine amendment, and I am proud to support it. As I say, I wish it had explicitly mentioned Yasser Arafat who has been an obstacle to peace. But the beauty of this amendment, the strength of this amendment is it does restore some right to what every fair-minded person sees as going on in the world. I thank my colleagues for doing it.

I have one final point. This backward vision of so many is confounding. When I read in the newspaper that there was an attempt to take the Nobel Peace Prize away from Shimon Peres but not Yasser Arafat from some on the Nobel committee, I had to scratch my head and wonder: What is going on in so much of the world and why isn't even a bit of truth seen?

This amendment I hope will be read not only by our colleagues and American citizens but by citizens throughout the world because it does restore some fairness and balance, particularly at a time when beleaguered people, the Israelis, are trying to defend themselves against the evil force of terrorism.

Mr. INHOFE. Will the Senator yield?

Mr. SCHUMER. I will be happy to yield.

Mr. INHOFE. Mr. President, quite often we are not together on legislation. In this case, we are. It was my wish we would have a stronger amendment. There was one in the House that mentioned Yasser Arafat. I think we should be mentioning Yasser Arafat.

We are in a war on terrorism. He is a terrorist. Sometimes we forget that in 1973 he gunned down three of our diplomats, including our U.S. Ambassador. He fits every description, every definition of a terrorist. All of us need to rise up and fight our battles, including Israel. This amendment is not strong enough, but I do support it.

Mr. SCHUMER. I thank my colleague. It is a fine amendment. I wish it mentioned Yasser Arafat, but I am fully in support of this amendment.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I join other colleagues in commending our distinguished junior Senator from the State of Connecticut, with whom I am privileged to serve on the Senate Armed Services Committee, for his

leadership, and my colleague from Oregon for his service on the Foreign Relations Committee and for taking this initiative.

This is done in a true spirit of bipartisan leadership in our wonderful Senate. It comes at a timely moment. I am pleased to be a cosponsor because I firmly believe the portions of this amendment that relate to this conflict are well stated and should be studied and read by all.

I am grateful that the leadership of the Senate, in my understanding, working with the executive branch, has decided it is timely for the Senate to act on this particular amendment. As I have often noted, the executive branch proposes, but the Congress disposes. In matters of foreign policy, however, the President has a principal role in guiding the affairs of the United States, and the Congress should follow his lead, wherever possible. Timely, informed debate about matters, such as the one before us, that include divergent views and new ideas are intended to assist the executive branch as they perform their challenging, often daunting responsibilities.

I rise today to express my profound and growing concern about the conflict between Israel and the Palestinian people, and to express my support for the amendment before the Senate, which recognizes that Israel is engaged in an all-out war against terrorism in its homeland.

Implicitly, the amendment recognizes the loss of life and the human suffering of both sides of this conflict. I feel strongly that this current conflict is of such gravity as to demand the attention of Congress and, most specifically, the Senate, and also demands our most valued resources and our best possible effort.

There is an ill wind blowing out of the Middle East that we have not experienced before. We have seen conflict, indeed, for centuries. But this one is different. It is a force that could fan the flames of conflict out of control, unless we act soon to stop this unending violence and human suffering.

All of us have listened for years as this problem has erupted from time to time. We have discussed it and debated it. The unfortunate end of much of this discussion is a grim resignation by some that this is an insoluble problem. I do not believe it is insoluble. We cannot accept that as an answer, and I join those who refuse to recognize it as unsolvable. But it is solvable only if we work together for a common solution—only if we put forward our own ideas, which may not be consistent, or expressed, or affirmed by others. That is basically what I am about to do.

I commend our President, the Secretary of State Colin Powell, and Secretary Rumsfeld, with whom a group of us met yesterday, for the persistence this administration has shown and for its leadership role. Understandably, there is a legitimate debate as to whether certain actions they have taken, or not taken, were timely or done in a manner that fully reflects the need to stop this terrible conflict. But I think we can examine the past at another time. It seems to me that, just by keeping both sides talking, our President and the administration are renewing hope in a region that is virtually devoid of any optimism. Hope is important in the near term, but hope is not a method for a long-term solution. Bold ideas are needed, and they are needed now.

Something has changed in this chapter of the long history of conflict in the Middle East, and it is time we recognize it and face up to it and give our best judgment as to how to end it. The anti-Israeli and anti-United States sentiments in the Arab world are stronger than they have ever been before. I have had the opportunity to associate with that part of the world ever since I was Under Secretary of the Navy and first visited there early in 1970–71. Thereafter, I have been back many times. At that time, our Navy put an installation in Bahrain, and I worked on other military installations in the region. I have been back a number of times, as have others.

Unfortunately, certain negative sentiments are growing as young, frustrated Arabs, with few prospects for ever enjoying happiness or opportunities—such as we enjoy in this country or are enjoyed elsewhere in the world—believe all is lost. They have a distorted image and understanding of the Israeli people and the need for the Israeli people to live safely within the safe, recognized borders.

The recent suicide bombings are something that I personally have difficulty comprehending. Only once before in history can I recall this scale of suicide, and that was in the closing months of World War II. I was a young sailor in a training command and we witnessed from afar the tragic suicide operations in the Battle of Okinawa, where Japanese pilots were strapped into their aircraft and their aircraft were used as missiles, devouring them and their lives. That was a tragic chapter in the war in the Pacific. It was shortly thereafter that President Truman made the decision to end that war as quickly as possible, utilizing means that we all recognize now.

Unfortunately, the negative sentiments in the Arab world that foment irrational suicides and other radical actions are growing and we have to do everything we can to reverse it. If we do not act to preserve the will of the vast majority of peoples in the Middle East, the radical minorities may well gain further advantage, and that we cannot allow. The result would be increased killing, and, indeed, it threatens to undermine the position of the United States in that part of the world—a position that many administrations have worked hard on, and that many individuals have conscientiously worked on over the years. We cannot allow that to be further eroded. Our position in the Middle East and our ability to successfully wage war against terrorism globally is at stake. I share these thoughts with my colleagues.

There has been no shortage of experts and observers offering opinions and ideas for ending the violence and solving—or at least mitigating—this crisis. I add my voice with this idea: First and foremost, we must foster in every way possible a cease-fire. Clearly, this has been elusive in the past, and other cease-fires have lasted only for brief periods. But this one must take on a permanence. The Israelis want the acknowledged right to exist in the region within safe and secure borders. The Palestinians want an independent state. The Bush administration has stated its support for both goals. I commend our President. This must be the basis of any cease-fire.

At the time of the cease-fire, of course, the parties must attempt, in good faith, to reconcile the many differences that exist. That will take time and careful, conscientious negotiations. During that period of negotiation, there must be stability in that region. By stability, I mean stopping the suicide bombings, stopping the incursion of armored vehicles into the areas where the Palestinians live. That must be maintained, for an indefinite period, while the negotiations take place. To guarantee that this cease-fire is effective, it is my hope that there will be a recognition by both the Palestinians and the Israelis of the need to have an outside, independent, objective force—call them peacekeepers—come in and establish a cessation of the conflict, such that conscientious negotiations can take place—establish a cessation of the conflict so one cannot resume the conflict in order to gain some point or points in the course of the negotiations. It must remain absolutely static until the negotiations have run their course—hopefully successfully—with the conclusion that will be accepted by both sides in the form of a peace agreement, or treaty, or whatever the case may be.

Those are the two fundamentals—a cease-fire and a willingness by both sides to recognize that an independent, impartial force must come in for peacekeeping purposes. It must be at the invitation of both sides. You cannot thrust such a military force upon either side. It has to be jointly accepted.

Now, who should undertake that? Others have their views, and I have mine. I feel very strongly—and this is not a well-received thought at the moment, but it should be considered—that the NATO forces are the logical, best force to come in at this time, following the cease-fire and the willingness of both parties to accept outside military forces.

They are the best choice because, No. 1, they are trained and they are ready to go on short notice. They are trained in peacekeeping—Bosnia and Kosovo being examples.

It represents 19 nations, so the coalition is in place. Any other peacekeeping option would require building a political coalition, which would require considerable time. We have to act promptly. We have to move with trained forces, and we have to move with a coalition that has been in place and has the internal structure, command, and control to take on this serious and very difficult mission.

NATO troops, as I said, are ready to roll. NATO is an established coalition, as I mentioned, with a proven record of success.

Then there is the added advantage—and again this is my own thought—there is a perception that the United States has a bias towards only the Israeli perspective in this conflict, and I am not going to try and reconcile that now. Indeed, we value a strong relationship with the State of Israel and we have done so for a very long period of time, and we will continue, in my judgment, to do that.

On the other side, there is a perception that the European nations have a bias in favor of the Palestinian interests. I am not here to debate that.

To me, there is an advantage to bringing the United States and our NATO partners in Europe together to assume responsibility, with their military forces, for the peacekeeping mission. To me, that would lessen some of the debate on which side has a perception that the other side is not looking at this conflict in a manner that truly will resolve it, resolve it such that both parties can accept eventually a peace agreement.

In April of 1999, at its 50th anniversary summit in Washington, DC, NATO adopted a new strategic concept which expanded NATO's responsibilities in overall global security issues. I will read from it. This is found in part 1, paragraph 10 of the strategic concept adopted roughly 23–24 April 1999. I remember it well. I was not entirely in favor and so expressed my concerns about NATO moving beyond what I felt was the parameters of the original charter. The strategic concept identifies the ''fundamental security tasks'' of NATO and includes in those tasks to do the following: '' . . . to stand ready to contribute to effective conflict prevention and to engage actively in crisis management, including crisis response operations.'' I read directly from the document.

The current situation, in my judgment, demands immediate concern and support for all those who want a civilized, peaceful future in the Middle East. Decisive action is now called upon. This is a concept that should be carefully considered in the course of the days and weeks to come as we work to achieve a cease-fire and then in working for a peaceful solution.

I also will read from two articles that appeared in the press. One on Wednesday, April 17, Wall Street Journal, by Eliot Cohen, ''Keepers of What Peace?'' he states a position contrary to mine:

As an alternative, there is more and more talk of sending American troops, possibly as part of an international operation, to separate the two sides and keep the peace. Such notions have been bruited about before, most notably on the Golan Heights, but never in this context. It is an appallingly bad idea.

Peacekeeping works best under one of two situations: When both sides want the peacekeepers to ratify a cease fire line or boundary that both can live with almost indefinitely as, for example, Cyprus, or once one side has been decisively beaten, as in today's Yugoslavia. Peacekeeping is not like normal military activities.

I ask unanimous consent that the entire article be printed in the RECORD.

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

[From the Wall Street Journal, Apr. 17, 2002]

KEEPERS OF WHAT PEACE?

(By Eliot Cohen)

The viciousness of the Israeli-Palestinian war that erupted a year and a half ago following the collapse of a decade of assiduous mediation by the United States and others has given birth to a number of bad ideas for restoring peace. Most of these involve invocations of the Tenet and Mitchell plans, whose texts few have read, but which are premised upon some degree of Israeli-Palestinian trust. Such confidence does not, and cannot exist in the near-term.

As an alternative, there is more and more talk of sending American troops, possibly as part of an international operation, to separate the two sides and keep the peace. Such notions have been bruited about before (most notably on the Golan Heights), but never in this context. It is an appallingly bad idea.

Peacekeeping works best under one of two situations: When both sides want the peacekeepers to ratify a cease-fire line or boundary that both can live with almost indefinitely (as, for example, in Cyprus), or once one side has been decisively beaten (as in today's Yugoslavia). Peacekeeping is not like normal military activity. Soldiers preparing to fight try to be stealthy, collect intelligence clandestinely, and devise ways to surprise an enemy with sudden and effective violence. Peacekeepers must be visible, have communications that are largely transparent to both sides, and avoid surprise while using minimum violence.

It is, despite what some say, a job for soldiers, but a job for specially trained soldiers and one which often interferes with their preparation for combat. It is a draining effort, as well: the rule of thumb has it that for every peacekeeper, another two soldiers are tied up, either preparing to deploy or recovering from deployment. When one takes into account the various forms of support needed for peacekeepers in the field a more realistic ratio is five to one.

To be sure, what we now call peacekeeping is a necessary military function at some times—it is important today in Afghanistan and Yugoslavia, as it was half a century ago in Germany and Japan. But no one should doubt the level of effort it would require—an increase in military end strength of 100,000 or more troops would not be an unrealistic estimate of what it would take. More importantly, though, Israel and the Palestinian territories are profoundly unripe for such a venture.

Between Israel and the Palestinian Authority there is no trust, no agreed demarcations of a cease-fire line, let alone a boundary. The threat to security comes not, on the Palestinian side, from a regular armed force with which one can have conventional liaison relationships, but from several shadowy organizations, several of which operate independently of the Palestinian Authority.

One conundrum of the current war is Yasser Arafat's degree of control of terror in areas controlled by the Palestinian Authority. If he has control, it is obvious that he has approved and supported the repeated attacks on Israeli civilians over the past year and a half (a view which captured documents and other intelligence seems to confirm). If he does not have control, the peacekeepers would have to establish it themselves.

To do that, if they were serious, would involve doing just what the Israelis are doing now on the West Bank, but with fewer resources, less local knowledge, and infinitely less will-power. The more likely alternative is not to be serious—that is, not to intercept or preempt terrorists.

Thus arises the ultimate problem with any of the solutions floated by the European Union, in particular: what to do if one side simply does not play along. What happens if terrorist attacks on Israel were to continue, which they almost certainly would? Would the external powers expect the Israelis to absorb them? Would they permit retaliation, and, if so, of what kind? Until those who propose such plans can come up with a realistic proposal for what would happen in the face of an aggressive campaign of terror waged despite the presence of an international peacekeeping force, they cannot be taken seriously.

Nor should the technical problems be brushed off. Israel is a small place, about the size of New Jersey, but the intercommunal boundary with Palestine is hundreds of kilometers long. The inability of even the Israeli Defense Forces—a manpower-rich force that draws on universal male and female conscription, plus a sophisticated reserve system—to prevent Palestinian infiltration is sobering. Tens of thousands of troops would be required to make it all work, and even then only by imposing an obtrusive presence that would attract, in the end, its own resentments and hostility from the local population. One should note, of course, that the extreme hostility expressed by most Palestinians towards the United States, and the political interest of groups like Hamas and Islamic Jihad give them every reason to target American peacekeepers for violence.

We have been here once before. The place was called Beirut, the year was 1983, and it took 241 dead Marines to teach us the lesson that peacekeeping in the midst of a shooting war waged by terrorist groups using suicide bombers is folly. We would be better advised to recognize war for what it is, and to understand that, however terrible it may be, there are times when the logic of war has a hold which even the best of intentions cannot break. Indeed, hard as it may be to accept, there are times when well-intentioned measures can only make matters worse.

Mr. WARNER. Another view that was expressed in the New York Times on April 3 by Thomas Friedman states as follows:

President Bush needs to be careful that America does not get sucked into something very dangerous here. Mr. Bush has rightly condemned Palestinian suicide bombing as beyond the pale, but he is not making clear that Israel's war against this terrorism has to be accompanied by a real plan for getting out of the territories. Why? Because President Bush, like all other key players, does not want to face the central dilemma in this conflict, which is that while Israel must get out of the West Bank and Gaza, the Palestinians cannot at this moment be trusted to run those territories on their own, without making them a base of future operations against Israel. That means some outside power has

to come in to secure the borders, and the only trusted powers would be the U.S. or NATO.

Of course, the United States would be a vital complement of NATO.

The only solution is a new U.N. mandate for U.S. and NATO troops to supervise the gradual emergence of a Palestinian state, after a phased Israeli withdrawal, and then to control its borders, says the Middle East expert Stephen P. Cohen.

People say that U.S. troops there would be shot at like U.S. troops in Beirut. I disagree. U.S. troops that are the midwife of a Palestinian state and supervise a return of Muslim sovereignty over the holy mosques in Jerusalem would be the key to solving all the contradictions of U.S. policy in the Middle East, not new targets.

I ask unanimous consent to have the entire article printed in the RECORD.

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

[From the New York Times, Apr. 3, 2002]

THE HARD TRUTH

(By Thomas L. Friedman)

A terrible disaster is in the making in the Middle East. What Osama bin Laden failed to achieve on Sept. 11 is now being unleashed by the Israeli-Palestinian war in the West Bank: a clash of civilizations.

In the wake of repeated suicide bombings, it is no surprise that the Israeli Army has gone on the offensive in the West Bank. Any other nation would have done the same. But Ariel Sharon's operation will succeed only if it is designed to make the Israeli-occupied territories safe for Israel to leave as soon as possible. Israel's goal must be a withdrawal from these areas captured in the 1967 war; otherwise it will never know a day's peace, and it will undermine every legitimate U.S. effort to fight terrorism around the globe.

What I fear, though, is that Mr. Sharon wants to get rid of Mr. Arafat in order to keep Israeli West Bank settlements, not to create the conditions for them to be withdrawn.

President Bush needs to be careful that America doesn't get sucked into something very dangerous here. Mr. Bush has rightly condemned Palestinian suicide bombing as beyond the pale, but he is not making clear that Israel's war against this terrorism has to be accompanied by a real plan for getting out of the territories.

Why? Because President Bush, like all the other key players, doesn't want to face the central dilemma in this conflict—which is that while Israel must get out of the West Bank and Gaza, the Palestinians cannot, at this moment, be trusted to run those territories on their own, without making them a base of future operations against Israel. That means some outside power has to come in to secure the borders, and the only trusted powers would be the U.S. or NATO.

Palestinians who use suicide bombers to blow up Israelis at a Passover meal and then declare ''Just end the occupation and everything will be fine'' are not believable. No Israeli in his right mind would trust Yasir Arafat, who has used suicide bombers when it suited his purposes, not to do the same thing if he got the West Bank back and some of his people started demanding Tel Aviv.

''The only solution is a new U.N. mandate for U.S. and NATO troops to supervise the gradual emergence of a Palestinian State—after a phased Israel withdrawal—and then to control its borders,'' says the Middle East expert Stephen P. Cohen.

People say that U.S. troops there would be shot at like U.S. troops in Beirut. I disagree. U.S. troops that are the midwife of a Palestinian state and supervise a return of Muslim sovereignty over the holy mosques in Jerusalem would be the key to solving all the contradictions of U.S. policy in the Middle East, not new targets.

The Arab leaders don't want to face this hard fact either, because most are illegitimate, unelected autocrats who are afraid of ever speaking the truth in public to the Palestinians. The Arab leaders are as disingenuous as Mr. Sharon; he says ending ''terrorism'' alone will bring peace to the occupied territories, and the Arab leaders say ending ''the occupation'' alone will end all terrorism.

Like Mr. Sharon, the Arab leaders need to face facts—that while the occupation needs to end, they independently need to address issues like suicide terrorism in the name of Islam. As Malaysia's prime minister, Mahathir Mohamad, courageously just declared about suicide bombing: ''Bitter and angry though we may be, we must demonstrate to the world that Muslims are rational people when fighting for our rights, and do not resort to acts of terror.''

If Arab leaders have only the moral courage to draw lines around Israel's behavior, but no moral courage to decry the utterly corrupt and inept Palestinian leadership, or the depravity of suicide bombers in the name of Islam, then we're going nowhere.

The other people who have not wanted to face facts are the feckless American Jewish leaders, fundamentalist Christians and neoconservatives who together have helped make it impossible for anyone in the U.S. administration to talk seriously about halting Israeli settlement-building without being accused of being anti-Israel. Their collaboration has helped prolong a colonial Israeli occupation that now threatens the entire Zionist enterprise.

So there you have it. Either leaders of good will get together and acknowledge that Israel can't stay in the territories but can't just pick up and leave, without a U.S.-NATO force helping Palestinians oversee their state, or Osama wins—and the war of civilizations will be coming to a theater near your.

Mr. WARNER. What I propose today is the idea of one Senator, shared by some and disagreed by others, but I do hope it is worthy of consideration by those who will undertake to resolve this conflict. Again, I thank the sponsors.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I rise in support of this amendment being offered by Senator LIEBERMAN and Senator SMITH of Oregon and so many others on a bipartisan basis. This is an important amendment, and it is a timely amendment, dealing with the Middle East. It is brief, but it gets to the point in a hurry. It says clearly what our principles of conduct should be and establishes standards and values which I believe the vast majority of Americans would agree.

I commend those who authored this very thoughtful and prudent amendment. It is presented to us in words and terms that are not inflammatory. We are doing our best at this level to express our solidarity with Israel, without in any way jeopardizing the efforts of the Bush administration or others to try to find peace in the Middle East.

It is important that our voice be heard, that the Senate pass this amendment, and the people across America and around the world who would take note of it understand why we are doing this.

In the morning hours of September 11, America was awakened to the reality of terrorism. The calm and safety of our great Nation was broken by explosion, bloodshed, and death. Our lives were changed forever on that day by the senseless violence. Our hearts were broken by the deaths of thousands of innocent Americans. You can still see, to this day, the full page of the New York Times every single day, since September 11, with the photographs and biographies of the victims. Our Nation was united, though, by this event. We were united to protect our people and to stop the threat of terrorism.

September 11, 2001, is a day in our history that America will never, ever forget. In Israel, each dawn seems to bring September 11—another horror, another tragedy, to a nation which bears its grief as a lifetime burden.

A city bus in Jerusalem was lifted 2 feet off the street by a powerful bomb, killing and maiming innocent passengers. A bar mitzvah in Tel Aviv, a seder in Netanay, was ripped by explosions, leaving a trail. This last weekend in Adora, 5-year-old Danielle Shefi was gunned down in her home, in her bed, in front of her mother by a Palestinian gunman.

Today we gather as Americans, as Senators, as survivors of September 11 to consider this important amendment, and with it to tell our friends in Israel: You will not grieve alone; you will not stand alone; you will not fight terrorism alone. From the moment Israel became a sovereign nation, the United States of America has stood by its side. And from that same moment, Israel has stood by the side of the United States. We are allies. We are friends. We are brothers and sisters in this battle for peace and an end to terrorism.

Our Nation believes the people of Palestine should have a safe and sovereign land but not at the expense of the safety and sovereignty of Israel. We believe the Palestinians deserve a voice in deciding their destiny, but that voice cannot be the roar of a suicide bomb killing innocent children. We believe the Palestinians deserve real leadership.

Recall for just a moment the brief history leading up to the current state of events when President Clinton, in his closing days in office, brought then-Prime Minister Barak to Camp David, along with Chairman Arafat, in a desperate last-minute effort in his administration to try to finally forge peace in the Middle East. They debated back and forth. They bargained for days at a time. They left and went back to the Middle East, those two leaders, and in Taba had a follow-up meeting to talk about details. When it was all done, when it was finished, 97 percent of the

disputed territory between the Palestinians and the Israelis had been resolved after 50 years of fighting, 50 years of an impasse and that much progress was made.

What happened? Chairman Arafat and the Palestinian Authority rejected that peace offering, rejected that peace agreement. And they didn't answer it with a strong letter. They answered it with violence in the street, the beginning of terrorism against the people of Israel. They rejected the peace agreement propounded by President Clinton and Prime Minister Barak and answered it with violence.

There were doubts in the minds of some as to whether the Israeli people would have even agreed to this, it was so broad, so sweeping, with 97 percent of the territory resolved. Yet Prime Minister Barak had the courage to come forward and say: I am prepared to put my political future on the line and offer it to the Israeli people. And he was rejected by the Palestinian side. And they answered with violence.

The ensuing election is now a matter of history. Mr. Barak lost to Mr. Sharon with the most overwhelming majority in the history of Israel. So if Chairman Arafat and the Palestinian Authority want to point a finger of blame at Ariel Sharon, they should be ready to acknowledge that they brought him to power. They did it with their response to this offering, this overture of peace.

I was in Israel this last January and had an opportunity to meet with many of the leaders before I came to Israel. While I was there, people from our Embassy and intelligence sources told me about the shipment of the *Karine A*. This was a ship intercepted by the Israelis carrying 50 tons of military armaments to the Palestinian Authority, with new rockets that made the whole nation of Israel vulnerable for the first time to rocket attack and 2,000 kilograms of C–4 plastic explosives, the weapon of choice of suicide and homicide bombers.

It was because of that shipment that I made a conscious decision not to meet with Chairman Arafat while I was there. I could not believe that as an American I could stand with President Bush in condemning terrorism and those who harbor terrorists and then turn a blind eye to this armed shipment.

So we stand today with a violent situation in the Middle East, one that needs to be resolved in peace. Let the violence and terrorism come to an end immediately. Let all innocent victims, whether they are Israelis or Palestinians, know that tomorrow is a safer day. Let the United States show the leadership needed to make certain we move toward peace in the Middle East. But never should we turn our back on the fact that poor Israeli citizens have been victimized by the same type of careless terrorism and violence we saw on September 11 in this Nation.

I sincerely hope the leadership will come forward to make this happen. We believe today as we have from the moment the nation of Israel came into existence that the Jewish people have a right to a homeland, that Israel and its people have a right to be safe and secure, that Israel and the United States are bound together in a commitment to democracy, freedom, tolerance, and peace. I hope this amendment and this debate will move toward negotiations and lasting peace.

Mrs. BOXER. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mrs. BOXER. I have a brief statement. It has to do with part of this amendment that I think is so crucial. I thank my friend for offering it so carefully. It calls on Arab States to condemn the suicide bombing.

Mr. SPECTER. Regular order, Mr. President.

The PRESIDING OFFICER. The Senator can yield for a question.

Mrs. BOXER. I am going to ask a question in about 15 seconds, if my friend allows me to pose it.

I am stunned that we have heard few voices from the Arab States. I ask my friend this, as he voted, as did all my colleagues in the Senate, for a resolution expressing our horror at the women suicide bombers. I wonder if the Senator is struck by this deafening silence and how he felt when Mrs. Arafat said if she had a son, in fact, it would be an honor for that son to die. It is a stunning statement.

Mr. SPECTER. Regular order, Mr. President.

Mrs. BOXER. I wonder if the Senator feels the same?

Mr. DURBIN. I will answer briefly because the Senator from Pennsylvania has been waiting patiently.

I have to say to the Senator from California that I am taken aback by the fact that people have not come forward to condemn the violence and terrorism on both sides.

When I was in Egypt and faced the press, they looked at me incredulously when I described to them that we saw happening in the Middle East as the same kind of violence as September 11. They could not understand the connection. I think Americans understand that connection.

I hope with this amendment we can move toward a peaceful outcome in this sad and bloody chapter of the violence in the Middle East.

I yield the floor.

Mr. SPECTER. I called for regular order for those who might be watching because it is the practice of the Senate to arrive and wait a turn. I conferred with the principal sponsor, Senator LIEBERMAN, and was queued up behind Senator DURBIN.

It is not an uncommon practice for Senators, under the guise of a question, to make speeches. While the Senate permits a question to interrupt a speaker, or when I have sought recognition, the rules of the Senate do not permit speeches. I think we had a speech and that is why I twice asked for regular order in accordance with the decorum of the Senate to take a turn.

Mr. WELLSTONE. Will the Senator yield for a request I want to make to be allowed to follow the Senator?

The PRESIDING OFFICER. Does the Senator yield?

Mr. SPECTER. I am happy to yield for a question.

Mr. WELLSTONE. I ask unanimous consent I be allowed to follow the Senator from Pennsylvania.

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

The Senator from West Virginia.

Mr. BYRD. Reserving the right to object, I do not want to object. I have a committee hearing on homeland security to begin at 2:30, and I believe the Senator from Pennsylvania has the floor; does he not?

Mr. SPECTER. I do, Mr. President.

Mr. BYRD. I had hoped to speak before that hearing. I don't think I will be able to because the Senator from Pennsylvania has the floor and the distinguished Senator from Minnesota wishes to speak. I don't want to be late for my own committee hearing. I have say to the Senate, the Members of the Senate, I want to speak on this Resolution before it passes. So the Senate is on notice of that fact. My speech won't be long, but I have a few things I want to say. I thank the Senator for allowing me to proceed.

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

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I commend the Senator from Connecticut, Mr. LIEBERMAN, and the Senator from Oregon, Mr. SMITH, for bringing forward this amendment because it is important that there be a unified fight against terrorism. The suicide bombers who have threatened Israel are identical to the suicide bombers who struck the United States on September 11, 2001. The only difference is that the suicide bombers on September 11th were a little more sophisticated. They hijacked planes and they flew them into the World Trade Center Towers. One, I think, was headed for the Capitol of the United States, the one which went down in Somerset County, Pennsylvania. One was headed for the White House, the one which struck the Pentagon.

The situation today in Israel is one of abject terror, and I can testify to that personally because I was in Israel in late March. In fact, I was there on March 26, 2002, and visited Chairman Arafat in his compound on the evening of March 26, leaving there close to midnight. The next day there was the suicide bombing at the Passover seder in Netanya.

Being in Israel is a terrifying experience, simply stated. There are suicide bombings in buses, suicide bombings in restaurants, suicide bombings at checkpoints, and suicide bombings on the streets. There is an undeniable right of self-defense under those circumstances. That is the essence of

what the Lieberman-Smith amendment calls for.

People talk about the cycle of violence. I do not think it is a cycle because that suggests there is some sort of mutuality. The suicide bombers provide the violence. The Israeli response is a matter of self-defense.

We face an imminent threat in the United States. We get alerts from time to time. I think President Bush's statement, which is cited in this amendment, is worth repeating. He said, on November 21, 2001:

> We fight the terrorists and we fight all of those who give them aid. America has a message for the nations of the world. If you harbor terrorists, you are terrorists. If you train or arm a terrorist, you are a terrorist. If you feed a terrorist or fund a terrorist, you are a terrorist and you will be held accountable by the United States and our friends.

What the Senate is saying in this amendment is that we are going to hold the terrorists accountable and we are going to stand with Israel in its fight against terrorism.

I know Senator BYRD wishes to make a presentation in advance of his hearing and Senator WELLSTONE has asked for recognition, so I am going to limit my comments to these 4 minutes and yield the floor.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Minnesota.

Mr. WELLSTONE. I say to my colleague from Pennsylvania before he leaves, Senator BYRD has now gone to the hearing. If my colleague needs to continue, I will wait. Senator BYRD has actually now gone to committee. I am pleased to speak now but I want my colleague to be clear on the situation.

Mr. SPECTER. Mr. President, I thank the Senator from Minnesota. I thought Senator BYRD was going to speak and therefore, I limited my comments.

I would make one additional observation.

Mr. WELLSTONE. That is fine.

Mr. SPECTER. The additional observation is that the amendment is sanguine in calling for assistance from Saudi Arabia. It is my hope that the Saudis will pursue their initiative in normalizing relations with Israel. That is a real breakthrough. I was pleased to see that Syria followed the Saudi lead.

I had a chance on my trip to the Mideast to talk to Bashar Asad, the new President of Syria. It is very important to set the stage for normalized relations. When there has been agreement on a Palestinian State, which is the principle of Oslo, and when Prime Minister Sharon has agreed on a Palestinian State, it is my hope that the principles of the plans advanced by CIA Director Tenet and former Senator George Mitchell can be carried through and that there can be a discussion of the Palestinian State to provide a framework for hope for the Palestinians.

However, the critical ingredient is normalizing relations. I compliment the President and Crown Prince Abdallah of Saudi Arabia for their meeting—candidly, providing that the Saudis follow through. We should not lose sight of the fact that 15 of the 19 terrorists who struck the United States on September 11th were Saudis, and that Saudi Arabia has also given us Osama bin Laden. The Saudis appear to have been financing some of the terrorists by paying money to their families. In statements on the Sunday news talk shows, representatives of Saudi Arabia did not deny that. In a circuitous way, they said what might be considered to be an admission. So let us hope that the Saudis will provide leadership. Chairman Arafat cannot be relied upon. He writes in disappearing ink.

If there is to be an agreement, it is going to have to be enforced by the moderate Arab States, by Egypt, by Saudi Arabia, by King Hussein of Jordan, and by King Mohamed of Morocco.

This amendment that Senator LIEBERMAN and Senator GORDON SMITH offered is a very important statement. It is tempered and I think it will not adversely affect what President Bush and his administration seek to do. So I, again, commend my colleague Senator LIEBERMAN and my colleague Senator GORDON SMITH, and hope that this will produce a very resounding vote in the affirmative.

I thank my colleague from Minnesota and yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I am going to speak briefly about this amendment. I will vote for this amendment because I believe Israel has a right to address the concerns of its citizens. As Camus once said:

> Murder is never legitimate.

When men and women are murdered at a seder meal, or there is the deliberate targeting of teenagers at pizza parlors, it is not at all surprising that Israel, the Government of Israel, wants to protect its own citizens and will respond.

I support this amendment because I believe it is about Israel's need and right to protect its citizens against terrorism. The amendment also states that many of the Arab States have been silent in the face of this unacceptable violence. I believe they must unequivocally declare their opposition to all forms of terrorism, particularly the suicide bombing, and work with the Palestinians, in concert with the United States, to stop this violence.

I wish also to say something more personal to my colleague from Connecticut. I am, if you will, a son of Israel. I am a first-generation American. My father, a Jewish immigrant, fled persecution. He was born in Odessa, and his family moved to Russia to stay ahead of the pogroms. I remember, as a little boy, watching my parents watch TV, and they would weep when Israel was at war. I never really understood the strong feeling that they had for Israel. I do now.

While the amendment before us affirms Israel's right and freedom to protect its people against terror, I do not read this amendment as an explicit or implicit endorsement of every action that the Government of Israel and its forces have taken in the occupied territory over the last several weeks.

There is a distinction in my mind between affirming my solidarity with Israel and not equating that with support of every policy of the Sharon administration.

I also want to talk briefly about the role of our government. I believe the real test ahead will be whether or not the Bush administration stays engaged in the Middle East.

Over and over again, I have pointed out that I believe Secretary Powell's efforts have been extremely important—that the administration has finally left the sidelines and is on the playing field of Middle East diplomacy. It must stay in the game. Israeli officials say the conditions could worsen in the days to come. We may see more suicide bombings.

But if the Bush administration, facing such an escalation of violence in the region, withdraws, as it has before, history will judge it harshly.

We have to stay engaged. I believe we must pursue a courageous approach which seeks to meet both the critical needs of the Israeli people to be free from terrorism and violence, and acknowledges the legitimate aspirations of the Palestinian people for their own state, a state which is economically and politically viable.

Even in this horrific time, we should not lose sight of what should be our ultimate goal—Israel and a new Palestinian State living side by side with peace and with secure borders. There is no question in my mind—and I could go on for hours about this—about the need to end the culture of violence and the culture of incitement in Palestinian and Arab media, in the schools, and elsewhere. It has gone on for too long.

But I also think it is terribly important that Israel shows respect for and concern about the human rights and dignity of the Palestinian people who are now and will continue to be their neighbors.

It is critically important—I believe this amendment embraces this, and maybe my colleague from Connecticut would like to respond—to distinguish between the terrorists, who must be confronted, and ordinary, innocent Palestinians who are trying to provide for their families and live an otherwise normal existence.

This is a critical distinction. We don't want to see Palestinians subjected to daily and humiliating reminders that they lack basic freedoms and control over their lives.

I have had certain discussions with people, which have been quite painful. I have had people come into my office who have been very critical of what Israel is doing. I listen to them. They

make the distinction between defending against terrorists, and harming innocent civilians—a distinction I agree with—and say repeatedly, what about the innocent Palestinians? I say it is a Jewish thing for me to be concerned about the loss of all innocent lives. But then I say to them, I want you to also talk to me about the loss of innocent Israeli life. I want you to talk to me about the Jews that were murdered at their seder meal.

These are people who feel strongly, and who condemn Israel's actions. When I meet with them, they don't say anything about the murder of Israelis. My God. I wonder why.

I have also met with other people who never utter a word about the loss of innocent Palestinians. This is not an argument about moral equivalency—I know the difference between innocent civilians who are deliberately targeted and murdered, as is the case with suicide bombings, and when they are not deliberately targeted or not deliberately harmed. But if my mother and father were alive, they would be weeping for the loss of innocent Israelis, and they would also be weeping for the loss of innocent life everywhere. They would say: Paul, we want you as our son to express your solidarity for Israel. We love Israel. You are a son of Israel. But we also, Paul, want you to be clear on the floor of the Senate that supporting this amendment—which I do—does not mean it should be viewed as an endorsement of every single, specific policy or action by the Sharon administration.

I thank my colleague.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Senator from Minnesota for his very principled and impassioned statement.

I wish to briefly respond, and in particular say, as a personal statement, that it seems to me it is self-evident and compelling that the only way peace will be established between the Israelis and the Palestinians is when each side recognizes the right of the other to have a homeland there and to live in peace.

That is a personal statement. But it also seems to me that has been at least an implicit, if not an explicit, part of American foreign policy, certainly since the Oslo Declaration of Principles was signed on the White House lawn in September of 1993. It remains to this day a fundamental objective.

As to the claims on both sides and the death on both sides, I think it is so critical, as I believe the Senator was saying, that neither side—this is difficult sometimes in the heat of violence and fear and anger—can be allowed to come to a point where they deny or forget the humanity of everybody on the other side.

There is a famous statement made by Golda Meir, the former Prime Minister of Israel. I will paraphrase it because I don't remember it exactly. She said at one point: We Israelis will someday forgive the Arabs for killing our children. What will be more difficult for us is to forgive the Arabs for forcing our children to kill their children.

That spirit, so eloquently expressed, really should guide our deliberations.

I consider this amendment to be a statement of American principles, a statement of solidarity with our ally, Israel, and a statement that is consistent with the war on terrorism and the doctrine that President Bush has articulated. It is intentionally not in any sense anti-Palestinian. It is antiterrorist. It is intentionally drafted that way with the hope that it will draw the broadest possible support and be an expression of solidarity and an expression of support for Israel's right centrally, fundamentally to defend itself against terrorism.

Mr. WELLSTONE. Mr. President, I thank the Senator for his statement. I think it is a supremely important statement.

As an example of my definition of hope—I had a chance to talk about this at Temple Israel in Minneapolis—is the story of the Israeli man who was one of the Israelis murdered at the bombing of the seder. His organs were donated to save the life of a Palestinian woman. His children said: Our father would be very proud.

I believe this is hope. I say to my colleague from Connecticut and South Carolina, that is the hope. I do not believe I am being naive when I say there are a lot of people—a majority of the people—who understand that we have to get from where we are now to where we all know we need to be. The terrorists will not get us there.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Connecticut.

Mr. LIEBERMAN. I thank my friend from Minnesota. I could not agree with him more. I think what is at issue now is whether we can create a circumstance where the Palestinian leadership will seize the initiative from the suicide bombers, from the terrorists, who have captured it, who have, in that sense, hijacked, as I said earlier in this debate, the legitimate cause of Palestinian statehood. When that happens, I am confident they will meet with an overall majority of the Israeli people who want nothing more than to live in peace and security with their neighbors.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota—South Carolina. Excuse me.

Mr. HOLLINGS. Madam President, I will probably be from South Dakota after I make a few comments because I think the amendment is ill-timed and not in the best interests of the United States and not in the best interests of Israel.

I say not in the best interests of Israel—I agree, with the various items listed in the ''Sense of Congress''—and you can go through (1) through (7)—''(1) stands in solidarity with Israel . . . ''—there is no question about that—''(2) remains committed to Israel's right to self-defense''—and on down the particular seven points.

I do not have to explain it. I have a 35-year voting record for Israel. But as to what the amendment does not say—it is not what it says; it is what is not said that bothers me.

The distinguished colleague from Connecticut talks about the humanity. Well, where is the humanity on the Palestinian side here? That is what we are looking for. Five years from now, 10 years from now, 50 years from now, there is bound to be an Israel. I think there is going to be a Palestine. The task is to get these folks as neighbors living together.

Where is the humanity? This comes at a particularly tenuous time. We just got the President engaged. I say that advisedly. It was an affirmative action plan that we are not going to fool with Israel. All these other Presidents did. Let them do what they are going to do. But we got him engaged.

Now we have Crown Prince Abdullah from Saudi Arabia engaged and visiting. And he is offering, categorically, recognition of the Israeli state. He says Syria and the rest of them—including Egypt and Jordan—will all go along. They all will join in. Some say that is propaganda. Don't give me that propaganda stuff. Let's try it.

We have Secretary Powell making his visits, and then along comes this political amendment. I have been up here a long time, and it would be easier for me to just walk to the desk, vote aye, go home, and not have to answer the phone.

I know because I made a comment in the earlier part of the year that I thought Ariel Sharon was the Bull Conner of Israel. As for Arafat—I think he wants to be a martyr, he wants to be killed, he cannot be trusted.

In any event, I know what it is to be critical. I finally found some solace the other day for saying anything at all.

Here is a column by Richard Cohen, from the day before yesterday in the Washington Post. I ask unanimous consent the article in its entirety 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, Apr. 30, 2002]

WHO'S ANTI-SEMITIC?

(By Richard Cohen)

If I weren't a Jew, I might be called an anti-Semite. I have occasionally been critical of Israel. I have occasionally taken the Palestinians' side. I have always maintained that the occupation of the West Bank is wrong and while I am, to my marrow, a supporter of Israel, I insist that the Palestinian cause—although sullied by terrorism—is a worthy one.

In Israel itself, these positions would hardly be considered remarkable. People with similar views serve in parliament. They write columns for the newspapers. And while they are sometimes vehemently criticized—

such is the rambunctious nature of Israel's democratic din—they are not called either anti-Semites or self-hating Jews.

I cannot say the same about America. Here, criticism of Israel, particularly anti-Zionism, is equated with anti-Semitism. The Anti-Defamation League, one of the most important American Jewish organizations, comes right out and says so. ''Anti-Zionism is showing its true colors as deep-rooted anti-Semitism,'' the organization says in a full-page ad that I have seen in the New Republic as well as other magazines. ''No longer are the Arab nations camouflaging their hatred of Jews in the guise of attacking Israel.''

I feel compelled to pause here and assert my credentials. Few people have written more often about Arab anti-Semitism than I. I have come at this subject time and time again, so often that I have feared becoming a bore. Arab anti-Semitism not only exists, it is often either state-sponsored or state-condoned, and it is only getting worse. It makes the Arabs look like fools. How can anyone take seriously a person who believes that Jews engage in ritual murder?

But that hardly means that anti-Zionism—hating, opposing, fighting Israel—is the same as anti-Semitism, hating Jews anywhere on account of supposedly inherently characteristics. If I were a Palestinian living in a refugee camp, I might very well hate Israel for my plight—never mind its actual cause—and I even might not like Jews in general.

After all, Israel proclaims itself the Jewish state. It officially celebrates Jewish holidays, including the Sabbath on Saturday. It allows the orthodox rabbinate to control secular matters, such as marriage, and, of course, it offers citizenship to any person who can reasonably claim to be Jewish. This so-called right of return permits such a person to ''return'' to a place where he or she has never been. Palestinians must find this simply astonishing.

To equate anti-Zionists or critics of Israel in general with anti-Semites is to liken them to the Nazis or the rampaging mobs of the pogroms. It says that their hatred is unreasonable, unfathomable, based on some crackpot racial theory or some misguided religious zealotry. It dismisses all criticism, no matter how legitimate, as rooted in prejudice and therefore without any validity.

No doubt there has been an upsurge of anti-Semitic incidents in Europe. But there has also been an upsurge of legitimate criticism of Israel that is not in the least anti-Semitic. When Israel recently jailed and then deported four pro-Palestinian Swedes, two of whom are physicians, under the misguided policy of seeing all the Palestinians' sympathizers as enemies of the state, it was an action that ought to be condemned—and the Swedes who have done so ought not be considered anti-Semites.

When the same thing happens to a Japanese physician, that too ought to be condemned—and it was, as it happens, in the Israeli newspaper Haaretz. A column by Gideon Levy made the point that Israel cannot reject and rebut all criticism by reciting the mantra: ''The whole world is against us.''

The same holds for American Jews. To turn a deaf ear to the demands of Palestinians, to dehumanize them all as bigots, only exacerbates the hatred on both sides. The Palestinians do have a case. Their methods are sometimes—maybe often—execrable, but that does not change the fact that they are a people without a state. As long as that persists so too will their struggle.

The only way out of the current mess is for each side to listen to what the other is saying. To protest living conditions on the West Bank is not anti-Semitism. To condemn the increasing encroachment of Jewish settlements is not anti-Semitism. To protest the cuffing that the Israelis sometimes give the international press is not anti-Semitism either.

To suggest, finally, that Ariel Sharon is a rejectionist who provocatively egged on the Palestinians is not anti-Semitism. It is a criticism no more steeped in bigotry than the assertion that Yasser Arafat is a liar who cannot be trusted. That does not make me anti-Arab—just a realist who is sick and tired of lazy labels.

Mr. HOLLINGS. He says, in concluding:

''The only way out of the current mess is for each side to listen. . . .

Nobody in America believes we are not for Israel. It is perfectly obvious. We have given them all the equipment. We have given them the economic aid. We will give them what is necessary. We admire that little country right in the middle of the Mideast, the progress she is making. Yitzhak Rabin could see it. But his own folks killed him. And Anwar Sadat could see the progress Egypt was making, and his own folks killed him.

We talk about the Palestinian Authority in one breath and in the next breath say: Who has the authority? The Palestinians? No. The Israelis have the authority. This is a very complex issue.

I remember back in World War II, in the occupation, where the French would take out a German soldier on the corner, and then the Germans would retaliate and then just wipe out the block. We all know about that.

Several years ago, I was in Kosovo. And some Albanians would get feeling good, and they would take out a Serb policeman on the corner, and along would come the Serbian army and they would clean out the block. Now along comes Sharon, and he must learn the lessons of the past. He is making more terrorists than he is getting rid of.

He sounds formal—''I am getting rid of the infrastructure''—like there is a structure. There is no structure to this mess. Anybody who thinks Arafat is in charge, to the extent that he is in charge because we have a deal with somebody. He is in charge, but Hamas, Hezbollah, and all, they use him. This is a tricky part of the world.

And we are looking for friends in the war on terrorism. And they have been going along with us. Now we could come along and start losing friends with this kind of leadership and the categorical one-sided endorsement of it.

I was not prepared to talk about this, but I did not know this was going to come up today. But in conscience, I cannot support it.

Let me cite what Richard Cohen says:

The only way out of the current mess is for each side to listen. . . .

Don't you think it would be good for Congress, as the President asked over on the House side—that this is not the right time for us to vote on this resolution. I heard earlier today that the White House is not taking a position, but we know they do not support it. Can't we help the President in this tenuous situation?

Quoting Richard Cohen again:

The only way out of the current mess is for each side to listen to what the other is saying. To protest living conditions on the West Bank is not anti-Semitism. To condemn the increasing encroachment of Jewish settlements is not anti-Semitism. To protest the cuffing that the Israelis sometimes give the international press is not anti-Semitism either.

To suggest, finally, that Ariel Sharon is a rejectionist who provocatively egged on the Palestinians is not anti-Semitism.

It is a criticism no more steeped in bigotry than the assertion that Yasser Arafat is a liar who cannot be trusted. That does not make me anti-Arab—just a realist who is sick and tired of lazy labels.

Let's go in the resolution to the labels and the whereas. How can you live with that? We fight the terrorists and we fight all those who give them aid. America has a message for the nations of the world: If you harbor terrorists, you are terrorists. If you train or arm a terrorist, you are a terrorist. If you feed a terrorist or fund a terrorist, you are a terrorist, and you will be held accountable by the United States and our friends.

Crown Prince Abdullah just left Crawford, TX. The Saudis are funding terrorism, I can tell you that. Go to the religious schools in Pakistan. As we saw on TV, the Saudis have been funding them for a long time. But we can't say that about the Saudis, we have to get oil. In any event, who is the terrorist here with respect to the situation? Do the Saudis qualify as terrorists under this resolution?

Madam President, the situation in the Middle East is such that you have the creation of more terrorists under this approach. The Arabs, by the way, think we are terrorists. In fact, that is what they call us. In the U.N., they have brought resolutions against the United States in the past. The U.N. passed resolutions to send weapons inspectors into Iraq. We condemned Saddam for not letting them in. Now the U.N. formed a team to investigate the incursion into Jenin. Sharon refuses to let the U.N. investigate, so in a way he's acting like Saddam Hussein.

Max Rodenbeck, in an article on April 17 in the New York Times, wrote:

While other Arabs have always taken the Palestinians' side, the violent images are increasing the sense of personal interest in the conflict. When half a million Moroccans marched in a recent protest against Israel, many carried placards saying: We are all Palestinians.

So according to this amendment, everybody in Morocco is a terrorist. Any Palestinian you see defending his house, as we have been watching on TV—even if he had no connection whatsoever to any of these individuals with the explosives or the suicidal terrorists, or even if he doesn't like Arafat—is a terrorist.

Incidentally, there have been five attempts that someone just told me about on Arafat's life—not by Israelis,

but by Arabs, by Palestinians. So if I am in my home, defending my home, and I see a soldier come shooting his way in, and I shoot him, all of a sudden I am a terrorist. If you don't have uniforms, I guess you are terrorists. If you have uniforms, then you are soldiers.

How do you deal with Arafat if you are going to call him a terrorist in one breath and the Palestinian leader in the next breath? This is too simplistic. We have had enough blood on both sides. Now we are getting to where the administration is taking charge—and I commend them for it. We are making some progress, and they have freed Arafat. But section No. 5 calls on the Palestinian Authority, actually it demands that the Palestinian Authority fulfill its commitment to dismantle the terrorist infrastructure in the Palestinian areas. And the Palestinian Authority—that is what we call an oxymoron. Let's not kid ourselves, this isn't any authority, but it's the best term we have.

Sharon—and I am quoting Andy Rooney, who said the other night on ''60 Minutes'':

Sharon is not our friend and President Bush should stop pussy-footing and say so.

Both sides are coming in and calling names, and that is what this amendment does. It doesn't help anybody but us Washington politicians.

This is the London Economist, of April 20. I ask unanimous consent that this be printed in the RECORD.

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

[From the London Economist, Apr. 20, 2002]

FRIENDLY FIRE

Thanks mainly to his comportment since September 11th, George Bush stands tall in American opinion. America's standing in the world is another matter. As the sympathy that followed the destruction of the twin towers fades, the admiration Mr. Bush earned for victory in Afghanistan is being pushed aside by complaints about the rest of the ''war against terrorism''. In the Muslim world, of course, but also in much of Europe, the uneven battles on the West Bank have encouraged demonstrators to burn the American flag on the streets, alongside the flag of Israel. But even before those battles, European politicians were lining up to denounce Mr. Bush's ''simplistic'' foreign policy and deplore America's preponderance in the world. The loyalty to Mr. Bush shown by Britian's prime minister, Tony Blair, had begun to alienate not only Britian's EU partners but also his own Labour Party.

GUILT BY ASSOCIATION

This rift was visible before Ariel Sharon invaded the West Bank. But Mr. Sharon has made the rift suddenly deeper. America is not responsible for the fighting, still less for its grisly climax in what may turn out to have been a war crime in Jenin (see next leader). But as the provider of Israel's sword and furnisher of its diplomatic shield, America is being held responsible in most of the world, but not America, picture of the bulldozer refugee camp plaster the front pages. To an extent that Americans do not realize being blamed for Israel's actions is ripping up the coalition Mr. Bush took such pains to knit together last September. How can he patch it back together?

From Europe, the answer looks simple. To save his coalition, Mr. Bush needs to put the squeeze on Mr. Sharon. Only thus, it is argued, can Israel be persuaded to make the compromises necessary for peace. And even if squeezing Mr. Sharon does not lead to peace, being seen by the Arab street to squeeze him is the only way to persuade fragile Arab regimes to stay on America's side in the larger war against terrorism. Instead, Mr. Bush appeared, first, to give Israel's invasion of the West Bank a green light; and then not to mean what he said when he called a fortnight ago for Israel to withdraw ''immediately''. At best, Europeans say, this makes America look ineffectual. At worst, it plays into the hands of Osama bin Laden and his associates, who accuse ''the Jews and the Americans'' of waging war against Islam. Europe cannot understand America's failure to see this.

What Europeans fail to see is that, precisely because of his steadfastness in the war against terrorism, Mr. Bush is widely admired in America. When he is criticized there, it is not for arming and shielding Israel but for sending Colin Powell, his secretary of state, to talk to Yasser Arafat, terrorist recidivist, and for suggesting that Israel might curtail its own was against terrorism. This, say the critics, smudges his previous ''moral clarity''. September 11th gave Americans at large—not just Jews, and not just politicians influenced by the Israel lobby—special reason to shudder at the onslaught on Israel by Muslim suicide bombers determined to kill as many civilians as possible. Long before then, Americans learnt to identify more with the beleaguered Israelis than the thwarted Palestinians. Above all, Americans cannot understand why some Europeans dignify terrorism as legitimate ''resistance'' to an occupation which, but for Palestinian intransigence, Israel's previous government would have ended anyway.

You do not have to resolve the merits of these two views of the conflict to see the danger that this cross-Atlantic incomprehension poses to the post-September coalition. European leaders were squeamish enough before Mr. Sharon's war about Mr. Bush's plans to take his campaign on to Iraq and other members of the ''axis of evil''. The accelerated killing gives them every reason to say that this must not happen while the West Bank is on fire, lest it unleashes the pan-Islamic rage Mr. bin Laden was aiming to provoke. America's Arab friends say so too—though they made it clear at the Beirut summit that ended before Mr. Sharon's re-invasion that they were not up for another swipe against Saddam anyways. In a funny way, Palestine gets Mr. Bush's reluctant allies off the hook. While Mr. Sharon is on the rampage, they are less likely to be roped into unwanted American adventures further afield.

How does Mr. Bush proposed to end this rift? Not by selling Israel down the river: Mr. Powell flew home with Israeli tanks still in the West Bank and Mr. Arafat still stewing under siege in Ramallah. Nor, probably, by resuming the aloofness that characterized his initial handling of the Middle East. For all their criticism of American zigzagging, Mr. Bush's European critics need to recognize that this is a president improvising responses to a baffling crisis. It would be wrong to confuse his immediate plan to achieve quiet—by piling pressure on Mr. Arafat to call off the intifada—with his longer-term thinking. Mr. Bush has, after all, spent the past weeks stating more plainly than any predecessor that America wants an independent Palestine and Israel back more or less to its 1967 border.

TIMING THE SQUEEZE

Empty words? At some point, it is true, getting an Israel under a Mr. Sharon to accept such terms will require Mr. Bush to apply that squeeze. With the domestic political capital he has collected since September 11th, he could certainly do so, especially if it seemed that supporting Israel was beginning to damage America's own security. But remember ''moral clarity'': the Europeans should not expect Mr. Bush to pressurize Israel in circumstances that seemed to appease terrorism. In other words, Mr. Arafat must accept—in good faith, this time—the principle underpinning the Oslo accords, which is that negotiating peace is not compatible with a terrorist war.

If they were serious about helping the Palestinians to statehood, Europeans would explain this to the Palestinians morning and night, instead of hailing the intrifada, as many do, as ''resistance''. The intifada it was that helped Mr. Sharon to power, destroyed Israel's peace camp and turned Americans off the Palestinian cause. After September 11th, Americans feel that they too are at risk, and at war. Europeans do not.

Mr. HOLLINGS. It says:

But as the provider of Israel's sword and furnisher of its diplomatic shield, America is being held responsible. In most of the world, but not America, pictures of the bulldozed refugee camps plaster the front pages. To an extent that Americans do not realize, being blamed for Israel's actions is ripping up the coalition Mr. Bush took such pains to knit together last September. How can he patch it back together?

Well, he is trying, and this amendment doesn't help him. It doesn't help him a bit. We know that. Since September 11, times are different. Yes, there is a war on terrorism, and how do we succeed in that war? We cannot do it alone, as the President says. We need the assistance of everyone—particularly in the Mideast which, in a general sense, has the majority, I would say, of terrorism and terrorists. So we have to go about it in a very careful fashion.

For this Senator's interest, I think we can go after Saddam Hussein, but first let's stabilize our friend Israel. You have to have first things first. We found in the artillery in World War II, no matter how well the gun was aimed, if the recoil would kill the gun crew, you don't fire. So before we start firing on countries, let's take care of the countries that are being fired upon. Let's take care of Israel. Let's give solidarity to Israel—solidarity of support.

In my judgment, it was wrong for Ariel Sharon to go to the Temple Mount with in-your-face kind of politics and leadership; to bulldoze the camps; and to extend settlements, all condemned by the United States. Then along comes this one-sided amendment like there is no cognizance or awareness of the complexity of this situation.

Our credibility is at stake and everybody should pay particular attention. Now we are working with Pakistan, who we were formerly against, in the war on terrorism. We got their help. We are going to Jordan and getting their help. We are going to Egypt, but Mubarak is in a tenuous position that he had to cut off contacts with Israel.

So this is a complicated thing. But to come with this simplistic one-sided

amendment is not in the interest of Israel and not in the interest of the United States. We ought to do like Richard Cohen says: Let's listen awhile, set this aside, and move on and continue our 100-percent solidarity with Israel. This doesn't furnish it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Madam President, briefly and respectfully, I reply to my friend from South Carolina. Particularly, I want to pick up on the point at the end as to whether this is in the interest of the United States and our credibility.

It seems to me that our credibility depends, in good measure, on our clarity—our moral clarity—and our consistency. That is what this amendment is about. It states that we, after September 11, are in a war against terrorism, effectively declared by the Congress 2 or 3 days after September 11, that our Nation's policy is now guided by a doctrine that President Bush articulated in his address to a joint session of Congress last September, now known as the Bush doctrine: Terrorism is evil; the use of violence to accomplish political ends—including legitimate political ends, such as in this case, as I have said earlier in this debate, Palestinian statehood—is unacceptable; you cannot use terrorism to accomplish legitimate ends.

It is a time of decision: Either you are with us or you are with the terrorists.

This amendment is a carefully drafted affirmative statement of moral clarity for the United States, that we see Israel as now a front-line state in the war against terrorism. Just as this administration has sent American soldiers, in fact, to the Philippines, to Yemen, to the country of Georgia, to assist regimes in their front-line status fighting terrorism, so, too, do we at least respect the right of the Israelis to do the same: to defend their people against terrorism.

It is not, with all respect, a political amendment. It is, in my opinion—and I was involved most deeply with Senator SMITH of Oregon in drafting it—a principled amendment. It goes to the principles articulated in the Bush doctrine and the moral clarity of our war against terrorism, which, with all respect, has been not so consistently applied over the last 2 or 3 weeks by this administration: On one day calling for the Israelis to withdraw, and the next day expressing understanding about why they would take military action against the terrorism.

The truth is, no regime, no democracy could do other than they have done. This is not to defend every particular act of every particular soldier. I do not know what every particular soldier did.

If we put this in American terms, if we think about young people out at night at a cafe getting blown to death by a suicide bomber; working people waiting at a bus stop; people at a religious service; and this past weekend a mother with two children in their home, while the father is off at synagogue on Sabbath morning, a terrorist comes in disguised in an Israeli military uniform and kills a 5-year-old girl, no civilized nation can do anything other than put a stop to that behavior.

That is what this amendment says: We respect and stand in solidarity with Israel as it takes the necessary steps to provide security to its people, and we remain committed to Israel's right to self-defense.

This is not in any sense an anti-Palestinian statement. It was carefully drafted to make sure it was not. It is an antiterrorism statement.

It is in that sense that I hope the great majority of my colleagues will support it today.

I note the presence in the Chamber of the Senator from Tennessee. I yield the floor at this time.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. I thank the Chair.

Madam President, I thank Senator LIEBERMAN and Senator GORDON SMITH for this amendment. It is entirely appropriate for the legislative branch of Government to express itself on something that is so important to so many Americans.

The President has stated this country is not going to abandon Israel. I know he means what he says. I do not think there is much doubt in terms of the Congress of the United States, but we need to make sure there is none. Quite frankly, I am surprised at some of the misreadings that our friends in Europe and other places have sometimes of our body and our intentions.

It appears to me that Israel is in a struggle for its very existence. I do not think that is an overstatement. We read about skirmishes, and we hear of the historical difficulties we have had in that region. We tend to, in my mind, sometimes downplay the significance of what is going on there, but it is more significant probably than most people realize.

No. 1, it is quite apparent that the Israelis believe they are in a struggle for their existence. It is clear to them, as it is to me, that the driving force among the Palestinians—not all Palestinians—is intent to drive the Israelis out of their country.

If we look at Arafat's map, we will see that it does not have Israel on it. When those people talk about a Palestinian homeland, they are talking about Tel Aviv, they are not talking about the West Bank.

When the Israelis see that and they are subjected to organized, orchestrated, systematic terrorist activity where their children are being murdered, they take that very seriously. They are doing right now what is necessary to protect themselves.

I am afraid their enemies in this region are not interested in just a Palestinian state, which I think the entire international community now is saying has to be a part of any long-term resolution of this problem. They certainly are not interested in a peace process, not at this stage of the game anyway.

Mr. Arafat was offered what in most people's minds was the best deal that had ever been placed on the table during the prior Israeli administration. The Crown Prince of Saudi Arabia has put a proposition on the table that the Palestinians have shown no indication they want to accept.

Is there any doubt that if the violence stopped, the Israelis would be willing to sit down at the table? Of course not. Is there any doubt, on the other hand, that if the Israelis pull out of Jenin and the other places in the West Bank, the Palestinians will be willing to sit down at the table? The answer to that is no.

Why is this the case? I am afraid it is the case because they still think they are winning the battle, they are winning the struggle. How can that be when they undergo tremendous losses? I think it is because the Palestinians believe they are winning the battle in the international community.

It has been absolutely amazing to me to watch this occur. It is Orwellian to see person after person—young people—being strapped up with dynamite—with the encouragement of their families who are being paid off in many cases by Saddam Hussein and others—to kill innocent men, women, and children in public places in Israel, and to see the massacre and carnage of people who are not military people, who are not government leaders, but just kids out having a good time, and then to have this situation twist and turn a few times and come out as outrage against the Israelis in the world community.

Somehow this brutal activity against civilians is equated with military operations the Israelis conduct against Palestinian militant leaders. I do not understand how that can come about. I am sure it boggles the minds of the Israelis, and I am sure it encourages the Palestinian leadership that wishes to drive Israel into the sea. That is the reason they still believe they have a chance, because our European friends are more critical of Israel as they defend themselves from these massacres than they are of the Palestinians. They believe that because our moderate Arab friends feel the same way about it. They believe that because the United Nations itself is more intent on investigating a war zone where people get killed, where the Israelis, instead of dropping bombs the way the United States often does, went house to house to save innocent lives and get the guilty and get the people who are responsible for so much of this destruction, losing people—they conduct this house-to-house kind of activity and bulldoze some buildings. This is the activity that the leadership of the United Nations wants to investigate.

Of course, as it turns out, there was not anything to investigate. All of the

charges against the Israelis proved false before they even got there. At the same time, the blood is hardly dry in downtown Tel Aviv from innocent children who were murdered by the leadership of the PLO and other radicals among that group. As the Senator said, 5-year-old children are being shot and killed in their bed, but it is a war zone that the United Nations wants to investigate. So that is why I think the PLO and Mr. Arafat and his kind believe they may be winning. They are willing to sacrifice any number of their people in order to have the political victory.

I think the toughest thing in the world for political leaders to do is to acknowledge sometimes that there is nothing that can be done in short order. It does not matter in the end what the Europeans, the United Nations, the Americans, or the moderate Arabs think. Until these two parties are willing to sit down and work out a peace arrangement, we are not going to have peace. There is nothing in the world that any of us can do to force them to do that.

In my opinion, nothing is going to force them to do that until they are both either exhausted or they both believe it is in their best interest to sit down. As I said, I am afraid Mr. Arafat and the PLO do not see that in their best interest right now.

I suggest to our friends around the world to reassess what they are doing. I think they are contributing to the problem. They are keeping hope alive among these people who would drive Israel out of existence and into the sea. That is not going to happen. They are endangering the entire region because Israel is not going to let that happen. We all know Israel has the capability to keep that from happening. No one wants a conflagration in that part of the world, but that will happen before Israel allows itself to once again be exterminated.

By encouraging the kind of activity that has driven Israel to that point, we are prolonging the conflict and making the world a more dangerous place. I say to our moderate Arab friends, including our friends the Saudis, with whom we do have an important relationship—they are important to us. We are important to them. It is not one-sided. We have worked with each other for a long time. Hopefully, we can work with each other again. But it is no testimonial to friendship to not be honest.

Part of what our friends there need to remember is, it is their country who furnished most of the terrorists on September 11 who did so much damage to us. It was their diplomat ambassador to Great Britain who was quoted as praising these suicide bombers and terrorists. It is their country and some of their own people who are raising money or allowing money to be raised in that country that finds its way to terrorists all over the world. It is their people, in many instances, who are raising money for the families who send these children in to blow themselves up and kill innocent Israelis. And it is their leaders, many times in their controlled press, who call the United States, along with the Israelis, terrorists. These are the folks we should be worried about, oil or no oil.

The United States will not continue to be the United States that we all know and love and grew up in if we let these people dictate our policies contrary to our own interests and to the interests of our only democratic ally in that part of the world. I know that is not going to happen, and our friends, the Saudis, need to understand that is not going to happen.

The United Nations, over the years, has had every kind of conceivable condemning resolution against the Israelis, while atrocity after atrocity has occurred against the Israelis. The United Nations, instead of investigating and looking into these places in the world where people are getting butchered by the tens of thousands, are more interested in the supposed human rights violations that the Israelis are conducting than anything else. These are supposed to be the objective analyzers of the situation in Jenin and other places.

I urge that perhaps they take a look at their own behavior and their own attitudes. Our European friends, I hope, would reassess their attitudes and their public statements of their leaders at a time when anti-Semitism is breaking out once again in key European countries.

As we watch the elections, as we watch the synagogues being burned, we are getting condemning lectures from them because we are supporting the only democracy in the Middle East. What in the world are they thinking? What kind of reaction do they think that is going to engender on our part?

I think it is very important that we send a strong, clear message, as I think the President has done, and that we in this body send a clear message we will not bow to such wrong-headed public opinion, no matter how universal it is at the present time. We should be the leaders and we should point out the error of their ways. They should change their opinions because we are not about to turn our backs on an ally who has been our ally for so many years; that is a democracy, is not aggressively pursuing anyone except in self-defense, and who is now being subjected to a new kind of warfare that is, I believe, designed to wipe them off the face of the Earth in the end. Otherwise, we would have had at least a peace process that meant something instead of one that is in name only and is violated as soon as the ink is dry on the paper.

So I again commend my friends from Connecticut and Oregon for giving us an opportunity to vote on this and to add our voices to those who are so wishful for a resolution in this troubled part of the world, who understand that it is in the interest of the United States to have a resolution in this part of the world. It is the right thing to do. It is the humane thing to do, to engage in that kind of process. It serves our interest with regard to our war and fight on terrorism in other countries in that region, but at the same time, realizing that it cannot happen, we cannot force it to happen until the parties are there, and one of the parties is not going to be there as long as the entire world is encouraging them to conduct continued terrorist activities that, up until this point, would have been universally condemned but for some reason is not being now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I want to thank my friend and colleague from Tennessee for a superb statement. I thank him not only for his support of the amendment that Senator SMITH of Oregon and I have put before the Senate today, but for the principled and compelling logic of the additional statements that he made.

I was just about to use a term to describe the remarks of the Senator from Tennessee, which I was going to say is normally associated with a colleague who sits near him, and that colleague walked into the Chamber. I was going to say his remarks were definitely straight talk, and I appreciate them very much.

Does the Senator from Arizona wish to speak?

Mr. MCCAIN. If I could.

Mr. LIEBERMAN. Yes. I yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I thank the Senator from Connecticut, Mr. LIEBERMAN, and the Senator from Oregon, Mr. SMITH. There has been discussion whether it is appropriate at this time, and whether this would be viewed by some as undercutting the position or weakening the position of the President and the Secretary of State in their efforts to obtain peace in the Middle East. Those concerns are legitimate. The Senator from Connecticut and the Senator from Oregon considered seriously those concerns.

We are not entirely totally comfortable moving forward with this amendment. We ought to return to our constitutional responsibilities as a coequal branch of government. No one denies that there is a crisis in the Middle East today, that there is the possibility of a wider conflict. There is no doubt that you can draw many scenarios in which the national security interests of the United States are threatened. If we accept those premises I articulated, then there does come a time when the Congress of the United States, as a coequal branch of government, exercising particularly in the Senate our responsibilities of advise and consent, should speak out.

I know there are very strong feelings about what has happened to the State

of Israel in the last several months. I hold those strong views. If you look at the strong views we hold compared to the language in this amendment, one would interpret that as rather mild language.

As I read the amendment—and the Senator from Oregon and the Senator from Connecticut can correct me if I am wrong—there is no criticism of the Palestinians in this amendment, there is no criticism of the Saudis, who continue to fund the madrasahs which teach not only the destruction of Israel but the destruction of the West and everything in which we believe. There is no criticism of the Saudis who are still paying money to the families of those who are ''martyrs.'' There is no criticism of the Saudi Ambassador who wrote an ode to the martyrs. There is no criticism of other ''moderate states in the region'' that have failed—utterly, miserably failed—to renounce these suicide bombers not as martyrs but as an offense to Islam and an impediment to any possibility of peace. The language of this amendment is measured. It is thoughtful. I know each word was carefully examined before it was put into this amendment.

I say to our Arab friends—and there are many Arab friends in the region—if there is not a condemnation of the kinds of attacks that are being orchestrated, encouraged, applauded, and in some cases even compensated for, we may see a stronger amendment from the Senate. I don't believe the overwhelming membership of this body is ''pro-israel,'' but I do believe there is a deep and profound recognition that the State of Israel is the only democratically elected government in the region. The 22 members of the Arab League are all dictators.

There is a basic and fundamental principle of a nation's right to exist which is at play. Israel recognizes the right of other nations to exist in the region. The Israeli Government and people right now are fighting for the simple fundamental right to exist, and not only the right to exist but the ability to exist.

I thank the Senator from Connecticut and the Senator from Oregon. We support the President of the United States and his efforts to bring about peace in the region. We support Colin Powell, our distinguished and respected Secretary of State. We support Condoleezza Rice and all other efforts to bring about peace and all the members of the administration who are working so hard. We applaud their efforts.

We also believe we, as a body, the Senate, should go on record as to our position and our desire to see this little country survive and our commitment to seeing what we can do to ensure its survival.

I thank my colleague from Connecticut, and I yield the floor.

Mr. LIEBERMAN. Madam President, I thank my friend from Arizona for his strong and principled statement. I could not agree with him more. I pick up for a moment on what the Senator from Arizona and the Senator from Tennessee suggested earlier: This amendment might affect the conduct of foreign policy by the President and this administration.

I strongly believe adoption of this amendment will be supportive of the policy of this administration and will strengthen the hand of the President and the Secretary of State, particularly as they proceed in their diplomacy in the Middle East, and more particularly in the Israel-Palestinian conflict.

Why do I say that? Because America is always at its strongest when we are true to our principles. The President articulated those principles post-September 11 in the Bush doctrine. They say we will stand with those who fight terrorism as we are fighting terrorism ourselves; all the more so when it comes to a fellow democracy, a longtime ally, such as the State of Israel.

A nation gains strength by being true to its principles but also by being true to its allies and not compromising longstanding relationships as a result of the pressures of the moment, no matter how compelling those pressures.

We are a great nation. We are the mightiest nation in the history of the world. If any nation has the strength to stand by its principles, it is, thank God, the United States of America. That is what in simple, direct terms this amendment says.

We made a stand after September 11 against terrorism. The Israelis are fighting the same enemy as we are now. They are not fighting the Palestinians; they are fighting terrorism. In that battle, no matter what the economic or political or strategic or diplomatic pressures that some may attempt to put upon the United States, we will be true to principle and we will be true to our alliances. That is what my colleagues have spoken eloquently on. For that, I thank my colleagues.

When this Senate adopts this amendment overwhelmingly, it will send a message to those who may be equivocating, who may be remaining silent. Remember that line from Dante: The hottest places in hell are reserved for those who in time of moral crisis maintain their neutrality. Great powers in the world are doing that right now.

We say as the representatives of the people of the United States in this amendment, for the United States, we are not going to remain silent. We are going to stand by our principles and by our friends. That will strengthen us in our relationship with our friends and with our enemies.

I am pleased to note the presence in the Chamber of the Senator from Utah. I yield to him.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I compliment both my colleagues to whom I have been listening, Senator MCCAIN from Arizona, a leader on this floor and of course a friend for whom I have tremendous respect, and his Democratic counterpart, Senator LIEBERMAN, a dear, dear friend, someone with whom I have passed legislation where he has made a great deal of difference and who has spoken eloquently and reasonably and in a way that should advance the cause of peace in this world.

I also rise to address this amendment. I am joined with a large number of colleagues as cosponsors to do so.

This amendment is a reiteration of what Congress has overwhelmingly stated through the years, that this body stands in solidarity with Israel.

Israel is a front-line state against terrorism. What they do is very important with regard to the battle against terrorism because it takes necessary steps—to provide and bring about security to its people from these suicide bombers by dismantling the terrorist infrastructure in the Palestinian areas.

We have all watched with growing alarm the explosion of suicidal violence that wracked Israel in the last couple of months. I am greatly relieved that, for the time being, those suicide attacks have ceased.

But what has happened in the interim to lead to this cessation of suicide bombings?

Was it a newfound political will in the offices of the Palestinian Authority that declared unambiguously that terrorism would no longer be promoted or tolerated from the territories over which the PA holds power?

Was it a statement by Chairman Arafat, in Arabic, denouncing suicidal murderers as nihilistic and counter productive to any cause of peace?

Was it a deployment of Yasser Arafat's multiple security services to disrupt, capture and imprison the perpetrators of terrorism against Israeli citizens?

No, we all know that the cessation of suicide bombings, at least for the time being, was not the result of political will on the part of the leaders of the Palestinian Authority. It was the result of a military deployment by the government Israel, a deployment by the Israeli Defense Forces that was costly, controversial, and . . . for the moment . . . successful.

What nation do we believe could exempt itself from the right of self-defense? Isn't such an exemption fundamentally against the natural state of nationhood? Have we ever expected any nation let alone a long-standing friend and ally to exempt itself from its right of self-defense? Of course not.

Yet Israel has faced a great deal of criticism for its action in the last month. Certainly Israel is not above criticism—any more than it is exempt from the right of self-defense. But I, for one, cannot criticize its right to self-defense, its need to act in its self-defense, and its responsibility to use its professional military to destroy the terrorist infrastructure that is still

dedicated to the military defeat of the only country in the Middle East that fully shares our western values. You're never going to see criticism of that type coming from this Senator.

I recognize that there are long-standing, unresolved political issues between Israel and the Palestinians. I recognize that many Palestinians now have generations of being uprooted, frustrated and impoverished from which to feed a legitimate sense of injustice.

I also recognize, Mr. President, that there have been many Israelis, in their government, in their elites, but, more important, throughout their society, who have desired, sought and worked for a peaceful solution between the two peoples.

I was amazed myself with the offer Prime Minister Barak made to Yasser Arafat and the Palestinians. It went way beyond anything most people I talked with thought that Israel should do. It should have been snapped up by Yasser Arafat, and certainly it should become at least a basis for trying to resolve the conflict between the Palestinians and the Israelis.

I have my doubts if Yasser Arafat can be a partner for peace. His duplicity is well-known; he talks peace in English on the White House lawn and before some aid agencies. He speaks jihad in Arabic before young Palestinian crowds and in the courts of Arab leaders. The man who, nearly 20 years ago, could not address the United Nations, a body dedicated to the resolution of conflicts without violence, without the symbol of a pistol holster on his hip, clearly today continues to believe that there is a legitimate role for terrorism.

The reason there have been no suicide bombings in Israel in the last few days is not because Yasser Arafat has preached the renunciation of terror. It is because the IDF went after the terrorists that Arafat's Palestinian Authority harbors. It is an old lesson that we dare forget at our own peril: Tolerate terrorism and it will grow and multiply, feeding every angry and hateful cause. Negotiate with terrorism and you will legitimize it, creating incentives for more terrorism and the promoting the deadly illusion that terrorism is some form of legitimate political expression.

We all recognize that the IDF actions of the past month do not guarantee that suicide bombings will cease, and I say this with a sense of reality and deep regret. I even recognize that those absolutely dedicated to terrorism have most likely not been dissuaded from their nihilistic path. I also know that perhaps some of those living in despair in the Palestinian territories may have been made more desperate, and that their desperation may be used by the cynical manipulators behind the suicide attacks.

I long for the day when all the peoples of the Middle East are freed from regimes that harbor hatred rather than promote growth, that plan for war rather than development, that delude their peoples while denying them a future of prosperity.

I strongly support the Administration's efforts to help find a just political solution to this conflict, and to begin talking, at this early stage but generations too late, about economic development that will give the Palestinians outlets to channel their work toward building secure and prosperous futures for their families and future generations. I empathize with the Palestinians who have unemployment rates well in excess of 50 percent. No wonder there is unrest and discord over there. I support, even, calls for immediate reconstruction assistance to the Palestinian territories, to be channeled, I would hasten to add, by legitimate non-governmental organizations, and not by the Palestinian Authority.

I encourage the Administration's efforts to bring the so-called moderate Arab nations into this effort. Those nations will not only have to dedicate their diplomatic efforts toward encouraging the leaders of the Palestinian Authority to accepting a political solution. Those countries will not only have to dedicate substantial funds for promoting economic development that channels the energies of the Palestinians into productive and peaceful endeavors. But if those countries are to succeed in their diplomacy and with their assistance, they will have to stop encouraging anti-Semitic and anti-American hatred in their own societies. I certainly wish the Administration the best of luck in this very difficult endeavor.

We will need to see a political solution before we seen economic development, Mr. President. But to have a political solution, there must be political will, on both sides, to reach an settlement. A political solution cannot be begun under a wave of terrorist attacks. I don't see how anybody can criticize Israel under the circumstances. Terrorism requires a military response. We are finding that is so true.

While I have always believed this country should support Israel in its effort to seek peace, I strongly believe that we must remain equally dedicated to Israel's right to self-defense. For this reason, I am proud to cosponsor this amendment, and I urge the unanimous support of my colleagues with a vote for it.

Madam President, I have been talking about Israel and terrorism and what we have to do about it. But now I want to shift for a minute and talk about the extreme dissatisfaction registered by Senator GRASSLEY, the ranking Republican member of the Finance Committee, Senator PHIL GRAMM, and others on our side of the aisle in regard to the trade promotion authority and trade adjustment assistance—the Andean Trade Preferences Act and trade promotion authority.

Trade creates jobs both at home and abroad.

Trade can also help promote political stability in many regions of the world.

It is in our national interest to foster free trade.

Let us look at the facts.

Ninety-six percent of the world's consumers live outside our borders.

Based on that fact alone, the United States would be foolish not to pursue a vigorous trade agenda. But let me go on.

Exports accounted for about 30 percent of U.S. economic growth over the last decade, representing one of the fastest growing sectors in our economy.

Almost 97 percent of exporters are small or medium-sized companies and, as my colleagues are aware, small businessmen are the engines of job growth.

In fact, almost 10 percent of all U.S. jobs—an estimated 12 million workers—now depend on America's ability to export to the rest of the world. Export-related jobs typically pay 13 percent to 18 percent more than the average U.S. wage.

And there are many reasons to believe that the best is yet to come in this dynamic sector.

Economists predict that there could be a 33 percent reduction in worldwide tariffs on agricultural and industrial products in the next WTO trade round. This action alone could inject an additional $177.3 billion into the American economy in the next 10 years. That is a lot of money.

I strongly support Congressional passage of Trade Promotion Authority legislation this year. I was the one who made the motion and got it passed out of the Senate Finance Committee upon which I sit.

TPA will provide a measure of certainty to our trading partners that any agreement reached with USTR will receive timely Congressional consideration and will not die a slow death by amendment.

Look, the Finance Committee passed the trade promotion authority legislation by a wide, bipartisan 18 to 3 vote back in December.

I agree with Senator GRAMM that if we had an up/down vote of this bi-partisan bill permitted by the Majority Leader, it would probably pass with over 70 votes.

I believe it would pass by an over whelming majority of 70 or more votes.

The majority leader knows this. We all know this.

Instead, the bill that was laid down last night was a thumb in the eye of bipartisanship.

It is bad for America.

It should not and will not be adopted by the Senate this week, next week, this month, next month, this year, or next year.

Members of the Finance Committee know that all last year, I took the position that Congress must pass both trade promotion authority legislation and trade adjustment assistance legislation.

If both bills do not pass, neither will pass. That is the truth of the matter.

That is the political reality.

It is also true that there is little we can do in Congress to help the prosperity of American families—and help the prosperity of nations around the world—other than TPA.

We need trade promotion authority to open up new markets for American goods.

We also need trade adjustment assistance to provide retraining and other benefits to workers who lose their jobs due to the effects of international trade.

Let me acknowledge that there are some in my caucus who are leery of TAA because they are justifiably concerned about expanding yet another federal entitlement program.

In my state of Utah, we have felt the effects of the dumping of imported steel by the closing of the Geneva Steel production facilities, and the loss of almost 2,000 jobs.

I commend the action the President took on steel.

I support TAA to help displaced workers, but it must have reasonable limits.

The TAA bill that was before the Finance Committee last fall was already too big.

I was going to say, the TAA bill that was reported by the Finance Committee, but I am not sure that is an accurate statement.

Anyone present that day will tell you that the vote on the bill appeared to take place in violation of Senate rules—specifically, the rule against conducting Committee meetings for more than two hours after the full Senate was in session was invoked.

The gavel went down after time had expired.

Let us face it. Unlike the bipartisan trade promotion authority legislation, this TAA bill has had a strange partisan bent to it from start to finish.

Last night a bad TAA bill got worse.

While I remain hopeful that we can do what we should do, and pass both TPA and TAA.

I want my colleagues on the other side of the aisle to know that there is little sentiment on our side for passing TPA at any cost.

That is what Senator GRASSLEY and Senator GRAMM said earlier today, and I agree with them.

Let us get this process back on track.

I think if we can do that we will find that a strong consensus can develop on trade issues—both on TPA and TAA.

I am mindful that there will be those on both sides of the aisle that will remain inalterably opposed to either trade promotion authority or trade adjustment assistance.

For the good of the American people, we cannot afford to let that occur.

I have a lot of faith in Senator GRASSLEY. He is a good man. He is a hard worker. I have trust in the fact that Senator BAUCUS wants to do the right thing. He is a good man. He works hard on the Finance Committee. I hope they get the chance to help bring us together.

My fear is that the bill that was laid down last night may put the Senate on a glide path to disaster.

Just as there appeared to be a narrowing of the issues of the health care aspects of the TAA bill, a host of new issues were suddenly put on the table for the first time.

As I read it, the Majority Leader's bill includes measures that were not included in any of the bills that were reported by the Finance Committee.

It is my understanding that never in any of the negotiating meetings has the issue of wage insurance been raised—but it then suddenly appears in the majority leader's bill.

I do not want to see these important talks over this legislation stall, but my colleagues on the other side must be willing to come to the table with reasonable proposals.

I believe that there is a way that my Republicans and Democratic Colleagues can come together and pass both TPA and TAA.

Frankly the measures that we are discussing today were all reported by the Committee separately as free-standing bills.

Let me be clear. I would like to see the Senate take up and pass the Andean Trade Preference Act, Trade Promotion Authority, and Trade Adjustment Assistance this year.

Perhaps we would be better off by taking them up one at a time.

As I recall, we didn't approve an omnibus trade bill in the Finance Committee.

It appears to many that the bill laid down last night was hastily-crafted with apparently a partisan purpose in mind.

Just let me give you one example. I ask my colleagues to turn to page 23 of the bill distributed last night. This section is entitled ''Action by the Secretary'' and deals with appeals of the TAA certification process.

Now turn to page 41 of the bill. You will see this entire section repeated verbatim.

One of the reasons for careful consideration of legislation by the Committees of jurisdiction is to avoid these types of embarrassing drafting errors that occur when complex laws are rewritten in the dead of night outside the regular order.

As the ranking Republican member on the International Trade Subcommittee and as a member of the Intelligence Committee, I can tell the Senate that international trade has long been one of the most important foreign policy tools of the United States.

The Bush administration—led by Commerce Secretary Don Evans and our United States Trade Representative Bob Zoellick—has helped launch a new round of international trade talks. We all have an interest in making the next World Trade Organization ministerial succeed.

In order to make the next ministerial a success, it is important that the United States signal to the world that we will continue to make trade a very high priority. We can do this best by passing TPA.

I will say again that I recognize, in all likelihood, the Senate will need to act on Trade Adjustment Assistance legislation if there is a chance of passing the TPA bill.

So be it.

I am for both TPA and TAA.

But let me be clear, I am not for a loaded up TAA bill with unrealistic health care provisions.

On a related issue, I am deeply disappointed by the health care provisions of the Daschle substitute.

As someone who has worked very much in a bipartisan way during my 26 years in the Senate on all health care issues, this has become a partisan issue. It shouldn't be.

I am a strong advocate of getting Trade Promotion Authority for the President—but Senator DASCHLE's amendment includes health care provisions that are just unacceptable to me and other members of the Senate Finance Committee.

Let me take a minute to highlight some of the more egregious health provisions in the Daschle substitute.

The Daschle amendment has a 73 percent advanceable, refundable tax credit that may be used for COBRA coverage or other pooled insurance coverage.

S. 1209, the Trade Adjustment Assistance Act that was rammed through the Finance Committee required the Treasury Secretary to create a program that would pay 75 percent of the COBRA subsidies. These subsidies could only be used for COBRA benefits.

What Senator DASCHLE is promoting is only a slight improvement over what was included in S. 1209—hardly a compromise, in my opinion. Subsidizing health insurance by 73 percent is just too high.

It is my understanding that the discussion between Senators GRASSLEY and BAUCUS were much more constructive on this issue and now the majority leader's substitute goes in the direction away from a reasonable compromise.

The Daschle substitute also allocates $200 million for National Emergency Grants to States in order to provide assistance and support services to eligible workers. This grant money could be used to pay for health care coverage; however, States may also use this money to provide benefits through the Medicaid program or my CHIP program we passed a few years ago.

Both the Medicaid and Child Health Insurance programs are programs for the low-income; however, the way I understand the Daschle substitute, anyone would be eligible to participate in these programs no matter how wealthy.

While this is an improvement over the TAA legislation approved by the Finance Committee, which essentially gave States the option to offer Medicaid coverage to uninsured workers, it is still unacceptable.

In fact, during the Finance Committee's consideration of S. 1209, I expressed my strong opposition to the Medicaid expansions included in S. 1209.

Those of us who are familiar with the history of the Medicaid program know that State options usually end up becoming permanent fixtures of the Medicare program.

While the Daschle substitute doesn't include the blatant Medicaid expansions of S. 1209, I believe it is a backdoor way of expanding both the Medicaid and CHIP programs.

And if I had to make a prediction, chances are that these ''temporary'' provisions—I will put ''temporary'' in quotes—will end up becoming permanent. It is as if we are not even listening to our State Governors.

They keep telling us that the States' budgets are in financial disarray. My State can't even afford to cover children eligible for the CHIP program—3,000 more children than the 27,000 who are currently covered.

I believe that the Daschle provisions on Medicaid and CHIP could have very serious financial impacts on both the State and Federal budgets, especially when both are experiencing budget shortfalls.

What is most troubling to me is that the Daschle substitute provides the uninsured far more generous health benefits than those who have existing health coverage.

I don't understand why any Member of the U.S. Congress would want to promote a provision that actually acts to encourage individuals to remain unemployed because they can get better health coverage.

By offering such generous health benefits, this bill encourages people to remain unemployed.

Is this the American way?

Is this the way to fulfill the American dream?

Is this what we in the Congress want—more uninsured Americans?

I hope not. In my opinion, this bill contains an unintended incentive that promotes joblessness.

And even more disturbing, the drafting of this partisan bill may send a very clear message—take it or leave it.

Is there room for bipartisan discussions here?

Can we work together?

These are the areas we ought to work together on to bring a consensus about.

Can we work out our differences?

Can we find a fair compromise?

I sure hope so. But, I have my doubts about it because of the way that this debate has started. And that is just not acceptable for the American people.

Senator GRASSLEY does have the right idea—there are health care provisions that can be included in TAA in order to get trade promotion authority approved by the Senate.

I, for one, would be willing to support tax credits for the purchase of COBRA, pooled insurance, or individual insurance, so long as the individual has a choice of coverage, not a take-it-or-leave it requirement set right here in Washington.

In addition, I believe it makes sense to provide funds to States in order to create and operate insurance pooling arrangements.

I also support providing funds for National Emergency Grants so States can subsidize health insurance for TAA eligibles.

In my view, we are not that far apart that we cannot come together.

I think we can if we just have some good-faith effort here on the floor and behind the scenes.

I only hope that we do not let this opportunity to pass both trade promotion authority and provide reasonable health insurance subsidies to uninsured Americans slip away.

I am committed to working with my Senate colleagues, for as long as it takes, to get this job done. So, I urge my colleagues: let's quit the partisan bickering, let's roll up our sleeves, and let's get the job done.

In closing, I urge passage of both the trade promotion authority legislation and the trade adjustment assistance bill. But let's make sure these bills are bills we can live with, bills that are bipartisan in nature, bills where we have worked out the kinks and the difficulties, bills that are not a partisan benefit to one side or the other, bills that will do the best for our individual citizens in this country who need this help.

I hope we can get this job done before Memorial Day.

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, I note the presence of the two main sponsors of the amendment in the Chamber. We have had a number of speakers. I wonder if it would be Senator LIEBERMAN's intention to have a vote on this amendment fairly soon.

I ask unanimous consent to yield to Senator LIEBERMAN for purposes of a colloquy.

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

Mr. LIEBERMAN. I thank the Chair.

Mr. President, responding to my good friend from Arizona, it certainly is our intention to have a vote on this amendment this afternoon. I think it is important to do so. And it is my understanding that that is also the intention of the leadership of the Senate. I gather some conversations may be going on with the senior Senator from West Virginia, who was in the Chamber earlier, before going to a hearing, who said he had a statement to make of limited duration. I believe there is an attempt to have him come to the floor as soon as possible. I do not know of any other Senators at this time who wish to speak on this amendment.

I thank my friend.

Mr. MCCAIN. I thank my friend.

Mr. President, I had hoped we could encourage any Senators who want to speak to come to the floor, but I am not sure there is any really compelling reason to continue to hold up the business of the Senate, particularly since we have other pending issues to address. So I hope we can do that fairly soon. Maybe around 4, in the next 15 or 20 minutes, if possible.

Mr. President, I want to talk, just for a minute, about this imbroglio in which we find ourselves over the Trade Preference Act, the Andean Trade Promotion and Drug Eradication Act, the trade promotion authority and trade adjustment assistance, and the Generalized System of Preferences. I do not intend to take a lot of time, except to note that this is a very serious issue. It is unfortunate that we seem to be diverging rather than converging in our efforts to reach some kind of agreement.

I would like to say a few words about the Andean Trade Promotion and Drug Eradication Act. All of these issues we are trying to address are very important. But I point out, there is an extreme time sensitivity associated with what I will refer to from now on as ATPA, the Andean Trade Preference Act.

I remind my colleagues that as of the 16th of this month—in 2 weeks—if we do not act, then this legislation will expire, customs that are retroactive will be levied on goods that have been brought into the country. And I want to emphasize the serious impact this would have on these four struggling democracies in our hemisphere: Bolivia, Colombia, Ecuador, and Peru.

I remind my colleagues that this ATPA grew out of a commitment that the former President Bush made at the February 1990 Cartegena Drug Summit to provide economic benefits to these four Andean countries. The reason for it was, it was an effort to reduce illegal drug production and trafficking in these countries by promoting legitimate economic activity in these countries. Well, that was in 1990. The legislation was passed in 1991.

We have now had 11 years of ATPA. What happened in these four countries? First, the good news is that Bolivia's coca production has been reduced to practically zero. The bad news is that Colombia is in a very serious situation. As we know, the FARC leaders—who have just been indicted by the United States of America and controlled a large tract of the country—have continued to engage in narcotrafficking, and the overall supply of cocaine into the United States has not been reduced. That is actually in spite of the valiant efforts of the Government and the people of Colombia, with the assistance and help of the United States of America, and other countries, to try to

bring about a peaceful resolution to this very serious insurgency situation in Colombia.

Have no doubt, the funding for the FARC, to a large degree, has been made possible because of the trafficking in drugs. Peru has gone through a very difficult time, as we know. The former President was overthrown. There was a scandal the likes of which only bad novels are made from, where the former chief of intelligence was videotaped while providing bribes to Members of their Congress and judges. And a former President is now residing in Japan. There is a new President of Peru, whom I had the opportunity to meet. I think he is doing his very best.

Let me say, finally, that in Ecuador they have been dramatically affected by the whole situation in Colombia. In summary, because I see the majority leader on the floor, I will just say that the situation, as far as ATPA is concerned, is serious. We should consider carving that out from the other trade provisions and perhaps moving that piece of legislation on its own. It is time sensitive and critical. We made a commitment a long time ago to these countries. I see no reason to renege on that commitment now to four struggling nations in our own hemisphere.

I yield the floor.

Mr. HUTCHINSON. Mr. President, I rise in support of amendment No. 3389 offered by Senator LIEBERMAN and Senator GORDON SMITH. This amendment is an important expression of our Nation's solidarity with the Israeli people during these attacks against their people. Civilized peoples must come together to fight and defeat terrorism wherever it occurs.

There can be no negotiations with terrorists. On September 11, the American people experienced the depravity of international terrorism. The Israeli people have been subjected to a barrage of terrorist attacks that have been specifically targeted at civilians. It is incumbent on the United States to send the message throughout the world that these acts will not tolerated.

It has been made evident that the Palestinian leadership uses suicide bombings as a means to accomplish political goals. This is simply unacceptable, and must not be tolerated. We must continue to ensure that Israel has all the necessary resources in order to defend itself. We must make it clear to all nations in the region that there will be consequences for support of terrorism. But most of all, we must send a message to the world that the United States stands in unity with Israel.

Mr. FEINGOLD. Mr. President, I am proud to cosponsor today's amendment expressing solidarity with Israel. Like many Americans, I have a very personal connection to the Israeli people and to the State of Israel. And it is with a heavy heart that I join my colleagues today in mourning the innocent lives lost in the recent terrorist violence in Israel.

The U.S.-Israeli relationship is one of the strongest and most important of all of our bilateral relationships. Within that context, it is my sincere hope that this amendment will send a clear signal by expressing the overwhelming sense of the Senate that America is now and always will be firmly committed to a future in which the state of Israel can live in security and peace with all of its neighbors. It is my greatest hope that our ongoing commitment to these principles, and through them to peace in the region, will demonstrate our country's respect for the dignity and future of the Israeli people, while establishing the basis for a political settlement to the conflict.

I also want to state clearly, and for the record, that I supported President Bush's decision last month to send Secretary Powell to the Middle East to help bring the current crisis to a close and to bring Israelis and Palestinians back to the negotiating table. Intense U.S. engagement remains an essential ingredient in the resolution of the crisis, although nothing will be accomplished without the added leadership and foresight of the Israeli and Palestinian people. I also believe that the President was right to call on both the Palestinians and the Arab states in the region to take responsibility for ending terror and the culture of hatred that threatens peace in the region. And he has also been justified in calling on Israel to take a number of concrete and compassionate steps to ease the pressure on Palestinian civilians. In the end, only through continued efforts at the highest level will the United States be in a position to assist our strongest ally in the region and give the Israeli people an opportunity to seize a secure future.

Mr. KERRY. Mr. President, I am proud to be a cosponsor of the amendment submitted by Senators LIEBERMAN and SMITH demonstrating our continued solidarity with our ally, Israel, in its efforts to defend itself against terrorism. Suicide bombings and the taking of lives of innocent civilians are terrorist acts by anyone's definition. No moral or political justification exists for the bombing of civilians on buses or in restaurants or at religious celebrations. This resolution makes it clear that we oppose these acts of terrorism and that we recognize and support Israel's right to defend itself against them.

Now that Yasser Arafat is no longer confined to his headquarters in Ramallah, it is imperative that he make every effort possible to stem the tide of Palestinian terrorism and to break up whatever elements remain of the terrorist networks. And it is equally important that those Arab states who say they want to work with us in the war on terrorism do all that they can to help bring about an end to all forms of terrorism. They must make it clear that like us, they too oppose suicide bombings and that they expect the leadership of the Palestinian authority to live up to its responsibility to bring them to a halt.

Israel exercised its legitimate right to self-defense when it used force to root out and break up the terrorist networks threatening its own civilians. But force alone cannot ensure the security of the Israel and its people over the long term. I am convinced that the only way to truly enhance Israel's security is to replace the dynamic of violence with hope and political settlement.

This amendment acknowledges that reality. It calls upon all parties in the region to pursue vigorously efforts to establish a just and lasting comprehensive peace. When I was in the region in January, I met with all the key players. At that time I came away convinced that we must find a way to get back to a peace process. That need is even more urgent now.

Ultimately the Israelis and Palestinians are going to have to live with each other as neighbors, not enemies. Passions are so high at this point that it is difficult if not impossible for either side to imagine that future. It is our responsibility, as the one country with the greatest influence over both sides, to help them see beyond the current impasse and to move them toward the prospect of reopening political discussions particularly now that some semblance of calm has been established. Now that the Administration has finally gotten engaged it must stay engaged. Our role as broker is vital and we must be willing to undertake it if we are serious about Israel's long-term security, peace in the Middle East and combating terrorism.

Mr. GRAHAM. Mr. President, as we debate this amendment expressing our Nation's support for Israel, we must recognize the unique relationship that exists between our two nations.

Israel has been the starting point of United States foreign policy in the Middle East since 1948, when the United States under President Harry S Truman became the first country to formally recognize the state of Israel.

Good relations with Israel are of vital importance to the United States' interests in the Middle East. It is the only democracy in the region and a reliable ally of America.

This bond is even deeper. Israel is a nation that we mirror—in our culture and in our historical values. It is essential that we continue to work with Israel on advancement of these commonalities.

Our relationship with Israel is reminiscent of the American role in the French Revolution, which at the time many considered a foolish position. Although America was a new and small nation on the other side of the Atlantic, we empathized with the French aspirations for liberty and equality. To understand our motivation, we should look at the words of Thomas Jefferson. ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights'' he wrote, enshrining in the Declaration of

Independence the concept of all men being created equal. To Jefferson and all the signers of the Constitution, the quest for equality at that time was to be pursued not just within America, but throughout the world.

America's role in the French Revolution was an extension of the liberty and freedom that we stood for, exercised through our foreign policy. Today, this same concept applies to our foreign policy and contributes to our special relationship with Israel.

As an ally and friend of the state of Israel, America provides the Jewish state $3 billion a year in military and economic support—the largest amount of direct aid provided to any nation by the United States. Israel is also the beneficiary of a preferential trade relationship with the United States.

The ability of the people of Israel and the region to lead normal lives has been shattered by acts of violence and terrorism. It is impossible to observe the tragic situation that has been dragging on over the past 18 months without recognizing that no one—Israelis, Palestinians, or any of their neighbors—is interested in continuing to live their lives this way.

There is no doubt after September 11 that our Nation has a new understanding of the plight of our friends in Israel. There can be no question that the Middle East harbors a significant percentage of the world's terrorists, including many individuals who share the philosophy of those who attacked America.

This is why we must support this amendment and stand in solidarity with our brothers and sisters in Israel.

Mr. LEAHY. Mr. President, I will vote for this amendment because I agree with its general purpose—to reaffirm unequivocally U.S. support for Israel's right to defend itself against acts of terrorism or other forms of aggression. Israel is a friend and ally, and it has faced threats to its survival for over half a century. Since its birth in 1947, we have provided Israel over $50 billion in aid. There is no doubt about our support.

While I will vote for this amendment I am uneasy that we are considering this matter at just the time when we are finally seeing real progress in defusing the recent crisis. While some wish it reflected a more balanced approach, this is the only amendment to be considered.

The amendment expresses support for Israel ''as it takes necessary steps to provide security for its people.'' I fully support that. But as so many have said, some of the steps taken by Israel in the past weeks and months have been both unnecessary and counterproductive. I fear that, in the long run, these steps may have weakened the security of the Israeli people because of the bitterness and the desire for vengeance that they caused among Palestinian civilians—many of whom had previously shunned violence. And there appears to be far more support for Yasser Arafat today among average Palestinians than there was just a few months ago.

The amendment demands that the Palestinian Authority ''dismantle the terrorist infrastructure.'' I fully agree that this needs to happen. I also know, as Secretary of State Powell has said, that Yasser Arafat, whose security apparatus has been largely destroyed by the Israelis, cannot do everything himself even if he wanted to, but he can and must do more. I also know there are people in the West Bank and Gaza who will do anything to sabotage progress toward peace.

The amendment singles out Egypt and Saudi Arabia to ''act in concert with the United States to stop the violence.'' They should do that, and condemn more forcefully the suicide bombings. These governments have many problems, and certainly the Saudi Government, with all its wealth, has not always played the constructive role it could. But it is important to recognize the positive things they have done, which this resolution fails to do. The Saudi Government has put forward the only viable peace proposal in the past 18 months. Not even the U.S. administration has done that. Egypt, according to Secretary Powell, has been supportive of U.S. policies in the region.

Mr. President, this amendment, which addresses a number of issues, is silent on others that need to be addressed. Given the vastly conflicting reports of what happened at Jenin, an impartial investigation should be done. The use of U.S. weapons also needs to be looked at, particularly since the State Department reports of ''numerous serious human rights abuses perpetrated by Israeli security forces during the year.''

And most important, there needs to be a recognition of the role of the Israeli settlements in the recent explosion of violence. For this amendment to not even mention the role that the settlements play strikes me as a serious omission because until that issue is resolved, I am afraid the bloodshed will continue.

It has been widely recognized for years that the United States is the only country that can play the role of intermediary in the Middle East. The situation has become so polarized, and steeped in hatred, that our task is now infinitely harder.

It is time for a more forceful strategy for peace because it is clear that normal diplomatic efforts have failed. Both sides say they want to live in peace, but whatever they have gained or suffered in the past few weeks has, I believe, only made peace more elusive.

A two-state solution is the only solution, and that means a Palestinian State that is viable, that is worth living for, not a state in name only.

And for Israelis, it means being able to live free of terror and fear. Suicide bombings or other deliberate attacks against civilians are acts of terrorism that can never, ever be justified. These bombings should be condemned by everyone, including countries in the Middle East that have either expressly condoned them or tacitly approved them by their silence.

The strategy of the Palestinian leadership has been a disaster for Israelis, for Palestinians, for the entire region. Mr. Arafat has repeatedly deceived his own people. Palestinians are an industrious, compassionate, proud people. They deserve far better. Mr. Arafat has survived this latest storm, but he needs to act immediately to prove that he wants peace and can be trusted.

As long as either side deprives the other of the freedom, the dignity, and the security to which all people are entitled, the bloodshed will continue. The President was right when he said there has been a lack of leadership on both sides. That is why, more than ever, stronger U.S. leadership is needed—leadership that receives the support of both sides.

I hope this amendment encourages that leadership.

Mr. REID. Mr. President, I am proud to rise today and join my colleagues in expressing solidarity with Israel.

The Senate includes members of different faiths, ethnic backgrounds, and political ideologies. But despite our differences, we have shown our ability to come together at important moments and unite around common principles.

We rallied together, Democrats and Republicans, to support the war on terrorism after our country was attacked.

And we have worked together in a bipartisan manner not only to meet America's national security and homeland security needs, but also on issues such as education reform.

I am pleased that so many of my colleagues—Democrats and Republicans—are joining me to express solidarity with Israel.

We stand with Israel because Israel has been a friend and partner of the United States.

We stand with Israel because Israel is a democracy and shares our values.

We stand with Israel because we have an obligation to secure the continuance of a Jewish state. We have seen—and must not forget—the horrors of the Holocaust when too many people, leaders and governments failed to intervene.

''Never Again'' will the world fail to see, or hear, or speak, or act when the Jewish people are being persecuted and murdered.

It is important for the people of Israel to know that we continue to stand with them, and it is important for Israel's enemies to know that America will not abandon her. Furthermore, our continued support of Israel sends a powerful and unequivocal message to terrorists everywhere that the United States will not retreat in our war against terror.

This is a critical moment for Israel and for the prospects of peace in the Middle East.

For far too long, that region has been plagued by war and bloodshed.

Israelis have suffered violent attacks against them since the state of Israel was born more than 50 years ago. Israel is a small country, and really a small community where it seems everyone knows each other, so when tragedy strikes, the loss is felt intensely by all.

Israelis have somehow learned to endure attack after attack, and almost to view terrorism as a normal part of life. Certainly, deadly attacks have occurred frequently, but for them to be seen as normal is itself a tragedy.

We stand with Israel because we too mourn the loss of innocent lives.

In the past 18 months, the violence has escalated to an unprecedented and completely unacceptable level.

During the Jewish festival of Passover, 28 Israelis who gathered for a Seder were butchered; 28 innocent victims including children, mothers, fathers, grandparents.

This past week, on the Jewish Sabbath, more innocent Israeli civilians—including a 5-year-old girl inside her home, and a husband and wife lying in bed—were killed in cold blood by Palestinian terrorists.

We recall other incidents like the joyous Bat Mitzvah celebration that suddenly became a killing field, and we think of Israelis participating in typical activities like stopping for a nosh at the pizzeria, riding a bus to school or work, enjoying a night at the disco—not realizing that they would instead be killed. But these are the conditions Israelis face.

While we admire Israel's bravery and perseverance in the face of constant threats, we must not accept a world in which terrorism is so commonplace.

Americans do not want to be victims of terror again, nor can we expect Israel to stand idle while her citizens are being slaughtered. Once we identified those responsible for the attacks on the World Trade Center and the Pentagon, we sent our troops to Afghanistan to bring the terrorists to justice and end their ability to strike again. We vowed to stamp out evil and to continue our fight as long as necessary.

How then can we—or anyone—reasonably ask Israel to allow the terrorists responsible for murdering innocent Israelis to remain free and continue to plan more attacks? We cannot.

So we reaffirm our commitment to Israel's security and right to self-defense.

We stand with Israel because Israel's enemy—terrorism—is also our enemy, and the U.S. has no better ally than Israel in our war on terrorism.

We stand with the people of Israel who want a safe, peaceful and prosperous future not only for themselves but also for their neighbors.

We all pray and hope for peace so that all the people in the region can live free from danger and without fear.

I have in the past called on the administration to be more actively engaged in brokering peace between the Israelis and Palestinians.

I believe the President neglected the region and the issue for too long, and as a consequence hostilities increased and more innocent lives were lost.

But now the administration has become more engaged, recognizing that the United States has important reasons for promoting peace and fighting terrorism there as elsewhere around the globe.

And we have a unique position of leadership that also comes with a responsibility to be actively involved in efforts to bring about lasting peace.

So the United States should do all it can to support peace, and reach out to Israelis, Palestinians, neighboring Arab states, and all other interested parties willing to work towards a solution.

But in doing so, we must be clear in expressing our solidarity with the people of Israel.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. Mr. President, I thank the Senator from Arizona for being accommodating to me and other Senators.

I strongly support the Lieberman amendment reaffirming this Nation's solidarity with Israel. It is a timely resolution, and I am proud to be a cosponsor.

I have said many times that the terrorist attacks on our country on September 11 brought us closer to Israel. Every American now better understands the terrifying reality that Israelis have lived with day in and day out since Israel was founded 54 years ago.

Today we send a message to the people of Israel: We stand with you in this time of great challenge.

Each of us recalls the hundreds of letters and resolutions that poured into our offices from foreign capitals around the world in the aftermath of September 11. Their message was clear: The world will not allow terrorism to triumph. We are right to send that same message to our friends in Israel today.

This amendment rightly calls on Chairman Arafat to fulfill his commitment to dismantle the terrorist infrastructure in the territories. Without a clear and demonstrable commitment to battle terrorists, the world will remain skeptical of his intentions and his goals.

As Arafat acts, so must the rest of us. We all have a role to play, and this amendment calls on ''all parties in the region to pursue vigorously efforts to establish a just, lasting, and comprehensive peace.''

This land is home to three of the world's greatest faiths. And what happens there affects our common future.

That means we all have responsibilities.

The Arab States, particularly our key allies, Egypt and Saudi Arabia, must provide the same kind of leadership in the battle against Palestinian terrorism that they have demonstrated in our common efforts against extremism in Afghanistan.

Israel, too, must act. At Oslo, at Wye, and again at Camp David, Israel has taken risks for peace. It must be—and I believe it is—ready to do so again.

We must all recognize Israel's right to defend itself against attack. That is a basic right of every nation and this amendment affirms it clearly.

At the same time, we call on Israel to distinguish between those who seek only to provide for their families, and the agents of terror who seek Israel's destruction.

Lastly, the United States must remain engaged in this vital region. We must remain actively involved in negotiations. More than any other country in the world, we can help to bring the parties together. We must continue to do so.

The President's initiative to deepen United States involvement in the region is right for America, and it is right for Israel.

The United States is—and will remain—Israel's best friend. We must—and will—honor our commitment to preserve Israel's military superiority. And we must continue to make clear—as this resolution does—that our bonds with Israel are unshakeable.

We must also recognize that part of the war on terrorism must be to build productive societies. Right now, in Afghanistan, we are rebuilding that country and showing Afghanistan, and the world, that our war is with the Taliban and al Qaeda, and not the Afghan people.

We must do the same in the territories—held rebuild the West Bank and repair the infrastructure of Palestinian society.

In doing so, we will send a message to the Palestinian people and the world: Terrorists destroy, democracies build. And we will build.

The names and the details in this resolution are different than those messages we received from around the world in those dark days last September. But the fundamental principle is the same: In the battle against terrorism, the world must be united. We are right to send that same message today to our friends in Israel, and to all of the people in the region who long for peace.

I urge my colleagues to support the Lieberman amendment.

Mr. President, there comes a time when, as leader, one has to make decisions about schedule that are not always in keeping with every Senator's wishes. But if anybody has looked out the window, they know that the storm which is forecast is virtually upon us. There are Senators who wish to catch airplanes prior to the time the airport is shut down. I have had numerous requests all afternoon for a vote on the Lieberman amendment to accommodate those Senators who need to leave.

So while I fully appreciate the fact that there are some Senators who have yet to speak, given the circumstances we face weather-wise and the need for Senators to accommodate their schedules, I have made the decision that we will have a vote.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Kentucky (Mr. BUNNING), and the Senator from Utah (Mr. BENNETT), are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) and the Senator from Kentucky (Mr. BUNNING) would each vote ''yea.''

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

The result was announced—yeas 94, nays 2, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—94

Akaka	Edwards	McConnell
Allard	Ensign	Mikulski
Allen	Enzi	Miller
Baucus	Feingold	Murkowski
Bayh	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Burns	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carnahan	Hutchinson	Schumer
Carper	Hutchison	Sessions
Chafee	Inhofe	Shelby
Cleland	Inouye	Smith (NH)
Clinton	Jeffords	Smith (OR)
Cochran	Johnson	Snowe
Collins	Kennedy	Specter
Conrad	Kerry	Stabenow
Corzine	Kohl	Stevens
Craig	Kyl	Thomas
Crapo	Landrieu	Thompson
Daschle	Leahy	Thurmond
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Dodd	Lincoln	Wellstone
Domenici	Lott	Wyden
Dorgan	Lugar	
Durbin	McCain	

NAYS—2

Byrd	Hollings

NOT VOTING—4

Bennett	Helms
Bunning	Torricelli

The amendment (No. 3389) was agreed to.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Madam President, first let me say, I cannot understand the rush to act on this amendment. This is a resolution. It was called up today as an amendment to the pending legislation. I had hoped to speak before the vote, not that my speech would have made any difference insofar as other votes are concerned, but I wanted to speak before the vote. I sent word to the leadership that I wanted to speak before the vote.

For several days I have had hearings scheduled in the Appropriations Committee, hearings on homeland security, hearings on the supplemental appropriations bill. Those are important hearings. A couple of weeks ago, the Appropriations Committee conducted hearings on the supplemental and the homeland security request, and we heard from people at the local level, the local responders: The firefighters, the policemen, the health personnel. We had a good hearing.

On the day before yesterday, the committee continued its hearings and we had administration witnesses. We again had administration witnesses today. The distinguished Senator from Washington, who is now presiding over this Senate, was there today at those hearings. The hearings were set. They were announced in advance. We had important witnesses today—Secretary of HHS, Tommy Thompson; we had the Attorney General; we had the head of FEMA. And there was good attendance in the committee. Several Senators on both sides of the aisle were there to ask questions.

All of a sudden, here comes, right out of the blue, this resolution expressing solidarity with Israel in its fight against terrorism. I had wanted to speak on that resolution before it passed. I am under no illusions as to whether or not my remarks would have made any difference. They would not have. I know that. I know that. The die is cast.

On this subject, the American people should understand that when this subject is before the Senate, the vote can be predicted—any matter of this nature, where Israel is involved.

I am as much a supporter of Israel as any Senator in this body. I have spent my years, in considerable measure, studying about the history and the creation of that great people, God's chosen people. I have read it in the Book of Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, First and Second Samuel, First and Second Kings, First and Second Chronicles, Ezra, Nehemiah, Esther, Job—and so on. I am a student of the history of this people.

If the Bible were as small as the Constitution, I would carry it also in my shirt pocket; the Old and the New Testament. So the people of Israel have no greater defender of their national integrity than this Senator from the State of West Virginia.

But I think it was a mistake to bring this resolution up before this Senate at this time. I do not think it is very helpful to the efforts that are being made to bring the two sides together.

As the chairman of the Appropriations Committee, I know what this Senate every year votes by way of appropriations in support of Israel. I know that each year, almost without any questions asked, we appropriate roughly $3 billion—$3 billion—to the State of Israel. We appropriate roughly $2 billion to the Government of Egypt. Those two countries count on these moneys as if they were entitlements. They count on receiving those moneys. Three-billion dollars. That is what the American taxpayers give them.

I am not sure the American people are fully aware that this Government, this Congress, appropriates $3 billion every year—every year, as sure as the calendar rolls around—$3 billion for Israel, and $2 billion for Egypt.

Despite the progress made over the past few days to ease tensions on the West bank and end the standoff over Yasser Arafat's headquarters in Ramallah, the Middle East remains a tinderbox. It is a tinderbox. Even the slightest spark could ignite another conflagration.

Why do we have to come here with this resolution today? Why all the rush?

I informed the leadership—I will say it again—that I wanted to speak on this resolution before the vote. I will not make too much of that. In the annals of history, that won't even merit an asterisk. But, as a Senator who has been a Member of this body and in my 44th year in this body, as a senior Democrat, as the President pro tempore of the Senate, as one who has served as majority leader, as minority leader, as one who has served as chairman and as ranking member of the Senate Committee on Appropriations, I was denied what I asked for. I asked to speak on the resolution before the vote. That is fairly easy to interpret. That is not difficult language to understand. I was denied that.

What is the hurry? Oh, the airport was going to be closed. So what? There is a storm. Senators need to go. OK. Senators have a right to go when they want to go. I was conducting a hearing. It was my duty as chairman to proceed with that hearing. I was told that the need was great. I sent word that I wanted to speak. Finally, realizing that the vote might occur anyway, I asked Senator LEAHY to take the gavel in the Committee. And he had to go. I asked Senator STEVENS, my Republican counterpart, my colleague, to take the gavel, and continue so I could come to the floor and speak. When I got to my office, they were already into the vote 5, 6, or 7 minutes—I don't know. So I

found that the vote was already taking place. Well, that was unfortunate.

This is not a time for chest-thumping rhetoric. This is a time for quiet diplomacy, measured speech, and clear direction. This is not the moment for Congress to stir the Mideast pot. Unfortunately, that is just what the resolution before us does.

I am sure it is a well-intentioned resolution. I know there are many Members of this body who feel passionately about the devastating suicide bombers who have caused so much chaos and heartbreak in Israel. I recognize that there are many Senators who are aching to express in some tangible way their support for Israel. I understand their anguish, and I sympathize with their frustration. But this is not the time to express that frustration. It is not the time.

According to the news reports I have read, the White House has strongly urged Congress not to inflame passions by staging a vote on Israel. The fear is that even a symbolic vote by Congress in favor of Israel would jeopardize the already precarious role of the United States in the Middle East peace negotiations and could even backfire by aggravating tensions and possibly provoking more violence in the Middle East.

Does anyone actually believe—does anyone, anyone, anywhere actually believe—that the U.S. Senate needs to manufacture a vote to demonstrate its support of Israel? Do we not have an unblemished record of support stretching back to the founding of the State of Israel in 1948?

According to the Congressional Research Service, since 1976 Israel has been the largest—the largest—annual recipient of United States foreign assistance and is the largest cumulative recipient since World War II. Since 1985, we have provided about $3 billion a year to Israel in foreign assistance. If Israel does not know by now the depth of United States support and solidarity, it never will.

I object not only to the timing of this resolution—and I believe the timing is fraught with peril—I also object to the slant of the resolution.

Yes. The United States Senate supports the State of Israel and abhors the violence that has been perpetrated against its citizens by Palestinian suicide bombers. The United States Senate also supports peace in the Middle East. And peace in the Middle East is a two-way street. Nowhere in this resolution—nowhere in this resolution—is Israel called upon to fulfill its role in working for peace in the Middle East.

Why was this resolution written so hurriedly? Why was it incumbent upon this Senate to vote today?

This resolution condemns Palestinian suicide bombing, demands that the Palestinian Authority dismantle the terrorist infrastructure in Palestinian areas, and urges all Arab States to act in concert with the United States to stop the violence.

Where are the demands that Israel withdraw from Palestinian lands and cooperate in establishment of a Palestinian State? Where is the denunciation of the destruction of homes and water lines and roads and basic infrastructure in Jenin and Nablus and elsewhere in the West Bank? Where is the expression of support for humanitarian and reconstruction aid to the innocent Palestinian victims of Israel's incursions into the West Bank? Where?

If the Senate is serious about promoting peace in the Middle East—and I believe to the depths of my soul that the Senate is serious—then we should leave the grandstanding to others. We should support the real work of peacekeeping. For better or worse, the United States has been cast in the role of honest broker in the Middle East. But resolutions like this one do not enhance our ability to perform that role. The Middle East today is balanced on the head of a pin. This is not the time for the U.S. Senate to wade into the fray, waving an ill-timed, ill-advised, and one-sided resolution.

I voted against it.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator withhold his suggestion?

Mr. BYRD. Yes, I withhold my suggestion.

The PRESIDING OFFICER (Mr. REED). The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, the Senate just voted on an amendment expressing solidarity with Israel in its fight against terrorism. I voted for the amendment. But I also thought it necessary to explain my views so my vote and my position on this current Middle East situation is fully understood.

I strongly agree with the main thrust of the amendment as I understand it; that is, the United States has a historically unique relationship with Israel; that we condemn violence; that we condemn terrorist attacks; that we condemn the loss of innocent lives of Israeli citizens; and we vigorously support efforts to achieve peace in the Middle East.

I have a couple of concerns that I want to raise, concerns with the language of the amendment. The first concern is that the language implies—or can be read to imply—a blanket support for any and all actions that Israel may choose to take in this fight against terrorism.

In my view, our President was right when he called upon Ariel Sharon to immediately withdraw troops and Israeli forces from Palestinian territories. He first made that demand on April 4 of this year. He repeated the demand that Israeli forces be withdrawn on the 6th of April. Our Secretary of State, Colin Powell, reiterated that position on behalf of our Government when he visited the Middle East on April 8.

In my opinion, this recent occupation of Palestinian territories by Israeli troops is an obstacle—the continued occupation is an obstacle—to renewed negotiations for peace between Israel and the Palestinians. It is very much in the interest of everyone involved that Israel withdraw those troops.

While I understand fully that Israel views the current situation as a struggle for its very survival, a viable peace process requires temperance and compromise on both sides. A blanket statement of support for any U.S. ally causes me concern because there are times—and this is one of those times—when the United States needs to disagree with the actions of an ally, whether they are military actions or otherwise. In my view, when we believe our statements will serve the cause of peace, we should not be reluctant to state that disagreement.

Long term, the only vision of peace that holds out hope for the Israelis and the Palestinians both is for Israel to live in a secure Israel that is not threatened by its neighbors and for the Palestinians to live in a secure Palestine. In the short term, the suicide bombings and violence against civilians in Israel must stop, and Palestinians must be allowed to rebuild their communities and return to some semblance of normalcy in their lives. The current violence and military reaction to that violence has led to a dangerous downward spiral that prevents any serious consideration of a negotiated settlement.

I also point out one other shortcoming of the amendment that we have adopted; that is, that it says nothing about the need to assist the Palestinian people to live lives marked by peace and a reasonable standard of living. It is essential that the entire Palestinian people not be allowed to lose hope that some reconciliation between themselves and the Israelis can be achieved.

While the United States has a unique relationship with Israel, as the amendment states, as a superpower, we also have a unique responsibility to bring the two sides together. We will lose that opportunity if we fail to acknowledge our concern and responsibility for the well-being of the Palestinian people.

I hope very much that in the appropriations process which is still unfolding this year in Congress, aid will be provided both to Israel and to help with the rebuilding of communities in the Palestinian territories. Such aid, hopefully, will assist not only in establishing a reliable security regime for Israel and for the Palestinian people but also help both societies to rebuild their social and physical infrastructure to provide hope for their children and for future generations.

Mr. President, I would also like to speak briefly about trade adjustment assistance, which is the subject we have been discussing most of this week, prior to consideration of this amendment related to Israel.

I rise today in strong support of the trade adjustment assistance legislation

offered in the Daschle trade amendment. I am extremely pleased that it has come to the floor and I look forward to the debate over the next few weeks. From my perspective, this is legislation that takes a very significant, positive, and long overdue step forward for American workers, firms, and communities.

In 1962, when the Trade Expansion Act was being considered in Congress, the Kennedy administration established a basic rule concerning international trade and American workers. When someone loses their job as a result of trade agreements entered into by the U.S. Government, we have an obligation to assist these Americans in finding new employment.

I think this is a very simple proposition really, one that recognizes that if the U.S. Government supports an open trading system, it is ultimately responsible for the negative impacts this policy has on its people. It suggests that if the U.S. Government believes that an open trading system provides long-term advantages for the United States, the short-terms costs must be addressed if the policy is to continue and the United States is to remain competitive. It suggests that if there is a collective interest that must be pursued by the United States in the international trading system, our individual and community interests must be simultaneously protected for the greater good of our country.

In my view, the proposition makes even more sense now, as we are, unfortunately, facing a very different economic climate than we were just a few years ago. The way it is now, most people who lose their jobs cannot simply go across the street and get the same kind of work. Their old jobs are gone, and they need something different to make a decent living. These are people who have been dedicated to their companies and have played by the rules over the years. They deserve a program that creates skills, that quickly moves them into better jobs, that provides opportunities for the future, that keeps families and communities intact. They deserve something more than an apology that this is just the way the market works. They deserve the recognition that they are important, that they matter, and that we need them to make our country strong. There are people who are being hurt by trade in every State, and they need our support.

My interest in this legislation was reinforced in 1997 in Roswell, New Mexico, when the Levi-Strauss plant closed and I saw first hand how trade adjustment assistance worked. Unfortunately, the importance of the program has only increased over the years. In Las Cruces, in Albuquerque, in Questa, in Alamogordo, in my own hometown of Silver City—time and again we have seen the negative impacts of trade in my State. Since 1994, we have had over 10,000 people in New Mexico certified for trade adjustment assistance. The number would be closer to 20,000 if we added secondary workers and contract workers.

I know many of my colleagues on both sides of the aisle have similar stories from their States. Many are worse than my own. Department of Labor statistics show that since 1994 over a million Americans have been certified to receive trade adjustment assistance. And these are the people who are actually eligible for trade adjustment assistance and have applied. There are literally hundreds of thousands of others who deserve these benefits but are not eligible, or who are eligible but don't know it. They have suffered—they continue to suffer—because of the shortcomings of existing law, and we need to change that.

To reach our goal of strengthening existing law, we talked to the people in my State and other States who had been laid off and had a story to tell. We talked to the community leaders who had to rebuild their towns after economic disaster had struck. We talked to the local organizations that had to work with their people to get their lives back on track. We listened to where the program worked, and where it hadn't worked, and where it needed to be improved. We asked the GAO to write several reports on the program, so we had an objective analysis to use as a guideline for reform. Then, and only then, did we begin to write new legislation.

What we have here today is the outcome of several years of work. This trade adjustment assistance legislation was not created in a vacuum. It is not trade policy in the abstract. Every step along the way we connected real people to specific language in the legislation. Every provision has a story behind it. Every line in this legislation will help someone make his or her life better in communities in New Mexico and across the United States.

Trade adjustment assistance is a program that is absolutely essential—that much is clear from the comments I have heard from my colleagues on both sides of the aisle—but it needs to be changed in a way that it works more efficiently and effectively. I am convinced the Trade Adjustment Assistance Program should be both solidified and expanded at this time, and we need a stronger and more consistent safety net for American workers and communities. Let me quickly explain how we have improved the program and why we feel it is necessary.

Our first objective was to combine existing trade adjustment assistance programs and harmonize their various requirements so they would provide more effective and efficient results for individuals who need help. Currently there are substantial differences in coverage between the Trade Adjustment Assistance Program and the NAFTA Trade Adjustment Assistance Program, and we make sure those differences are eliminated in the bill. We have taken the NAFTA Trade Adjustment Assistance program as a model and expanded available allowances from 52 to 78 weeks. This allows individuals to enroll in the specific kind of program they need to get a new job.

We have also expanded coverage to secondary workers and workers impacted by shifts in production to any country. Currently these categories of workers are only covered under the NAFTA Trade Adjustment Assistance Program, not the Trade Adjustment Assistance Program, and we feel this distinction is both artificial and arbitrary. In an international economy, there is simply no logical reason that coverage should be limited to individuals dislocated by trade with Mexico and Canada alone. Basic fairness and common sense dictates that anyone hurt by trade deserves the same treatment as that which is currently available under NAFTA trade adjustment assistance.

Our second objective was to address the issue of health care in a way that makes a substantial difference in people's lives. Currently individuals certified for trade adjustment assistance only receive in the range of $250 a week. Then they must make a choice between paying for the range of expenses—health care, rents and mortgages, childcare, education, transportation, and so on—that they face in their daily lives. This is especially difficult when they are enrolled in the training they need to get a new job. Realistically, they must sacrifice something, and frequently the first thing they sacrifice is their health care.

This can't continue. We have addressed this problem by providing a 73 percent advanceable, refundable tax credit towards COBRA coverage, the purchase of State-based insurance coverage, or, for those currently purchasing individual insurance, coverage through the individual market.

Our third objective was to encourage greater cooperation between Federal, regional, and local agencies that handle individuals receiving trade adjustment assistance. Currently, individuals who are receiving trade adjustment assistance obtain counseling from Workforce Investment Act one-stop shops in their region, but typically receive no information other than that related to their allowances and training. No information is given concerning assistance and funds available through other Federal Departments and agencies. This means most people have no real idea of what options are available to them.

To increase coordination between Federal and State agencies and increase the availability of information for trade adjustment assistance recipients, we have created an inter-agency working group on trade adjustment assistance and established stronger links between the Trade Adjustment Assistance Program and the Workforce Investment Act one-stop shops. This way the state-based delivery system remains intact but response times to

trade adjustment assistance applications will be quicker and more effective.

Our fourth objective was to recognize the direct correlation between job dislocation, job training, and economic development, especially in communities that have been hit hard by trade. Currently, trade adjustment assistance focuses specifically on individual retraining, but does not address the possibility that unemployment might be so high in a community that jobs are not available once an individual has completed a training program.

To fix this problem, we created a community Trade Adjustment Assistance Program, based at the Department of Commerce, specifically designed to provide strategic planning assistance and economic development funding to communities that have suffered substantially from a trade-related economic downturn. Significantly, this is a bottom-up approach, as we emphasized the responsibility of local agencies and organizations to create a community-based recovery plan that fits the economic needs of their region.

Our fifth objective was to help family farmers and ranchers. At present, trade adjustment assistance is available for employees of agricultural firms, but only when they become unemployed. This doesn't help family farmers and ranchers since they can't lose their job, there is no way for them to become eligible for trade adjustment assistance.

We fix this problem by offering trade adjustment assistance allowances to family farmers and ranchers but allow them to opt out of the training program. This allows them to keep their land and get through the hard times that come as a result of international trade.

The administration has focused their efforts on obtaining fast-track authority, stating that it is necessary for the United States to continue its leadership role in the international system. I do not disagree with the view that new, more comprehensive trade agreements will help U.S. corporations become more competitive in the international market. I am prepared to vote for an acceptable fast-track bill, as I think it is a valuable tool in opening the markets of other countries. But I will vote for fast-track only if a strong Trade Adjustment Assistance Program is part of the package. I think it is unacceptable to move forward on new trade agreements if we do not address the problems that American workers and communities face at this time.

I look forward to working with my colleagues and the administration to get a meaningful trade package through the Senate and to the President for signature.

I yield the floor and 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. REID. 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. REID. Mr. President, I heard the senior Senator from Utah speak this afternoon. I wanted to respond to what he said, but I didn't have that opportunity because of the intervening events. The Senator from Utah and I are good friends. I think the world of Senator HATCH. But I think on this issue regarding trade he is absolutely wrong. I say that because the trade bill has been laid down. There are a number of important issues in it. In fact, one of the few things I really support is what is being done to try to protect the steelworkers.

First of all, what is in this bill is very modest. It covers 1 year of retirement for steelworkers. When these people worked in the steel mills, they were promised they would have retirement benefits. Those retirement benefits are now gone. I bet those bosses who worked at the steel companies have pensions.

The people who oppose this legislation, and have a filibuster going on it now, should do what they have to do. If they don't like that part of the bill, move to strike it. Let's debate it on the floor and find out who has the most votes. Don't filibuster the bill. This is a bill the President says is a most important bill. I don't necessarily agree with his priorities, but that is what he said.

So it seems somewhat unusual to me that members of his own party are holding up this legislation. The first amendment is up and we cannot vote on it; there is a filibuster. We have all been through the energy bill, and we know how long that was held up. We were finally able to pass that. We want to bring up hate crimes; they will not let us do that.

Terrorism insurance, I have spoken on this floor several times about the importance of that terrorism insurance. Realtors, developers, bankers, and people in the financial markets say that is extremely important.

The Secretary of the Treasury for the United States testified this week that if that is not passed, it will have at least a 1-percent effect on the gross domestic product of this country. Now, my friend, the Presiding Officer, Senator REED, is chairman of the Joint Economic Committee, which renders reports to the Senate on a frequent basis about the state of the economy of this country. Whether the Secretary is right or not, I think it is something we should take into consideration.

We on the Democratic side have agreed to have this legislation go forward. We have tried everything we can to bring it to the floor. We have even agreed to have four amendments. So I hope everybody understands that we want this legislation to go forward. There isn't a single Democrat holding up this legislation.

I hope the President and the people who work with him will send a message to the Republican Senators that this terrorism insurance should be passed. I hope we can get that done as quickly as possible. People are awaiting construction projects, some are even talking about stopping some of it. We have a large shopping center in Las Vegas, one of the largest construction projects; it is in a mall. There are a lot of stores there. They are talking about stopping in the middle of construction because they can't get a continuation of their insurance.

So I hope the President will do that during the break we have. We don't need to be involved in a filibuster on the trade legislation. We need to move forward with hate crimes, terrorism insurance, and so many other items. I hope we can do that as soon as possible.

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. DASCHLE. I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF BUSINESS

Mr. DASCHLE. Mr. President, momentarily we will take up a unanimous consent request that will accommodate a debate on the farm bill conference report. As I understand it, the distinguished Republican leader is on his way to the Chamber. Let me comment briefly on a couple of scheduling matters.

I know the assistant Democratic leader has talked on several occasions and has offered unanimous consent agreements on terrorism insurance. We would be prepared, once again, to offer a unanimous consent agreement on terrorism insurance, but I hear our Republican colleagues continue to object. We have said on many occasions we are prepared to go to the floor procedurally, have a debate on any one of a number of questions relating directly or indirectly to terrorism insurance, but for whatever reason, our Republican colleagues continue to refuse to allow that debate and that consideration. This has been an ongoing effort.

We have made many attempts to satisfy those certain Senators on the other side who proclaim interest and support for terrorism insurance, but we have been unable to satisfy their obstruction—I use that word with full appreciation of its definition—their obstruction when it comes to an important matter such as this. We will continue to try to talk with our colleagues in an effort to come to some conclusion procedurally, but I must say there is growing frustration on our part that we have not been able to proceed.

The same could be said for the conference report on the farm bill. I have

attempted to bring the bill up throughout the day. I must say, Senator LOTT deserves commendation in his efforts to work with those who have threatened filibusters on the legislation. We received a letter from the President today urging the Senate to send the bill to the President as soon as possible. That was my hope today, that we would have a bill to send to the President. But as I now understand it, our Republican colleagues, rather than filibustering the bill, will ask for a substantial amount of additional time.

We will ask unanimous consent they have 6 hours on Tuesday and 6 hours on Wednesday to talk about a conference report. So we will accommodate that request and we will proceed with that unanimous consent request as soon as the Republican leader comes to the floor.

I have been getting calls today from the administration urging us to complete our work on trade as well. But as my colleagues know, there are those Senators on the other side who currently are filibustering the trade bill, the trade package. So we have a filibuster on trade and trade adjustment assistance, a quasi-filibuster on the farm bill, and I guess you could call it a filibuster on terrorism insurance—at least an unwillingness to proceed to terrorism insurance.

These issues are important. We hear oftentimes our colleagues talk about how they wish we could accomplish more on the Senate floor. I advise my colleagues, this is one reason it is difficult to accomplish more, when we don't get any more cooperation than that.

I do appreciate the work the Republican leader has invested in getting us at least to this point. I am prepared to entertain the unanimous consent request as soon as he comes to the floor.

I might say that the schedule next week will include not only this elongated debate on a conference report relating to the farm bill but the trade bill. The schedule will include, of course, the debate on Tuesday for 6 hours. We will then go back to the trade bill. The debate on the farm conference report will pick up again on Wednesday, beginning at around 9:30. Our expectation would be that we would then complete debate by Wednesday afternoon with, again, the expectation we would come back to the trade bill and attempt to move and consider additional amendments.

Because there are no vote scheduled on Monday, we will be in a pro forma session on Monday. There will be no votes, and I would not expect any debate on the trade bill on Monday.

That is the schedule. My desire is to dual-track other issues as they become available. I realize the possibility is not very significant, but if we could reach an agreement procedurally on terrorism insurance, of course we would bring that up. We have other confirmation questions we would want to raise and certainly would be prepared to have votes on those as well. In addition, as legislation becomes available that does not involve a great deal of controversy, it would be my hope that we could take that up, as well, on a dual track.

I remind my colleagues, we do have to make every effort to accommodate the May 16 deadline on the Andean Trade Preferences Act. If we fail, obviously all of the conditions involving the trade barriers that existed prior to the enactment of TPA kick back in. We would hate to see that. I hope we can avoid that. We will cross that bridge when we come to it.

Therefore, it is important we use all of that time available to us next week, outside of this consideration of the farm bill, to continue TPA, TAA consideration.

MORNING BUSINESS

Mr. DASCHLE. I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

FOSTERING HUMANE TREATMENT OF ANIMALS

Mr. BYRD. Mr. President, I ask unanimous consent to print in the RECORD remarks I made before the U.S. Humane Society.

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

REMARKS BY U.S. SENATOR ROBERT C. BYRD, AT THE U.S. HUMANE SOCIETY, WASHINGTON, D.C.

From ancient days, before the ink of history, man has held dominion over the animals. Should we be able to peer through the mist of those distant times, we might witness the process by which man turned from gatherer to hunter, and, skill permitting, began to use the flesh of animals as a source of food and survival in a cold world full of danger and a perilous future. Later, the relationship of man and animals began to evolve through so-called domestication, and animals became a more reliable source of food. A partnership of sorts was formed in which animals came to bear the brunt of labor and the title ''Beasts of Burden''.

Over this same stretch of time, man developed social compacts from which sprang the seeds of modern civilization, and which led to pursuits of philosophy, and an emphasis on morality. The process was slow in development and uneven in allocation among and within societies. Even today, attitudes and actions persist that run counter to a higher understanding about the value of life and the lives of all things. For better or worse, man is destined to rule this world, and with that charge comes the heavy responsibility of benevolent custody and faithful husbandry to all creatures found within nature. To fail in that duty is to denigrate the sanctity of all life. Choices in our treatment of animals are a good barometer of how well we are carrying out our stewardship of God's beautiful world. Man may choose to rule this world, or attempt to do so, but for all his worry over property rights among his own species, it is well to remember that it is only God who holds title to this planet.

Maintaining civilization sometimes seems a process of constant struggle with those who, either because of ignorance or a deliberate scheme, would prefer to stress efficiency and materialism over more elusive concepts. To balance those forces, those of us who hear a different drummer must educate, legislate, and promulgate better understandings and guidelines aimed at bringing mankind into closer harmony with nature. The Congress embodies the collective will of the American people, and those of us who serve there recognize that our duty is to the people in our states. But, we also have a duty to safeguard the spirit of this Nation and all that it represents in terms of philosophy and ideals, as well as law. You honor me this evening for my work in pursuit of these higher objectives, and I am very grateful.

Your organization works to enrich the condition of man by improving his relationship with nature, and in particular, his relationship with the animal kingdom. You bring to the public discourse a better understanding of the conditions in which animals exist and, unfortunately in many instances, of the inhumane manner in which they are treated. You remind us all that animals share this planet with us, and that their space, their comfort, and their lives are not without importance. You remind us of man's higher purpose in the larger universe. Public debate is enriched by your participation, and the lives of God's creatures greatly benefit because of your contributions.

Animals are man's fellow occupants on this blue-green ball, slowly spinning through eternity, and they enlighten and enliven our lives in many ways. They provide us companionship and friendship. They ward off loneliness. They assist the blind. They protect us. They help maintain the balance of nature. While there are those who object to the practice, they feed us. They benefit us in ways we don't even recognize. In return, it is our duty to ensure that their lives and, in some cases, their deaths, are free from unnecessary discomfort. Animals, deserve our respect because, they, too, are creatures of God. Combating cruelty and apathy towards the welfare of animals is a high and moral calling. I commend you for your altruism, and I am proud to count myself among your number. We cannot correct all the problems overnight, but we can make changes today, and we can make changes tomorrow. We have come a long way towards the goal of fostering more humane treatment for animals, but we still have much to do.

This evening, together we pause to reflect on our achievements and to contemplate future strategies. I am humbled by your recognition of my work, your encouragement, and the hope that our efforts may inspire others to a more sublime level of humanity through empathy with the animals with which we share this lovely world.

Mr. THURMOND. Mr. President, I am pleased to join several of my distinguished colleagues in support of S. 2439, the Human Cloning Prohibition Act of 2002, that will outlaw the reproductive cloning of human beings, and at the same time promote critical medical research. During my consideration of the new and emerging areas of regenerative medicine, including nuclear transplantation technologies, two basic principles have guided my thoughts. First, as someone who has taken a pro-life stance, I believe that Congress should pursue policies that encourage the development of life-saving treatments. Second, nuclear transplantation research, if performed under the strictest

of safeguards, is both moral and ethical.

Nuclear transplantation technologies hold enormous promise for the future of medicine. For example, this research may help those suffering from defective organs. Scientists may one day have the ability to use a patient's own body cells to grow tissues with identical genetic material, thereby eliminating the risk of rejection. Regenerative medicine also has the potential to provide treatments for diseases such as cancer, heart disease, Parkinson's, diabetes, ALS, multiple sclerosis, and many others. Experts estimate that over 100 million Americans suffer from diseases that are candidates for regenerative medicine research using nuclear transplantation.

While some critics of this research claim that we cannot be sure of its benefits, we will certainly not know the answer unless we try. Scientific discoveries are never predictable, and we must not hamper the abilities of our sharpest minds to explore the universe, down to the tiniest cell. We do not know the full potential of this research. These scientific advances may help us gain insight into how undifferentiated stem cells begin to develop into the more than 200 specialized cells and tissues that make up the human body. There are untold benefits to be gained from knowledge of the earliest development of these cells. In addition to the advances that may be made in the treatment of common diseases, we may also learn more about human health, how disease develops, and other conditions ranging from birth defects to genetically-inherited illnesses.

All of us know people who have suffered from incurable diseases. I believe that we must make every effort, within ethical bounds, to help those afflicted with life-threatening illness. While I respect those who disagree with me, I believe that support for regenerative medicine is the essence of the pro-life position. We must help those living in the shadow of sickness, whether they are cancer patients receiving chemotherapy treatments or diabetics facing the loss of vision or kidney failure.

Nuclear transplantation research, if performed under strict ethical guidelines and with appropriate oversight, is an entirely appropriate and morally sound activity. For instance, during nuclear transplantation, an egg is never fertilized by a sperm. Rather, the genetic material from a non-reproductive human cell is placed into an egg cell. Additionally, the resulting embryo is never implanted into a woman's womb or an artificial womb. The result is that a human being can never be born from this carefully controlled research.

I want to assure my colleagues and constituents that I am committed to ensuring the safety and morality of scientific research. I feel confident that nuclear transplantation technologies can be performed in a controlled and regulated environment which will prevent abuse. While the bill as introduced includes stringent ethical guidelines, I am open to amending the bill to ensure that the strongest protections are put in place. For example, women who donate eggs and those who donate body cells must only do so in a voluntary manner. Additionally, the development of the unfertilized embryo in the lab must be restricted. Therefore, the embryo will not grow past a certain time threshold. I will also gladly consider any other appropriate and reasonable guidelines to ensure the safety of nuclear transplantation technologies.

I hope that my colleagues will join me in supporting this legislation that will ban human reproductive cloning but will promote the development of regenerative medicine. We must make reproductive cloning illegal and provide for stiff criminal penalties. This bill accomplishes these all-important goals. Also, this legislation allows invaluable scientific research to go forward under strict ethical standards, thereby establishing a policy that both respects human life and encourages the advancement of medicine.

Regenerative medicine technologies such as nuclear transplantation hold out significant hope for those people who suffer from devastating and debilitating medical conditions. Cures for horrific diseases may one day be a reality. We should not allow these promising areas of research to go untapped, and we should pursue scientific breakthroughs that will improve the quality of life for millions of people. I am pleased to stand in support of regenerative medicine alongside former President Ford, former First Lady Nancy Reagan, the American Pediatric Association, the Juvenile Diabetes Research Foundation, and 40 American Nobel Prize winners.

LT. CMDR. A. JASON BAYER

Mr. ENSIGN. Mr. President, I stand before you today with a heavy heart. On Thursday, March 28, this country lost one of its prized sons. Lt. Cmdr. A. Jason Bayer was killed during a search and rescue training mission on a rugged Sierra Nevada Ridge.

The son of Arthur Bayer of Carson City, NV, and the late Merry Ann Bayer, Jason's success as a fighter pilot was determined early in life. As his father recalls, the very first word out of his mouth was ''jet.''

Growing up in Carson City, Jason was a star student, an avid athlete, and a loyal friend. Jason graduated from Carson City High School in 1986 and the University of Southern California in 1990. Commissioned to the Navy later the same year, he was accepted to the Naval Aviators Officer Candidate School, from which he was an honor graduate. He graduated first in his class from Intermediate Jet Flight Training, and then first in his class from Advanced Jet Training. Jason was stationed in Japan then was a flight instructor at Cecil Field in Florida and graduated from the Navy Test Pilot School in Maryland. Most recently, he was a test pilot in the Naval Weapons Test Squadron at China Lake. Jason's career was distinguished. He earned the VT 22 Eagle ''Top Hook'' award, the Meritorious Service Medal, and the Navy and Marine Corps Achievement Medal. Each achievement in his career took him closer to his ultimate goal of becoming an astronaut. His love for flying and the military and his devotion to God and this country never wavered and was only paralleled by his love for his family and friends. His lifelong friend, Dan Bernal, described him as ''a true patriot.''

I share these details of Jason's life with you so that his wife Anne, their one-year-old daughter, Gabriella, and their unborn son, Jason Christian, will have one more thing by which to remember him. Anne and Jason were blessed with 6 years of marriage. Although cut short, they were filled with many wonderful memories. But for Gabriella and her brother, stories and pictures of their father are all that they will have. In speaking to Anne about her husband, I quickly learned what a remarkable and strong person she is as well. Jason's legacy and their children are in wonderful hands.

As an F/A–18 Hornet fighter pilot, Jason was prepared to fight for his country no matter what the cost. He was focused on his mission as a pilot, and he never lost sight of his dream to challenge the sky's limits and be the first man on Mars. With our loss of Jason, I am reminded of our loss of seven valiant astronauts on January 28, 1986, on these space shuttle *Challenger*. Jason was a senior in high school with a bright future when President Reagan spoke of the astronauts' final journey in which they ''slipped the surly bonds of earth'' to ''touch the face of God.''

Jason is surely touching the face of God today. His service and dedication earn him a place among the outstanding men and women who risked their lives in the name of freedom and in the end made the ultimate sacrifice. Jason's life was cut tragically short, but his time here is an inspiration to me and an example of a true American hero for us all.

God bless Lt. Cmdr. Jason Bayer, and God bless his family.

Mr. REID. Mr. President, I applaud my colleague from Nevada for his heartfelt remarks concerning the tragic death of Lt. Cmdr. A. Jason Bayer. I rise today to honor this outstanding individual, a patriot, and I agree that this country, and more importantly Nevada, has lost one of its cherished sons.

It is with deep sorrow that I make this statement to you today on the Senate floor. Anne, please accept my sincerest condolences for the loss of your husband.

Jason made the ultimate sacrifice while conducting a search and rescue training mission in the rugged Sierra

Nevada Mountains. He truly is an American hero. You should be extremely proud of your husband, and I want you to know that citizens in Nevada and across this great nation appreciate his selfless service. Your daughter Gabriella and your unborn son, Jason Christian, will forever know the dedication and patriotism of their father.

Mr. President, I am very proud of Jason's patriotism and devotion to duty. I am also extremely grateful for his exemplary service to our country. I know all Nevadans feel the same way. My thoughts and prayers are with you and your family throughout these difficult times.

THE UNTOLD STORY OF MURDER-SUICIDE IN THE UNITED STATES

Mr. LEVIN. Mr. President, according to a report on murder-suicides released last month by the Violence Policy Center, a firearm is the weapon most frequently used to murder the victims, with the offenders then taking their own lives. The study notes that easy access to a gun was the decisive component for almost all of the murder-suicides. Of the 54 murder-suicides reviewed in this study, 52 were firearm-related. If these people had not had access to a firearm, some of these deaths may not have occurred.

There is a piece of legislation in the Senate I believe would help prevent easy access to firearms by felons, those determined to be mentally ill by a court, those individuals with domestic violence misdemeanors and restraining orders, and others prohibited by law from owning a firearm. In April of last year, Senator JACK REED introduced the Gun Show Background Check Act. The Reed bill, which is supported by the International Association of Chiefs of Police, extends the Brady bill background check requirement to all sellers of firearms at gun shows. I cosponsored that bill because I believe it is critical that we do all we can to prevent guns from getting into the wrong hands.

Mr. President, I believe this piece of legislation would be one of many things we can do to address the problem of easy access to guns.

THE HOME HEALTH MODERNIZATION ACT OF 2002

Mr. HUTCHINSON. Mr. President, I rise today, as an original cosponsor of the Home Health Modernization Act of 2002, to express my strong support for a clarification of the definition of ''homebound'' with respect to eligibility for home health services under the Medicare program.

I want to tell you about Ms. Pamela Wolfenbarger of Fayettevelle, AR. Ms. Wolfenbarger is a quadriplegic as the result of an accident and has devoted the last twenty years to raising her son. Now that her son is grown, she would like to return to school so that she might become more self-sufficient financially. Due the current Medicare homebound policy, Ms. Wolfenbarger is unable to do so, nor can she leave her home to go clothes or food shopping, despite offers of assistance from a tremendous support group in her community. Ms. Wolfenbarger needs the services of a home health nurse to assist her in personal care, dressing, and transferring from her bed to her wheelchair.

The current Medicare statute states: ''While an individual does not have to be bedridden to be considered to be confined to the home, the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences from the home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment''.

Problems have arisen because the terms ''infrequently'' and for periods of ''relatively short duration'' are comparative terms with no point of comparison, which has led the Centers for Medicare and Medicaid Services to interpret the statutory coverage criteria for home health as requiring patients to remain in their homes virtually at all times, except those times specifically excluded in the statute, in order to remain eligible for coverage of home health services. As a consequence, many beneficiaries who are dependent upon Medicare home services and medical equipment for survival, including Ms. Wolfenbarger, are being unnecessarily restricted to their homes out of fear that they will lose their home health benefits.

I believe we need to correct this problem for people like Ms. Wolfenbarger, and that is why I have joined Senators COLLINS, BOND and CLELAND in introducing S. 2085, to clarify the homebound definition. Under this important legislation, the current requirement that beneficiaries be allowed ''only infrequent absences of short duration'' would be eliminated. By doing so, reasonable absences from the home will be allowed and we will bring the home health benefit into the 21st century. I urge my Senate colleagues to support the Home Health Modernization Act of 2002.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred on May 19, 2001 in Fargo, ND. Two black men were assaulted late at night outside of their apartment. Just prior to the assault, the assailants used racial epithets directed at the victims. Angela Schussler, Thomas Schussler, and Robert Schussler were arrested in connection with the incident, which police described as being ''racially motivated.''

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

EARLY MILLER: BIRTH OF A PLAYWRIGHT

Mr. KENNEDY. Mr. President, I would like to commend to my colleagues an article from the New York Times reviewing a new production of Arthur Miller's play, ''The Man Who Had All the Luck.''

Produced by the Williamstown Theater Festival last summer, this revival has earned acclaim for its extraordinary adaptation of this work by one of America's finest playwrights.

The critic has offered special praise for the lead actors, Chris O'Donnell and Samantha Mathis as well as Sam Robards.

The Williamstown Theater Festival is a tremendous organization which brings great drama to the Berkshires every summer, with some of the most talented performers and directors in the country. This production is now brilliantly staged on Broadway and I know that audiences will enjoy this timeless and poignant American story.

I ask unanimous consent that the article from the New York Times be printed in the RECORD.

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

[From the New York Times, May 2, 2002]

EARLY MILLER: BIRTH OF A PLAYWRIGHT

(By Bruce Weber)

Unthreateningly handsome, with cornfed brawn, a polite-to-old-ladies manner and an earnest bleat in the voice, the young actor Chris O'Donnell certainly has the traditional mien of the All-American boy. He's a natural for the lead role in ''The Man Who Had All the Luck,'' Arthur Miller's 1940 play, subtitled ''A Fable,'' about America and the burdens of unmitigated good fortune, which opened in a stirring and rich revival last night on Broadway at the American Airlines Theater. I mean, he's really a natural. Known for playing sidekicks in popular films—he was Robin in two of the ''Batman'' movies, and he starred with Al Pacino in ''Scent of a Woman''—Mr. O'Donnell had never appeared onstage before. ''The Man Who Had All the Luck'' was produced last summer at the Williamstown Theater Festival.

Mr. O'Donnell played the title character, David Beeves, a young Midwesterner who, with seemingly unearned fate, gets the girl, the business, the land and the legacy, while all of those around him fall victim to life's vicissitudes and suffer enormous disappointments. His performance then made it clear that some gifts—like effortless charisma and

physical certainty—do indeed descend on some people as if ordained.

And now, as he leads a splendid cast in a production directed by Scott Ellis that the Roundabout Theater has imported largely intact from Williamstown, Mr. O'Donnell appears, if anything, more in control of a character who is blessed (and cursed) with being preternaturally in control. It's a remarkably complex and counterintuitive performance. You can't be naïve and play naïveté so well; nor can you be conscience stricken and play ambivalence with such conviction.

The play, written by Mr. Miller when he was 25, was his first to appear on Broadway, where, in 1944, it closed after four performances. And from the current production you can understand why producers would take a chance on a youthful playwright and why audiences and critics were not so eager to join them. It is a serious, ambitious work by a precocious and perhaps over-reaching young writer, populated by characters with blunt purpose; a little slow moving, particularly in the opening act; and a little pedantic, particularly in the third (and closing) act. Reviewing the original production in The New York Times, Lewis Nichols said, with a yawn: ''The Man Who Had All the Luck' lacks either the final care or the luck to make it a good play. But it has tried, and that is something.''

What no one could have known of course is what Mr. Miller would go on to accomplish (''Death of a Salesman'' was only five years away) and I can think of no other revival that is so enriched by retrospective knowledge. Anyone interested in Mr. Miller's career, which has had an extraordinary reconsideration in recent seasons, will be fascinated by the strong roots he planted in this early play.

Indeed, those who have seen any of the fine revivals of recent vintage on Broadway—including ''Salesman,'' ''The Price,'' ''A View From the Bridge,'' ''The Ride Down Mount Morgan'' and ''The Crucible,'' which is currently at the Virginia Theater—are likely to find their appreciation of those plays enhanced by a viewing of this one. Here are the issues of brotherly competition and fatherly betrayal that Mr. Miller explored again and again. (The scene in ''Salesman'' in which Willy Loman's egregious betrayal of his family is revealed to his elder son, Biff, has a clear antecedent here.)

Here are the admonitions against succumbing wholeheartedly to the lures of capitalism and against the sanctimony of ugly-Americanism. Here is the pained ambivalence of Mr. Miller toward the so-called American dream and the agony of a citizen playwright over a wayward national conscience.

All of these things were excitingly evident when I saw the production last summer, but a couple of other contextual elements weren't. One is the recent opening, 10 blocks north, of ''Oklahoma!,'' the revived 1943 musical in which Rodgers and Hammerstein presented a far different picture of American than Arthur Miller ever has. The director of that show, Trevor Nunn (who is British) and the choreographer, Susan Stroman, have uncovered in it the more ominous underpinnings of the national character. But even so, ''Oklahoma!'' ends with a frontier trial that explicitly vindicates our hero, the symbolic and joyous triump of expanding democracy.

Contrarily, at the conclusion of ''The Man Who Had All the Luck,'' David Beeves, a man who has made a great life the way the founding fathers made a great nation, simply by landing in the right place and seizing the awesome opportunity, remains a self-doubter. He has just dodged one more bullet, and future prosperity, embodied by his newborn son, seems assured to everyone except himself.

In the aftermath of Sept. 11, David's uncertainty seems especially poignant and prescient, and especially opposed to the bullheaded optimism of ''Oklahoma!,'' whose most comic character is a lovable peddler (American enterprise at work!) who happens to be from the Middle East.

In other words, this production of ''Luck'' has a fair amount of luck itself, at least in its remarkable timeliness. The rest of its appeal can be attributed to skill.

To begin with, the play is presented on Allen Moyer's handsome sets—the garage that houses David's auto-repair business and the home he takes over with his new wife after the death of her father—that share a vaulting back wall that suggests the unadorned roominess of the American plains. (The props include a magnificent automobile, a 1930 Marmont.)

And the play itself evinces the staunchness that has always characterized the construction of Mr. Miller's work. This is a drama with a fully thought-through dramatic arc and nine large roles, even though, like an apprentice carpenter, Mr. Miller banged in a few crooked nails. When the villainous father of David's fiancée is run over by a car, even the man's daughter shrugs and moves on without a sign. And the play's structure is long on fundamental theme-fulfilling and short on subtlety.

Several characters, for example, exist to make a single point, that most people succumb to a fateful flaw: J.B. Feller (Richard Riehle), a successful local businessman who invests in David's future, undermines his wish for a son with his drinking. Shory (Dan Moran), a wheelchair-bound veteran, curtailed his own sowing of wild oats with his penchant for whoremongering. Dan Dibble (Mason Adams), an elderly farmer who made a fortune raising mink, foreshadows his own personal calamity with a speech about the necessity of looking after your interests with unremitting vigilance.

All the actors are fine, and they've been welded into a nifty down-home-feeling ensemble by Mr. Ellis. Mr. Adams is marvelously crotchety and self-absorbed in the part, never more so than when he delivers this speech, which defends the principles of capitalism and mink farming. It's a set piece, much like the scene in which a baseball scout, played with the blunt and entertaining élan of caricature by David Wohl, explains his search for the source of a ballplayer's incurable flaw. It's a grand character turn, and a fine use of the sport as a metaphor for the American soul.

Sam Robards, who plays Gustav Eberson, an Austrian immigrant whose expertise and dreams become subservient to David's naturally endowed privileges, hits just the right notes of modesty and gratitude of someone who has bought into the fabled promise of our country. The early scene in which he enters David's garage and helps him repair the Marmont is a finely, sweetly evoked illustration of the forging of a lifelong bond.

The one new cast member is Samantha Mathis, who plays Hester Falk, David's fiancée and then wife. This is the play's only significant female role, which tells us something, I think, about the playwright's youth. Wisely, Ms. Mathis plays the part with the undemonstrative but cheering support of midcentury wifeliness, and as a couple she and Mr. O'Donnell are the image of a small town's favorite sweethearts.

The two of them, like the play itself, evoke another era altogether. As David's persistent fortune makes him ever more paranoid—he's convinced it's only a matter of time until fate cruelly catches up with him—she grows desperately helpless. In the middle of the 20th century it was crazy to think that a good-looking young American didn't deserve a golden existence, or that America was living under the sword of Damocles.

Wasn't it?

CLERGY HOUSING ALLOWANCE CLARIFICATION ACT

Mr. HUTCHINSON. Mr. President, I rise today to express my strong support for the passage of the Clergy Housing Allowance Clarification Act. This important legislation, of which I am a proud cosponsor, will affect the thousands of clergy throughout this country who tirelessly work for so many of us with little regard for their own financial well-being.

I have heard from countless Arkansans who are very concerned that if this legislation is not enacted, the 81-year-old housing tax exclusion for members of the clergy could be eliminated. This in turn would force a devastating tax increase on the many American clergy who can little afford to take on such a large financial burden.

I believe that this legislation needs to be passed today to ensure that clergy of all faiths and denominations can continue to receive the parsonage housing allowance exclusion. This bipartisan legislation was passed overwhelmingly in the House by a vote of 408 to 0, and I applaud my colleagues in the Senate for seeing fit to pass this bill with equal support today.

ADDITIONAL STATEMENTS

RETIREMENT OF DEPUTY COMMISSIONER OF CUSTOMS CHARLES W. WINWOOD

• Mr. DORGAN. Mr. President, on May 3rd the Federal law enforcement community will lose one of its finest civil servants. Charles W. Winwood, Deputy Commissioner of the United States Customs Service, will retire after a very distinguished 30-year career.

Mr. Winwood served as Acting Commissioner from January to September 2001. During that time he continued his longstanding and persuasive advocacy of the need to modernize Customs automated systems through the creation of the Automated Commercial Environment, often referred to as ACE. I share his strong view that ACE is critical to enforcement and trade facilitation needs. Therefore, I was especially pleased almost one year ago when Mr. Winwood announced the selection of the contractor team that will make ACE a reality.

While he was Acting Commissioner, Mr. Winwood also had the difficult task of managing Customs through the critical days immediately following the attacks of last September 11th. He immediately put the agency on Level One Alert and set the course for the commendable job that Customs is doing today on anti-terrorism and homeland security efforts.

Mr. Winwood is a graduate of Indiana University of Pennsylvania and earned

a master's in management and public administration from Florida International University. He began his Customs career in 1972 after serving his country for 2 years in the U.S. Army, including a combat tour of duty in Vietnam. After service in a number of important management roles, Charles Winwood was chosen as Deputy Commissioner on June 5, 2000.

Customs was formed in 1789 and is our Nation's oldest law enforcement agency. Mr. Winwood's dedication to duty has added yet another chapter to the agency's long, proud history. As he ends his service to our Nation, I ask the Senate to join me in thanking Mr. Winwood and wishing him a long, happy and satisfying retirement.●

CONGRATULATIONS TO TECO COAL

● Mr. BUNNING. Mr. President, I rise today to congratulate TECO Coal of Somerset, KY on winning the 2002 PRIDE Rogers-Bickford Environmental Leadership Award. This award, named for my good friend and fellow Member of Congress HAROLD ROGERS and Kentucky Natural Resources Secretary James Bickford, is presented to individuals and companies throughout the Commonwealth who have proved their commitment to making Kentucky an environmentally cleaner and safer place to live.

TECO Coal was specifically honored for their involvement in community service. TECO provided quality equipment, garbage bags, and plenty of manpower for multiple cleanup activities in Letcher, Perry, Pike, and Whitley Counties at a cost of over $100,000. The company also sponsored a televised volunteer of the month recognition program on behalf of PRIDE.

Since 1908, TECO Coal has helped communities throughout Kentucky thrive in terms of economic growth, and now they have demonstrated their commitment to making the entire Commonwealth environmentally safe for current and future generations of Kentuckians.●

COMMENDING TOM AND SALLY FEGLEY, OWNERS OF TOM AND SALLY'S HANDMADE CHOCOLATES

● Mr. LEAHY. Mr. President, I rise today to commend Tom and Sally Fegley, owners and operators of the award-winning Tom and Sally's Handmade Chocolates. For over a decade, Tom and Sally have been making world-class chocolates at their Brattleboro, VT, facility.

Leaving corporate positions in New York, the Fegleys started anew in Vermont with the dream of making high quality chocolate. Starting in 1989, with little knowledge of the chocolate business, the Fegleys volunteered their time as apprentices with a Jersey City chocolatier. After learning the trade, the Fegleys remodeled a vacant warehouse in downtown Brattleboro to house their new business. Through trial and error over the years, the Fegleys have developed and perfected their superb technique for making fine chocolates. Their diligence, passion, and entrepreneurial spirit have been richly rewarded.

Tom and Sally's Handmade Chocolates is a true Vermont company. While building their business, the Fegleys have remained involved in their community, allowing school groups and tourists alike to visit their facility and learn about the chocolate-making business. Moreover, their efforts are incredibly innovative, incorporating traditional techniques for making fine chocolates with novelty packaging and light-hearted humor. No doubt, their success can be attributed as much to their creativity as to their business savvy. And with their long commitment to producing the best chocolate possible, they've brought their chocolates to the world through the Internet at www.tomandsallys.com.

Thirteen national awards and 1.5 million chocolate cow pies later, the Fegleys continue to make their amazing hand-crafted chocolate in Brattleboro. I am proud that my home State of Vermont has attracted and produced such outstanding entrepreneurs as the Fegleys.

I ask that a December article from the Rutland Herald be printed in the RECORD.

The article follows:

[From the Rutland Herald, Dec. 23, 2001]

CHOCOLATES AND LAUGHS

AT TOM AND SALLY'S HANDMADE, THE SWEETS ARE SPRINKLED WITH HUMOR

(By Ellen Ogden)

Most people will eat sweets any time of the year; but in the high spirit of the holidays, it would be tempting, if only it were big enough, to dive into a box of chocolates. Especially the handmade kind: hand-dipped and decorated with crystallized violets or fancy fillings, packaged as if each bite were a piece of gold. A joy to the eyes as well as the taste buds.

Chocolate is such a treat, you would think anyone who makes it for a living would have fun. ''Truth is,'' says Sally Fegley, co-owner with her husband Tom of Tom and Sally's Handmade Chocolates, ''many fancy chocolatiers take themselves way too seriously.'' Making world class chocolate involves more than just a devotion to the art. It requires expensive packaging and a marketing plan to match. But the Fegleys have learned how to play up the pleasurable side of making chocolate.

Tom and Sally's Handmade Chocolates are the best in their class—they've won 13 national awards—but many of their products are packaged in silly ways. For example, their best selling item is a chocolate cow pie, a loosely formed plop of rich Belgian chocolate mixed with a handful of nuts. The idea came to Tom one morning while shaving and they've sold over 1.5 million of these pies, expanding on the line to include a range of over 50 other animals. There are moose pies with almonds, sheep pies with hazelnuts and elephant pies with peanuts.

The irony is that Tom and Sally's Handmade Chocolates set out in 1989 to make serious chocolate. ''We left high paying corporate jobs to move to Vermont and make chocolate,'' explains Sally. Dressed in a floppy white chef hat, blonde hair curling out from around the sides and large gold hoop earrings, Sally Fegley laughs easily. Her buoyancy seems consistent with the delightful chocolate aroma that fills the air of their 11,000-square-foot warehouse. She and Tom are wearing matching outfits, white chef top with a chocolate brown apron, each with their names spelled out in big letters.

At age 42, they were too young for retirement, but they knew they wanted to live in Vermont. It is a classic story of a couple seeking a career change. They knew they would make a good team. They also shared a love of good chocolate. ''We were convinced that there was no one in the U.S. who was making first-rate chocolate and we were determined to be the first,'' says Sally. While still holding their corporate jobs, they devoted a year to market research. They read, consumed and visited every chocolate venue around New York City.

And since they trained in corporate America, they are highly organized and goal oriented. ''From the time we left our jobs and moved to Vermont, we gave ourselves three months to find a building, build the inventory and open the store doors,'' says Sally. Reading and eating chocolate is one thing, but actually making it was something else. They needed hands-on experience before the big move. They offered themselves as volunteers to several chocolate makers around New York to obtain some form of basic training. But they were rejected until they looked beyond the city, and found a three-generation family-run chocolatier in Jersey City who agreed to let them in on some secrets. The both began an apprenticeship to learn about chocolate.

Everything was moving along like clockwork. They left Wall Street where she worked at Bank of America and he was at Metropolitan Life. They found a vacant building at 6 Harmony Place in Brattleboro, formerly a bar and electricians' warehouse. ''Right up until the opening day, every batch of chocolate we made failed,'' confesses Sally. It is clear she has told this story many times. Now that they have been in business for over a decade and have won those awards, it is easier to admit to early problems. ''It was still perfectly edible and delicious, but no matter what we did, the chocolate kept coming out gray and streaky.''

Before a chocolatier can mold the chocolate, the chocolate must be melted or tempered. This breaks the crystals and the butterfat; but it must be done at an exact temperature that matches the original chocolate. What the Fegleys had learned to make in Jersey City was based on a domestic chocolate, while what they selected for their Brattleboro operation was a premier Belgian brand, Callebaut. This brand has a more finicky tempering habit and wasn't responding to their learned methods.

''To me, having your own business means trying on all the knowledge and all the skills you've learned in your entire life,'' relates Sally, who called upon an eighth grade science class when the couple had to set up an experiment involving an empirical method and deduction. They set up the marble tables with candy-making trays and thermometers and filled each while keeping close tabs on the temperature and the procedure. They finally determined that the thermometers they were using had different calibrations. ''Each batch was off by as little as two degrees, but this made all the difference.''

They are now so confident of their method that they offer educational tours of the process to the public every day. Located five miles north of Brattleboro on Rt. 30, Tom and Sally's is a favorite site for school children who arrive by the busload. It is a pristine facility, with an open floor plan and

overhead signs explaining every step of the production. Large picture windows allow natural light, while a dozen employees are busy at the production and packing stations.

A typical tour begins in the back of the room, at the nine vats of melting milk, dark and white chocolate. Each vat holds between 125 pounds and 200 pounds of what many consider to be the finest chocolate in the world. Tom, the master of the production , is stationed at one marble table cutting slabs of caramel and marshmallow that will be combined into a layered candy and then hand dipped in dark chocolate. This, his favorite concoction, is dubbed Miss American Pie.

Sally explains that there are basically three methods of making Tom and Sally's Handmade Chocolates. They begin with shell molds, trays of high-grade plastic with decorative depressions. The molds are filled with liquid chocolate. Each chocolate piece is hand filled and hand painted, then cooled before another step in the process. It is an exceedingly skilled and time-consuming process. ''The molds are imported from Europe,'' says Sally. ''And they cost $22 apiece. We have hundreds of them.'' The molds, as are all of their equipment and inventory items, clearly labeled and neatly stacked according to the design motif. The high-end confections that result from this molding process sell for $34 per pound, about a dollar each.

A more mechanized method is done on what Sally loves to call the ''I LOVE LUCY'' machine. It is otherwise known as an enrober, a conveyor belt with a series of ''waterfalls'' allowing a cascade of chocolate during which each piece of fruit, crême or chocolate filling is given a chocolate coating. ''Remember the 'I Love Lucy' segment?'' says Sally with a wide smile. ''Where Lucy and Ethel reverse roles with Ricky and Fred? They take a job at a chocolate factory,'' she explains in vivid detail. Unfortunately, the conveyor belt starts running too fast and they have to determine what to do with all the chocolate. ''There is little choice but to fill their mouths, stuff their pockets and hide chocolate in their shirts in a vain attempt to keep up with the output of the enrobing machine,'' says Sally. This skit encapsulates Sally's fondness for the machine—a comedy routine that reflects her own fun with chocolate.

Finally there is the funneling method, and this is where the cow pies fit into the story. Using a large metal funnel filled with warm, tempered chocolate and equipped with a wooden stopper, two-ounce globs of chocolate are ''plopped'' onto a marble table. It is cooled and hardened into a solid mound of chocolate, and then packaged in a clear plastic bag with a catchy novelty tag that describes the contents in a whimsical way. The cow pies began outselling the truffles.

Each year Tom and Sally do something new to make chocolate lovers laugh. In fact they are so good at the marketing that they've had to trademark everything to prevent other companies from using their ideas. ''We just spent many thousands of dollars protecting our trademark on Chocolate Body Paint,'' says Tom, of a product that originated as a gag present for the president of the local Rotary Club. Packaged with a paint brush, the label on the treat reads ''heat to 98.6 and apply liberally.'' It is essentially a delicious chocolate fudge sauce for ice cream, but the name was catchy and it sells the product.

While making the best chocolate in the world is still their goal, Sally admits that their typical customer is more interested in the funny packaging. Most of their novelty chocolates are sold wholesale to over 8,000 stores across the United States. ''Our niche in the world of chocolate is that we are creative,'' says Sally. ''The best thing about having our own business is that we have the freedom to be creative,'' she adds. ''Can you imagine trying to get approval to make something like chocolate cow pies in a corporate world?''●

MONTANA'S YOUTH OF THE YEAR

● Mr. BURNS. Mr. President, it gives me great pleasure to bring to your attention today a story about a young man that I am proud to say is from Montana.

His name is Jerimiah Tretain and he is Montana's Youth of the Year.

Jerimiah has come from what I consider the ''school of hard knocks.'' At a young age he was abused by his father, then moved with his mother and older sister to Montana. Life has been difficult for him and The Boys and Girls Club of Billings & Yellowstone County have helped him get through some times through anger management and counseling. They are a truly wonderful organization.

It humbles me to see such a brave man conquer so many obstacles and being steered in the right direction in order to achieve his goals and dreams to enter Montana State University in Bozeman, MT, in 2003 and eventually become an architect.

I wish Jerimiah all the success in the national Boys and Girls Club competition. You make Montana proud!●

PUBLIC SERVICE RECOGNITION WEEK

● Mr. SARBANES. Mr. President, I rise today to honor and commend those who make up our Nation's workforce and who now, more than ever, make a vital contribution to the success of our Nation.

This week, from May 6th to the 12th, is Public Service Recognition Week, organized by the Public Employees Roundtable. The Public Employees Roundtable was formed in 1982 as a non-partisan coalition of management and professional associations representing approximately 1 million public employees and retirees. The mission of the Roundtable is to educate the American people about the numerous ways public employees enrich the quality of life throughout our Nation and advance the country's national interests around the world.

I am indeed proud to join the Public Employees Roundtable in their ongoing efforts to bring special attention to the dedicated individuals who have chosen public service as a career. This past year has demonstrated the crucial role of our Nation's public employees, and has highlighted the brave men and women who make up the public service workforce. On September 11th, it was the public employees of New York, Washington and Pennsylvania who responded to the tragic events of that day. And since September 11th, we have seen public employees playing a vital role in the fight against terrorism and in protecting our national security. The response of our Nation to the attacks of September 11th demonstrates the true value of our public servants.

President Kennedy once stated:

> Let the public service be a proud and lively career. And let every man and woman who works in any area of our Nation's government, in any branch, at any level, be able to say with pride and honor in future years: ''I served the United States Government in that hour of our Nation's need.''

September 11th was an hour of our Nation's need and our public servants rose to challenge. The first responders on the scene in New York, Washington and Pennsylvania didn't hesitate to put their own lives in jeopardy in the hopes of saving others. Many firemen died in the World Trade Center rushing in to help. Postal employees, too, continued to deliver the mail despite the loss of several of their number to the anthrax attacks last fall. And as our hour of need continues, public servants are everyday making our skies safer, investigating the acts of September 11th, and working to prevent further terrorist attacks. The remarkable bravery of these public servants is a testament to the character of our Nation's public workforce, of whom we can be infinitely proud.

The total impact of the work of public employees is impossible to measure. However, I believe very much that the United States will only continue to be a first-rate country if we have first-class public servants. On September 11th our public servants demonstrated that they were more than first-rate, they were heroic. It gives me great pleasure to extend my appreciation to such a worthy and committed group of men and women and encourage them to continue in their efforts on behalf of all Americans.●

RETIREMENT OF CARROLL BEACH

● Mr. ALLARD. Mr. President, it is my honor today to acknowledge the retirement of Carroll Beach, president of the Colorado and Wyoming Credit Union Leagues.

Mr. Beach began his tenure with the Colorado league in 1973, and since that time has brought about significant progress with that organization. The total number of credit union members in Colorado has grown from 350,000 to almost 1.4 million. These are members who, like others nationwide, own and control their credit unions. During this same period, assets in Colorado credit unions have also increased from $355 million to more than $7 billion.

With great innovation, Mr. Beach has developed a variety of high quality, fairly priced programs, products and services over the years to meet the needs of credit unions and their members. In 1997 the Wyoming Credit Union League contracted with the Colorado League for management services. Since then, all staff and resources available to Colorado credit unions are also available to Wyoming credit unions.

His record of committed service to others and dedication to cooperative principles includes the creation of the Volunteer Involvement Program, which meets the needs of credit union volunteers throughout Colorado and promotes credit union principles and philosophy. Mr. Beach has also been a member of the Credit Union National Association (CUNA) board; the CUNA Service Group Boards; Chairman of the U.S. Central Credit Union; Chairman of the Association of Credit Union League Executives (now AACUL); and a member on the National Credit Union Capitalization Commission. The Colorado Credit Union System also participates in many statewide charity organizations and is the primary sponsor of the Colorado Credit Union's Courage Classic Bicycle Tour to benefit the Children's Hospital in Denver.

The international credit union movement has also been important to Mr. Beach. Over the years, the Colorado League has worked with credit union officials in Macedonia, Romania, Poland and Ecuador in various efforts to help build credit unions in those countries.

In addition to these many accomplishments, as chairman of Credit Union House, LLC, Carroll Beach gained the cooperation and support of all leagues to build Credit Union House, which serves as a gathering location for credit union representatives as they visit Capitol Hill.

I am proud to acknowledge the retirement of this very accomplished man, Mr. Carroll Beach.●

IN MEMORY OF SENIOR CUSTOMS INSPECTOR THOMAS MICHAEL MURRAY

● Mr. BREAUX. Mr. President, as we address the importance of seaport security and homeland defense, we must remember the bravery and courage of the Federal, State and local law officers who place their lives on the line to protect us.

On October 30, 2001, Senior Customs Inspector Thomas Michael Murray tragically gave his life while inspecting a vessel loaded with scrap metal in the Port of Gramercy, LA. Mr. Murray was asphyxiated while he was conducting an inspection of the commercial vessel, M/V *Sakura* I.

Mr. Murray is survived by his wife and six children. Mr. Murray served with distinction in the U.S. Customs Service for 26 years. That is an extraordinary record of dedicated public service for which the people of Louisiana and our Nation owe a debt of gratitude to Mr. Murray and his family.

As Mr. Murray's personal family and extended Customs family assemble to remember his life, his passing reminds us that we must always look for ways to protect the brave officers who protect us each and every day.●

TRIBUTE TO THE LATE HUNG WAI CHING

● Mr. INOUYE. Mr. President, recently, I was made aware of an extraordinary eulogy delivered on February 23, 2002, at the memorial services of an old and dear friend, Mr. Hung Wai Ching. It was delivered by a comrade-in-arms, Mr. Ted Tsukiyama. I urge my colleagues to read this inspiring eulogy. It describes an important chapter in the history of Our Nation.

I ask that this eulogy be printed in the RECORD.

The eulogy follows:

HUNG WAI CHING: A EULOGY

Hung Wai Ching was a true and great hero of the Hawaii homefront during World War II. With his passing last February 9, 2002, Hawaii has lost the last survivor of those few wartime leaders who believed in the underlying loyalty of the Japanese in Hawaii, who courageously stood up and spoke up in the face of racial animosity and wartime hysteria to fight and win back for the Nisei the opportunity to demonstrate their loyalty to America.

Hawaii was indeed fortunate that Hung Wai Ching was appointed to the key and critical Morale Section of the Military Governor's office which served as liaison between the Military Government and the civil population to maintain and preserve the morale, peace and stability of a community at war. One of the main jobs of the Morale Section was to stabilize and prevent possible explosive race situations. Reprisals against the Japanese people had to be prevented. Roughneck whites and blacks amongst the thousands of defense workers pouring into Hawaii had to be kept in line working in harmony. When news of the ''Bataan Death March'' reached Hawaii, Hung Wai rushed out to the plantations to find the Filipino workers sharpening their cane knives. He told them: ''Hey, you sharp da knife, eh? Good! You be ready. But no use da knife until I give you da signal, OK?'' Hung Wai's ''cane knife army'' had to wait patiently throughout the whole war, because Hung Wai never gave the signal.

Hung Wai reported directly to FBI Chief Robert Shivers and to Army Intelligence Col. Kendall J. Fielder, who had unlimited authority to preserve the internal security of Hawaii, and to detain anyone deemed a security risk. There were any number of Japanese in Hawaii who, unbeknownst to them, were released early from detention or were never detained at all, because of Hung Wai's intervention. When General Emmons first arrived in Hawaii, he called in Fielder and asked him, ''Fielder, how many Japs did you take in today?'', but after consultation with Hung Wai, Fielder refused to make blanket quota arrests, even at the risk of court martial and his future military career. The tragic wartime mistake of mass evacuation and internment of Japanese was not repeated by Hawaii's military and intelligence leaders, largely because of calm and reasoned behind-the-scenes consultation from advisors like Hung Wai Ching.

The Morale Section concentrated its efforts on the Japanese, because after the Japanese sneak attack on Pearl Harbor, Hung Wai knew that everyone who was of Japanese ancestry, alien or citizen alike, were ''behind the eight ball.'' Pearl Harbor was still in smoking ruins. A Japanese invasion of Hawaii was expected any day. Rumors of Japanese disloyalty was rampant. Nisei soldiers of the 298th Infantry had their guns taken away. The draft status of all Nisei was changed to ''enemy alien'', ineligible for military service. The President of Mutual Telephone Company proposed that all Japanese be evacuated to Molokai. There was widespread fear and distrust against the Japanese in Hawaii and grave questions as to their loyalty to country.

But Hung Wai had no question or doubt whatever of these same people he grew up with, his classmates all the way up to the University, those that he lead in the YMCA programs. But he knew that people in Hawaii and the general American public at large would never be convinced of the loyalty of Japanese Americans until they could get back into the armed services, bear arms, fight, and even die for their country. So the most significant contribution Hung Wai Ching made during the war was the direct role he played in helping Japanese Americans regain the opportunity to bear arms and to prove their ultimate loyalty to country. This is that story.

On December 7, 1941, the UH ROTC cadets which had been called to duty were converted into the Hawaii Territorial Guard, the HTG, and were assigned to guard vital buildings and installations on Oahu. Six weeks later, on January 19, 1942, the War Department had discovered to its horror that ''Honolulu was being guarded by hundreds of Japs in American uniforms,'' all HTG soldiers of Japanese ancestry were discharged. Most of them returned to the University where Hung Wai met, consoled, counseled and inspired a group of confused, bitter and disillusioned Nisei to offer themselves to the Military Governor as a labor battalion. I was one of them, I remember his key pitch was: ''So they don't trust you with rifles, maybe they'll trust you with picks and shovels.'' ''Picks and shovels???'' Here, Hung Wai was asking guys who were trying to get a college education to escape a future of plantation labor to volunteer to go back to manual labor! But considering the desperate situation they were in, Hung Wai made sense. So, in the end, 169 Nisei signed a petition to the Military Governor offering themselves as a labor battalion. Hung Wai took that Petition to Col. Fielder to assure that the Petition would be accepted by the Military Governor. The group was called the ''Varsity Victory Volunteers'' and were assigned to the 34th Construction Engineer Regiment at Schofield Barracks to perform essential defense construction work for the next 11 months.

As the acknowledged ''Father of the VVV'' Hung Wai took a paternal interest in his VVV boys and showed them off at every chance. In December 1942, Col. Fielder asked Hung Wai to escort the Assistant Secretary of War, John J. McCloy, the most powerful man in the War Department, on a field inspection trip. Hung Wai made sure that McCloy saw the VVV Quarry Gang cracking rocks and operating the quarry up at Kolekole Pass and told him, ''those are all Nisei university boys who gave up their education to do their part for the war effort.'' Could it have been a mere coincidence that five-six weeks later, President Roosevelt announced the formation of an all Nisei combat unit and called for volunteers. This was exactly the ultimate objective of the VVV and the chance they had been working and waiting for, so the VVV voted to disband on January 25, 1943 so that they could volunteer for the 442nd. Thus, it was the VVV which had been inspired and initiated by Hung Wai Ching that proved one of the key factors leading to the decision to allow the Nisei to fight for country by the formation of the 442nd Regimental Combat Team, and the rest is well known to history.

Hung Wai then adopted the 442nd in place of his disbanded VVV boys, and used his connections with War Department to assure

that the 442nd be given every opportunity and fair treatment to succeed. When Hawaii's 442nd volunteers sailed out of Pier 11 on the Lurline troopship, Hung Wai was one of the few persons allowed on the Pier to see them off. Five days later when the Lurline sailed into San Francisco, there standing on the pier to greet the 442nd boys was Hung Wai Ching. He had flown up to California to meet and request that General DeWitt treat these volunteers with dignity and to withdraw any armed guards along the route because ''these were not Japanese POW's, they were American soldiers.'' Then Hung Wai asked the General if the 442nd could be given overnight passes so that they could eat chop suey in SF Chinatown. The General thought he was crazy. Imagine, Hung Wai was asking the very same man who had ordered 120,000 Japanese to be evacuated from the West Coast and imprisoned into American concentration camps to allow 2,452 ''buddahead soldiers'' to roam around the City of San Francisco. Crazy it was, but it shows how much Hung Wai tried ''to take care of his boys.''

When the troop trains bulled into Camp Shelby, Mississippi, the boys were greeted with the comforting sight of Hung Wai standing at the train station. He had just returned from a War Department visit where he tried to get the training site of the 442nd moved out of the South to a more racially tolerant Midwest. Secretary McCloy told him the decision was already made but authorized Hung Wai to travel to Camp Shelby to oversee the organization of the 442nd. At that time, the City of Hattiesburg, Mississippi was in uproar over the news, ''Jap regiment to train at Camp Shelby!''. First thing, Hung Wai met with the editor of the Hattiesburg American and the Chief of Police to tell them that ''These were not Japs, these were American soldiers who had volunteered to fight for their country.'' Thereafter, the ''Go Home Japs'' editorials ceased and the ''Japs Not Wanted'' road signs disappeared. Hung Wai saw to it that the 442nd got its own USO and that it was located on the white side of the then still-segregated Hattiesburg. An old-fashioned Southern Baptist minister had been appointed as the first 442nd chaplain but Hung Wai got the Army Chaplain's Corp to replace that chaplain with Hawaii's own Reverends Masao Yamada and Hiro Higuchi. These are some of the reasons why Hung Wai Ching is one of the first to be named an Honorary Member of the 442nd Veterans Club.

Earlier, in May, 1942, Col. Fielder had assigned Hung Wai to observe and monitor the formation of the Hawaiian Provisional Infantry Battalion, predecessor to the famed 100th Infantry Battalion. Hung Wai was instrumental in assuring that the 100th would be staffed and led into battle by Hawaii-born officers like Col. Turner, Maj. Lovell, Captain Johnson and Captain Kometani. Hung Wai monitored the progress of the 100th through its training, maneuvers and overseas Italian and French battlegrounds, and everywhere he went and spoke, he extolled the exploits and distinguished battle record of ''The Purple Heart Battalion.'' And this is why Hung Wai is named as one of the exclusive Honorary Members of the 100th Infantry Battalion Veterans Club.

Back at Camp Shelby, Hung Wai tells us the high brass of the 442nd were going crazy trying to figure out who this ''Bossy Chinaman'' was, always accompanied by ranking officers and who could order all kinds of changes in the 442nd organization. Little did they realize that backing up his demands was the authority of General Emmons, Military Governor of Hawaii, Joe Farrington, Hawaii's Delegate to Congress, Secretary McCloy of the War Department, and eventually the White House itself. Early in the War, Hung Wai's influential Quaker friend had introduced him to Eleanor Roosevelt and they quickly became good friends. She gave Hung Wai an open invitation to visit the White House any time. On one of those visits, as Hung Wai was telling Mrs. Roosevelt about the ''Japanese situation in Hawaii,'' she said, ''The President should hear this,'' and took Hung Wai upstairs to talk to President Roosevelt. Hung Wai remembers they talked for 40 minutes but he was so nervous and excited that when the President offered to light his cigarette, he put it in his coat pocket as a souvenir and burnt a hole in his new suit. But he remembers the one thing he told the President was that General Emmons and FBI Chief Shivers were doing a great job, had the situation well in hand, and that there was no necessity for a mass evacuation of Japanese from Hawaii. As we all know, Hawaii never suffered the same tragedy of mass internment of Japanese as happened in the West Coast of America.

After returning from Camp Shelby, Hung Wai went on speaking tours to countless business groups and civic organizations praising the military record and achievements of the 100th and 442nd. His constant message and plea was: When the boys come home from the wars, accept and treat them as full American citizens, open up greater job opportunities for them, and help them finish their education and vocational training. And after the war, Hung Wai led the way in helping the returning veterans rehabilitate back to civilian life, to go back to their old jobs or get placed into banks and Big Five jobs previously inaccessible to persons of Japanese ancestry. He headed the Veteran's Memorial Scholarship Fund and obtained scholarship aid to help needy veteran finish their schooling and vocational training.

One of Hung Wai's favorite scholarship stories is about a veteran who needed help to go to journalism school, and Hung Wai tapped one of the Big Five businessmen for funds to finance this veteran's schooling. Hung Wai says that donor went to his grave never knowing or realizing that he had helped finance the education of Koji Ariyoshi who was to become publisher and editor of the Honolulu Record, the chief critic and anti-Big Five newspaper in Honolulu. Hung Wai told me of another of his VVV and 442nd boys who was attending Chicago Law School who called and asked Hung Wai if he could get a loan of $300 to finish law school, so Hung Wai sent him the $300. Hung Wai says, ''You know, after that guy came back to Hawaii he not only paid back the $300 but he contributed every year many many times over the $300 so that others could get the same breaks.'' That veteran became the leading labor lawyer in Hawaii and ended up as a Justice of the Hawaii Supreme Court. His name was Edward Nakamura.

But one of the most notable persons he helped was not a veteran, but no less than the former FBI Chief Robert Shivers himself. One day Hung Wai got a call from Shivers who said he wanted to retire in Hawaii and asked Hung Wai to help him get the U.S. Collector of Customs job for Hawaii. The local Japanese community raised funds to send Hung Wai to Washington, D.C., to see Mrs. Eleanor Roosevelt, where he told her how much Shivers had done for the people of Hawaii during the War and was well deserving of the job. Mrs. Roosevelt said, ''All right, I'll go talk to Henry.'' Hung Wai asked, ''Who's Henry?'' ''Henry'' was none other than Henry Morganthau, Secretary of the Treasury and head of the U.S. Customs. A few days later, Mrs. Roosevelt called Hung Wai back and said, ''Tell Mr. Shivers everything is all arranged.'' Then Hung Wai tell me, ''You know, I really wanted that Customs job myself.'' He comes up close and gives me a jab with his bony elbow and says, ''Hey, as Collector of Customs, I could control the opium trade to Hawaii and become a millionaire.'' As we all know, Hung Wai ended his life far from being a millionaire. In fact, it has to be said that Hung Wai never used his wartime position of power nor his high placed contacts to gain benefit or profit for himself. It was always used for the good and benefit of others.

Hung Wai Ching's place in Hawaii's wartime history is secure. At the Centennial celebration of Japanese immigration to Hawaii held in 1986, Hung Wai Ching was nominated as one of the 24 non-Japanese and the only one of Chinese ancestry who had made significant contributions and support to welfare and progress of Hawaii's Japanese during their 100 year history. Hung Wai has been recognized as a national historical figure. Hung Wai called me one day not too long ago and said, ''Say, my grandson, Christopher, called me from Los Angeles all excited and telling me, 'Grandpa, Grandpa, I saw your picture in a museum.'" So Hung Wai asked me what kind of museum would be showing his picture, and I tell him, it's the National Japanese American Museum in Los Angeles and they have a photo and a story about you in the history of the Japanese American experience during World War II. Go see it when you go to LA. Next time I saw Hung Wai after a trip to Los Angeles, he reported that he did go to the Museum but they wanted him to pay admission to get in. He told them, ''You got my picture in there. I just want to go in to see my picture.'' The lady says, ''Five dollars please.'' So Hung Wai turned around and walked away. So I got after Hung Wai telling him, ''Hung Wai, you tight Pake, you. You don't want to shell out $5.00 to go in and see how much all the Japanese in the United States remember you, honor you, and want to thank you for all you did for them!''

And Hung Wai's place in history was revealed directly to his son, King Lit, one day in New York when he was introduced to a mainland-born 442nd Veteran who asked him ''If your name is Ching, do you know Hung Wai Ching?'' King Lit told this story to his father and said, ''When I told him Hung Wai Ching was my father, he really flipped. And as he told me all about you, he cried, Pop, the man cried! It was kind of embarrassing but then I was so proud.'' All of us 442nd veterans know exactly how that veteran felt. He shed tears of gratitude. He cried for all of us.

It is time to say ''Goodbye'' to Hung Wai.

So on behalf of all of ''his boys,'' I will simply say:

''So long, Hung Wai.''

''You did one helluva job for us.''

''Thanks for everything.''

''Aloha.''●

HONORING JIM McCORD

● Mr. BUNNING. Mr. President, today I pay tribute to Jim McCord of Fort Thomas, KY. Yesterday in San Diego, Mr. McCord officially began his 3,000-mile, 6-month journey in an effort to educate the American people about the ill effects of diabetes. On this cross-country jog, Mr. McCord will run 20 miles a day for the first 2 months, then 25 miles, then 30, resting every third day until he reaches Washington, DC on October 30.

Since the time she was just 9 years old, Maggie McCord, Jim McCord's daughter, has suffered from Type I diabetes. For 11 years now, Maggie has

given herself three to five shots a day. Having diabetes also puts Maggie at a much higher risk for heart attacks, strokes, vision loss and limb amputation. Furthermore, she has a 67 percent chance of dying before the age of 55. In sharing in these day-to-day battles with his daughter, Jim McCord has learned countless facts about diabetes and has come to realize just how little the American public knows about this deadly disease. Sixteen million Americans are currently suffering from diabetes. Every year, diabetes kills about 68,400 individuals. This figure is slightly higher than the victims of breast cancer and AIDS combined. These and many other numbers are the reason why Jim McCord sold his house in Fort Thomas, bought a camper, put his real-estate career on hold and recruited friends to accompany him on his quest. This journey will not be about raising money for diabetes but raising public awareness. Mr. McCord's mission is to help this Nation understand diabetes and the effects it has on millions of Americans. If he can first educate the public, he can then empower them with a sense of belonging and unite them in his mission.

I applaud Mr. McCord for his devotion to family and his devotion to the health of this great Nation. Diabetes is a truly terrible disease that affects households from Kentucky to California. Sometimes, to obtain our goals, we must make sacrifices. Jim McCord has sacrificed his home and career, but in the end, he will have made a difference from coast-to-coast.●

HONORING THE REV. DR. CALVIN McKINNEY

● Mr. TORRICELLI. Mr. President, I rise today to recognize the outstanding career of Rev. Dr. Calvin McKinney, Pastor of the Calvary Baptist Church of Garfield. For the past 30 years, he has given dedicated and distinguished service to his community.

Rev. Dr. McKinney, a native of Passaic, NJ, has lead a remarkable and memorable life with many accomplishments such as serving as the youngest Moderator in the history of the North Jersey District Missionary Baptist Association. Additionally, he served from 1996 to 2000 in an unprecedented tenure as one of the youngest Presidents in the history of the 300,000 member General Baptist Convention of New Jersey.

In addition to his role as Pastor of the Calvary Baptist Church, Rev. Dr. McKinney has served his community in numerous capacities ranging from Commissioner of the Housing Authority of the City of Passaic, NJ to Executive Board member of the Garfield/Lodi, NJ Branch of the NAACP.

Under the leadership of Rev. Dr. McKinney, the Calvary Baptist Church has enjoyed tremendous growth and development in its membership and its ministry to the community. It is my firm belief that Rev. Dr. McKinney will continue this fine tradition of community service in the years to come, and will serve with distinction as both Pastor to his community and father to his three children.

I am proud to recognize the many accomplishments and contributions of Rev. Dr. Calvin McKinney and I am confident that the Calvary Baptist Church will continue to flourish under his leadership.●

BRIG. GEN. BRUCE H. BARLOW

● Mr. ALLARD. Mr. President, I want to take a moment to commemorate Brigadier General Bruce H. Barlow, 7th Infantry Division, Light, and Fort Carson Assistant Division Commander/Deputy Commanding General, Central, Fifth United States Army, who died Wednesday while on temporary duty at Offut Air Force Base, Nebraska.

General Barlow, a 1972 West Point graduate, had been stationed at Fort Carson since August 2000. As Maj. Gen. Charles Campbell, 7th Infantry Division and Fort Carson commander, said: ''General Barlow was a valuable member of the Mountain Post team and we will miss him.''

General Barlow graduated from the United States Military Academy and earned a Masters from the Naval War College. He was 51 years old. Our thoughts and prayers are with his wife, Sandra, his son First Lieutenant Christopher Barlow, and daughter, Kelly Barlow.●

MARYLAND DEVELOPMENTAL DISABILITIES COUNCIL 30TH ANNIVERSARY

● Mr. SARBANES. Mr. President, I rise to recognize and congratulate the Maryland Developmental Disabilities Council as it celebrates its 30th anniversary. An organization composed of individuals with developmental disabilities and their families, representatives of principle State agencies, and representatives of private non-profit organizations, the Maryland Developmental Disabilities Council has been at the cutting edge of national disability policy.

The Council's many achievements stem from an unwavering commitment to the inclusion of all people with developmental disabilities in community life. The Council has worked diligently to promote self determination so that people with disabilities and their families are able to make decisions that impact their lives and are fully involved in the implementation of services and the support they receive in the community. I am pleased that this decade has seen the expansion of family support, which enables families to stay together and assists in meeting their unique needs. The strong leadership of the Council has brought about more opportunities and greater empowerment for people with disabilities and their families in Maryland.

Many Council initiatives and partnerships for the developmentally disabled have proven successful, including efforts to expand availability and accessibility of public transportation and homeownership, advocacy for children with developmental disabilities to be educated in the least restrictive environment in their neighborhood schools, access to assistive technology, and the creation of partnerships between special education personnel, service providers, students, families, and schools. Supported employment programs assure that people with disabilities have real work of their choice and receive the support they need to succeed. Since it's beginning, the Council has worked with many other Maryland organizations and government agencies to implement successful and innovative initiatives effecting systemic change and improved public policies.

As the Council celebrates its 30th anniversary, I want to again recognize its dedicated members for their tireless commitment. The Maryland Developmental Disabilities Council plays a central role in many critical initiatives and will continue to be at the forefront of efforts to encourage community inclusion and support of all citizens.●

WE THE PEOPLE . . .

● Mr. BREAUX. Mr. President, on may 4–6, 2002 more than 1,200 students from across the United States will visit Washington, DC to compete in the national finals of the We the People . . . The Citizens and the Constitution program, the most extensive education program in the country developed specifically to educate young people about the Constitution and the Bill of Rights. I am proud that a class of 25 students from John Ehret High School in Marrero will represent the State of Louisiana in this national competition after having won first place at the state level. These young scholars from Marrero have worked diligently to reach the national finals, where they will demonstrate a deep knowledge and understanding of the fundamental principles and values of our constitutional democracy. I applaud their teacher, Mr. George W. Allen, Jr., for his leadership and dedication to the program and his students.

The 3-day long event, modeled after hearing in the U.S. Congress, consists of oral presentations by high school students on constitutional topics followed by a period of questioning by a panel of adult judges who probe their depth of understanding and ability to apply their constitutional knowledge.

I wish these constitutional experts the best of luck at the We the People . . . national finals. It is inspiring to see students at the high school level successfully master the fundamental ideals and principles of our government. As competitors on a national level, these young scholars have proven their ability to achieve lofty goals, including any they may face in the future. Congratulations and best wishes

to the following John Ehret High School students who represent the future leaders of Louisiana and our nation: Crystal Baum, Jeremy Beasley, Keshawn Chopin, Hong Dao, Cara Davis, Heather Deese, Sherryl Escondo, Anita George, True Ho, Courtney Joseph, Maher Judeh, Bridgette Lai, Scott Le, Marquis O'sirio, Matthew Potter, Jason Pryor, Clark Regas, Ray Rivarde, Katie Roberts, Ronald Singleton, Danielle Smith, Torea Torry, Lisa Tran, Stacy Wing, and Byron Young.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, 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.)

MESSAGE FROM THE HOUSE

At 12:03 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House insists upon its amendment to the bill (S. 1372) to reauthorize the Export-Import Bank of the United States, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the House:

From the Committee on Financial Services, for consideration of the Senate bill and the House amendment, and modifications committed to conference: Mr. OXLEY, Mr. BEREUTER, Mr. TOOMEY, Mr. GARY G. MILLER of California, Mr. LAFALCE, and Mr. SANDERS.

From the Committee on Government Reform, for consideration of section 7 of the Senate bill, and modifications committed to conference: Mr. BURTON of Indiana, Mr. HORN, and Mr. WAXMAN.

The message further announced that the House has passed the following bill, which it requests the concurrence of the Senate:

H.R. 2604. An act to authorize the United States to participate in and contribute to the seventh replenishment of the resources of the Asian Development Fund and the fifth replenishment of the resources of the International Fund for Agricultural Development, and to set forth additional policies of the United States towards the African Development Bank, the African Development Fund, the Asian Development Bank, the Inter-American Development Bank, and the European Bank for Reconstruction and Development.

At 3:02 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2646) to provide for the continuation of agricultural programs through fiscal year 2011.

MEASURES REFERRED

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

H.R. 2604. An act to authorize the United States to participate in and contribute to the seventh replenishment of the resources of the Asian Development Fund and the fifth replenishment of the resources of the International Fund for for Agricultural Development, and to set forth additional policies of the United States towards the African-Development Bank, the African Development Fund, the Asian Development Bank, the Inter-American Development Bank, and the European Bank for Reconstruction and Development; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 255: A resolution to designate the week beginning May 5, 2002, as ''National Correctional Officers and Employees Week.''

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 1644: A bill to further the protection and recognition of veterans' memorials, and for other purposes.

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment:

S. 2431: A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to ensure that chaplains killed in the line of duty receive public safety officer death benefits.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEAHY for the Committee on the Judiciary.

Julia Smith Gibbons, of Tennessee, to be United States Circuit Judge for the Sixth Circuit.

Leonard E. Davis, of Texas, to be United States District Judge for the Eastern District of Texas.

Andrew S. Hanen, of Texas, to be United States District Judge for the Southern District of Texas.

Samuel H. Mays, Jr., of Tennessee, to be United States District Judge for the Western District of Tennessee.

Thomas M. Rose, of Ohio, to be United States District Judge for the Southern District of Ohio.

Paul G. Cassell, of Utah, to be United States District Judge for the District of Utah.

Steven M. Biskupic, of Wisconsin, to be United States Attorney for the Eastern District of Wisconsin for the term of four years.

James E. McMahon, of South Dakota, to be United States Attorney for the District of South Dakota for the term of four years.

Jan Paul Miller, of Illinois, to be United States Attorney for the Central District of Illinois for the term of four years.

Walter Robert Bradley, of Kansas, to be United States Marshal for the District of Kansas for the term of four years.

Randy Paul Ely, of Texas, to be United States Marshal for the Northern District of Texas for the term of four years.

William P. Kruziki, of Wisconsin, to be United States Marshal for the Eastern District of Wisconsin for the term of four years.

Stephen Robert Monier, of New Hampshire, to be United States Marshal for the District of New Hampshire for the term of four years.

Gary Edward Shovlin, of Pennsylvania, to be United States Marshal for the Eastern District of Pennsylvania for the term of four years.

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Elias Adam Zerhouni, of Maryland, to be Director of the National Institutes of Health.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ROBERTS (for himself and Mr. BROWNBACK):

S. 2440. A bill to designate the Department of Veterans Affairs medical and regional office center in Wichita, Kansas, as the ''Robert J. Dole Department of Veterans Affairs Medical and Regional Office Center''; to the Committee on Veterans' Affairs.

By Mr. SPECTER:

S. 2441. A bill to provide all prisoners with an opportunity to present exculpatory DNA evidence, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 2442. A bill to ensure that indigent death penalty defendants in State courts receive adequate legal representation, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 2443. A bill to ensure that death penalty defendants have a true opportunity to have their cases considered by the courts, and for other purposes; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. BROWNBACK, Mr. HATCH, Mr. HELMS, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. DEWINE, Mr. DURBIN, Mr. HAGEL, Mr. GRAHAM, and Mrs. CLINTON):

S. 2444. A bill to amend the Immigration and Nationality Act to improve the administration and enforcement of the immigration laws, to enhance the security of the United States, and to establish the Office of Children's Services within the Department of Justice, and for other purposes; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself and Mrs. HUTCHISON):

S. 2445. A bill to establish a program to promote child literacy by making books

available through early learning, child care, literacy, and nutrition programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SPECTER (for himself, Mr. BIDEN, Mr. DURBIN, and Ms. COLLINS):

S. 2446. A bill to ensure that death penalty defendants have a true opportunity to have their cases considered by the courts, to provide all prisoners with an opportunity to present exculpatory DNA evidence, and for other purposes; to the Committee on the Judiciary.

By Mr. DURBIN (for himself, Mr. HELMS, Mr. KENNEDY, Mr. SPECTER, Ms. LANDRIEU, Mr. TORRICELLI, Mr. KERRY, Mrs. CLINTON, Mr. CLELAND, Mr. EDWARDS, Mr. SCHUMER, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. DAYTON, and Ms. CANTWELL):

S. 2447. A bill to amend title XVIII of the Social Security Act to freeze the reduction in payments to hospitals for indirect costs of medical education; to the Committee on Finance.

By Mr. HOLLINGS (for himself, Mrs. CLINTON, Mr. STEVENS, Mr. INOUYE, Mr. ROCKEFELLER, and Mr. DORGAN):

S. 2448. A bill to improve nationwide access to broadband services; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself, Mr. MCCAIN, Mr. TORRICELLI, and Mr. CORZINE):

S. 2449. A bill to amend title XIX of the Social Security Act to allow Federal payments to be made to States under the medicaid program for providing pregnancy-related services or services for the testing or treatment for communicable diseases to aliens who are not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, and for other purposes; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 2450. A bill to withdraw Federal land in Finger Lakes National Forest, New York, from entry, location, appropriation, disposal patent, or leasing under certain Federal laws; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BOND:

S. 2451. A bill to provide for the liquidation or reliquidation of certain entries; to the Committee on Finance.

By Mr. LIEBERMAN (for himself, Mr. SPECTER, and Mr. GRAHAM):

S. 2452. A bill to establish the Department of National Homeland Security and the National Office for Combating Terrorism; to the Committee on Governmental Affairs.

By Mr. THURMOND (for himself and Mr. ALLARD):

S. 2453. A bill to provide for the disposition of weapons-usable plutonium at the Savannah River Site, South Carolina; to the Committee on Energy and Natural Resources.

By Mr. ENSIGN (for himself and Mr. KERRY):

S. 2454. A bill to eliminate the deadlines for spectrum auctions of spectrum previously allocated to television broadcasting; to the Committee on Commerce, Science, and Transportation.

By Mr. ENSIGN:

S. 2455. A bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a pilot program to provide regulatory compliance assistance to small business concerns, and for other purposes; to the Committee on Small Business and Entrepreneurship.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CORZINE (for himself, Mr. DURBIN, Mr. CLELAND, Mr. DODD, Mr. KERRY, Mr. KENNEDY, Mr. FEINGOLD, Mrs. CARNAHAN, and Mrs. MURRAY):

S. Res. 260. A resolution designating May 1, 2002, as ''National Child Care Worthy Wage Day''; to the Committee on the Judiciary.

By Mr. JEFFORDS (for himself and Mr. SMITH of New Hampshire):

S. Con. Res. 104. A concurrent resolution recognizing the American Society of Civil Engineers on the occasion of the 150th anniversary of its founding and for the many vital contributions of civil engineers to the quality of life of the people of the United States, including the research and development projects that have led to the physical infrastructure of modern America; to the Committee on the Judiciary.

By Mr. LIEBERMAN (for himself and Ms. SNOWE):

S. Con. Res. 105. A concurrent resolution expressing the sense of Congress that the Nation should take additional steps to ensure the prevention of teen pregnancy by engaging in measures to educate teenagers as to why they should stop and think about the negative consequences before engaging in premature sexual activity; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 913

At the request of Ms. SNOWE, the names of the Senator from New York (Mr. SCHUMER), the Senator from Virginia (Mr. ALLEN), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 913, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs.

S. 960

At the request of Mr. BINGAMAN, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 960, a bill to amend title XVIII of the Social Security Act to expand coverage of medical nutrition therapy services under the medicare program for beneficiaries with cardiovascular diseases.

S. 1269

At the request of Mr. BREAUX, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1269, a bill to amend title XIX of the Social Security Act to revise and simplify the transitional medical assistance (TMA) program.

S. 1335

At the request of Mr. KENNEDY, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 1335, a bill to support business incubation in academic settings.

S. 1394

At the request of Mr. ENSIGN, the names of the Senator from Maine (Ms. COLLINS) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1408

At the request of Mr. ROCKEFELLER, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1408, a bill to amend title 38, United States Code, to standardize the income threshold for copayment for outpatient medications with the income threshold for inability to defray necessary expense of care, and for other purposes.

S. 1607

At the request of Mr. ROCKEFELLER, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1607, a bill to amend title XVIII of the Social Security Act to provide coverage of remote monitoring services under the medicare program.

S. 1626

At the request of Mr. BINGAMAN, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 1626, a bill to provide disadvantaged children with access to dental services.

S. 1644

At the request of Mr. CAMPBELL, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1644, a bill to further the protection and recognition of veterans' memorials, and for other purposes.

S. 1986

At the request of Mr. BINGAMAN, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1986, a bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to identify a route that passes through the States of Texas, New Mexico, Oklahoma, and Kansas as a high priority corridor on the National Highway System.

S. 1991

At the request of Mr. HOLLINGS, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1991, to establish a national rail passenger transportation system, reauthorize Amtrak, improve security and service on Amtrak, and for other purposes.

S. 2045

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 2045, a bill to amend the Foreign Assistance Act of 1961 to take steps to control the growing international problem of tuberculosis.

S. 2051

At the request of Mr. REID, the names of the Senator from New Jersey (Mr. TORRICELLI), the Senator from Missouri (Mr. BOND), and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 2051, a bill to remove a condition preventing authority for concurrent receipt of military retired pay and veterans' disability compensation from taking affect, and for other purposes.

S. 2108

At the request of Ms. STABENOW, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2108, a bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay, and for other purposes.

S. 2116

At the request of Mr. KERRY, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 2116, a bill to reform the program of block grants to States for temporary assistance for needy families to help States address the importance of adequate, affordable housing in promoting family progress towards self-sufficiency, and for other purposes.

S. 2182

At the request of Mr. WYDEN, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 2182, a bill to authorize funding for computer and network security research and development and research fellowship programs, and for other purposes.

S. 2194

At the request of Mr. MCCONNELL, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Arkansas (Mr. HUTCHINSON) were added as cosponsors of S. 2194, a bill to hold accountable the Palestine Liberation Organization and the Palestinian Authority, and for other purposes.

S. 2200

At the request of Mr. BAUCUS, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 2200, a bill to amend the Internal Revenue Code of 1986 to clarify that the parsonage allowance exclusion is limited to the fair rental value of the property.

S. 2213

At the request of Mr. SESSIONS, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 2213, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain overseas pay of members of the Armed Forces of the United States.

S. 2329

At the request of Mr. BREAUX, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 2329, a bill to improve seaport security.

S. 2428

At the request of Mr. KERRY, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Mississippi (Mr. COCHRAN), the Senator from Virginia (Mr. WARNER), and the Senator from New Hampshire (Mr. GREGG) were added as cosponsors of S. 2428, a bill to amend the National Sea Grant College Program Act.

S. 2429

At the request of Mr. HUTCHINSON, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 2429, a bill to amend the Internal Revenue Code of 1986 to allow an above-the-line deduction from certain expenses in connection with the determination, collection, or refund of any tax.

S. 2431

At the request of Mr. LEAHY, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2431, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to ensure that chaplains killed in the line of duty receive public safety officer death benefits.

S. 2439

At the request of Mr. SPECTER, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2439, a bill to prohibit human cloning while preserving important areas of medical research, including stem sell research.

S.J. RES. 10

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S.J. Res. 10, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

S. RES. 247

At the request of Mr. HUTCHINSON, his name was added as a cosponsor of S. Res. 247, a resolution expressing solidarity with Israel in its fight against terrorism.

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. SARBANES, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. LIEBERMAN, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Alaska (Mr. STEVENS), the Senator from Missouri (Mr. BOND), and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of S. Res. 247, supra.

At the request of Mr. VOINOVICH, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. BIDEN, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. KERRY, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. CAMPBELL, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. CRAIG, his name was added as a cosponsor of S. Res. 247, supra.

AMENDMENT NO. 3382

At the request of Mrs. DAYTON, the names of the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Idaho (Mr. CRAPO), the Senator from South Dakota (Mr. JOHNSON), the Senator from Wyoming (Mr. ENZI), the Senator from Michigan (Ms. STABENOW), and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of amendment No. 3382 intended to be proposed to H.R. 3009, a bill to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

AMENDMENT NO. 3387

At the request of Mr. DORGAN, the names of the Senator from West Virginia (Mr. BYRD), the Senator from Minnesota (Mrs. DAYTON), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 3387 proposed to H.R. 3009, a bill to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY (for himself, Mr. BROWNBACK, Mr. HATCH, Mr. HELMS, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. DEWINE, Mr. DURBIN, Mr. HAGEL, Mr. GRAHAM, and Mrs. CLINTON):

S. 2444. A bill to amend the Immigration and Nationality Act to improve the administration and enforcement of the immigration laws, to enhance the security of the United States, and to establish the Office of Children's Services within the Department of Justice, and for other purposes; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, I'm honored to join Senator BROWNBACK and my other colleagues in introducing the Immigration Reform, Accountability, and Security Enhancement Act of 2002, which will strengthen our national security by bringing our immigration system into the 21st century. Recently, the Senate took an important step by unanimously passing legislation which strengthens the security of our borders, improves our ability to screen foreign nationals, and improves coordination among the several responsible entities. Restructuring the INS is the next critical step in establishing an agency that can act effectively and fairly to secure our borders and provide better services to immigrants.

There is strong bipartisan agreement that the INS must be reformed. But restructuring must be done correctly. The INS handles the enforcement of our immigration laws and the adjudication of benefits and services. INS's dual missions have long suffered under the current structure.

On the enforcement side, September 11 clearly demonstrated that our immigration laws are being applied inconsistently. Some of the terrorists were residing here legally, others had overstayed their visas, and the status of others is still unknown. Improving the structure of the INS will help ensure

greater accountability and the consistent and effective enforcement of our immigration laws.

The INS service functions have also suffered. Courteous behavior has too often been the exception, rather than the rule. Application fees steadily increase, yet poor service and long delays have persisted. Massive backlogs have forced individuals to languish for years waiting for their naturalization and permanent resident applications to be processed. Files have been lost. Fingerprints have expired.

To address the distinct and at times conflicting responsibilities, successful reform must separate the enforcement functions from the service and adjudication functions. The result will be increased accountability and efficiency, as well as clarity of purpose.

But, meaningful reform must also include a strong central authority to coordinate these dual functions. Our legislation requires that one high-level person take charge of the Nation's immigration laws to ensure uniform policy determinations and implementation, accountability, coordination, and fiscal responsibility. The new agency's director, like the FBI director, will have direct access to high-level officials in the executive branch.

I congratulate the House of Representatives for acting quickly and decisively on restructuring legislation. The House bill abolishes the Immigration and Naturalization Service and establishes separate bureaus for services and enforcement which would operate as parallel structures with limited coordination. An Associate Attorney General would oversee the two bureaus. The goals of the House bill are very similar to our bill, and I look forward to working with my colleagues in the House and the administration to pass effective legislation and put these reforms into law.

The overarching difference between our two bills is the power and authority vested in the agency head and the coordination between the two bureaus. Our bill expands and improves the coordination between the bureaus through strong central leadership.

The Immigration Reform, Accountability, and Security Enhancement Act establishes a Director of Immigration Affairs, a Deputy Director heading the Bureau of Services and Adjudications, and a Deputy Director heading the Bureau of Enforcement and Border Affairs. The Director will serve as the principal advisor to the Attorney General in developing and implementing U.S. immigration law and policy. The Director will be the strong central authority over the two bureaus, and will be able to integrate information systems, policies, and administrative infrastructure.

The coordination and harmonization of policy, services and enforcement will also be enhanced by the establishment of several offices which will assist the two bureaus. The General Counsel, appointed by the Attorney General in consultation with the Agency Director, will serve as the chief legal officer for the Agency, providing specialized advice on all legal matters involving U.S. immigration laws. A Chief Financial Officer will direct, supervise, and coordinate all budgetary duties for the Agency. A Chief of Policy and Strategy will promote a national immigration policy, identify priorities and coordinate policy within the Agency. A Chief of Congressional, Intergovernmental, and Public Affairs will be the central liaison with Congress and other Federal agencies, and the media.

This bill will enhance the accountability of the new Agency and will renew our national commitment to civil rights in the immigration process. This bill establishes an autonomous Office of the Ombudsman to be located within the Department of Justice. The Ombudsman will be appointed by and report directly to the Attorney General. The Ombudsman will identify and report on serious or systematic problems encountered by the public and will assist individuals in resolving problems with the Agency. The Ombudsman also will report annually to Congress on the steps taken to correct the problems and propose changes in the practices of the Agency to correct such problems.

The vital role of statistical information in the modern age is recognized. This bill establishes a Director of Immigration Statistics, appointed by the Attorney General, who will report directly to the Bureau of Justice Statistics of the Department of Justice. Using 21st century technology, the newly established Office of Immigration Statistics will not only record and analyze statistical information, but will also establish standards of reliability and validation and will coordinate with the Service Bureau, the Enforcement Bureau, and the Executive Office for Immigration Review.

This legislation also recognizes the need for alternatives to the detention of asylum seekers. The U.S. asylum program is a bipartisan success story, it provides new hope and new life for the persecuted and oppressed and it advances our foreign policy objectives by protecting human rights and promoting the American dream of opportunity. The United States is a leader in providing asylum to refugees worldwide. Still, we constantly need to strive to improve this very important program. This bill would require the consideration of specific alternatives to detention, including parole with appearance assistance provided by private nonprofit voluntary agencies.

Finally, we are including much needed reform to address the treatment of unaccompanied minors in INS custody. I commend Senator FEINSTEIN's longstanding commitment to this important issue and am honored to include her legislation, the Unaccompanied Alien Child Protection Act, as part of our proposal to restructure the INS. These provisions will address many of the problems facing unaccompanied minors and will help bring U.S. treatment of unaccompanied alien children into line with international standards. The bill establishes a new Office of Children's Services within the Department of Justice to ensure that Federal authorities recognize the special needs and circumstances of unaccompanied alien children when making decisions regarding their custody and repatriation and ensures that unaccompanied alien children have access to appoint counsel and guardians ad litem.

This bill is needed to ensure that our nation is prepared to meet the challenges that are before us. The Immigration Reform, Accountability, and Security Enhancement Act will help remedy many of the problems that currently plague the Immigration and Naturalization Service and will ensure that INS's responsibilities are effectively addressed and coordinated, executed with efficiency and courtesy, and uphold our great tradition of immigration and refugee protection.

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. 2444

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—Titles I through III of this Act may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.

TITLE I—IMMIGRATION AFFAIRS AGENCY

Subtitle A—Organization

Sec. 101. Abolition of INS.
Sec. 102. Establishment of Immigration Affairs Agency.
Sec. 103. Director of Immigration Affairs.
Sec. 104. Bureau of Immigration Services and Adjudications.
Sec. 105. Bureau of Enforcement and Border Affairs.
Sec. 106. Office of the Ombudsman within the Department of Justice.
Sec. 107. Office of Immigration Statistics within the Bureau of Justice Statistics.
Sec. 108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 111. Transfer of functions.
Sec. 112. Transfer of personnel and other resources.
Sec. 113. Determinations with respect to functions and resources.
Sec. 114. Delegation and reservation of functions.
Sec. 115. Allocation of personnel and other resources.
Sec. 116. Savings provisions.
Sec. 117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 118. Executive Office for Immigration Review and Attorney General authorities not affected.

Sec. 119. Other authorities not affected.
Sec. 120. Transition funding.
Subtitle C—Effective Date
Sec. 121. Effective date.
TITLE II—PERSONNEL FLEXIBILITIES
Sec. 201. Improvements in personnel flexibilities.
Sec. 202. Voluntary separation incentive payments for INS employees.
Sec. 203. Voluntary separation incentive payments for employees of the Immigration Affairs Agency.
Sec. 204. Basis for evaluation of Immigration Affairs Agency employees.
Sec. 205. Effective date.
TITLE III—UNACCOMPANIED ALIEN CHILD PROTECTION
Sec. 301. Short title.
Sec. 302. Definitions.
Subtitle A—Structural Changes
Sec. 311. Establishment of the Office of Children's Services.
Sec. 312. Establishment of Interagency Task Force on Unaccompanied Alien Children.
Sec. 313. Effective date.
Subtitle B—Custody, Release, Family Reunification, and Detention
Sec. 321. Procedures when encountering unaccompanied alien children.
Sec. 322. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 323. Appropriate conditions for detention of unaccompanied alien children.
Sec. 324. Repatriated unaccompanied alien children.
Sec. 325. Establishing the age of an unaccompanied alien child.
Sec. 326. Effective date.
Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel
Sec. 331. Right of unaccompanied alien children to guardians ad litem.
Sec. 332. Right of unaccompanied alien children to counsel.
Sec. 333. Transitional pilot program.
Sec. 334. Effective date; applicability.
Subtitle D—Strengthening Policies for Permanent Protection of Alien Children
Sec. 341. Special immigrant juvenile visa.
Sec. 342. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 343. Effective dates.
Subtitle E—Children Refugee and Asylum Seekers
Sec. 351. Guidelines for children's asylum claims.
Sec. 352. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.
Sec. 353. Unaccompanied refugee children.
Subtitle F—Authorization of Appropriations
Sec. 361. Authorization of appropriations.
TITLE IV—MISCELLANEOUS PROVISIONS
Sec. 401. Funding adjudication and naturalization services.
Sec. 402. Application of Internet-based technologies.
Sec. 403. Department of State study on matters relating to the employment of consular officers.
Sec. 404. Alternatives to detention of asylum seekers.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to improve the administration and enforcement of the immigration laws of the United States and to enhance the security of the United States;

(2) to abolish the Immigration and Naturalization Service and to establish the Immigration Affairs Agency within the Department of Justice; and

(3) to establish the Office of Children's Services within the Department of Justice to coordinate and implement Government actions involving unaccompanied alien children.

SEC. 3. DEFINITIONS.

In this Act:

(1) DIRECTOR.—The term ''Director'' means the Director of Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 103 of this Act.

(2) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 105 of this Act.

(3) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(4) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 105 of this Act.

(5) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 102 of this Act.

(6) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 103 of this Act.

(7) IMMIGRATION SERVICE AND ADJUDICATION FUNCTIONS.—The term ''immigration service and adjudication functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 104 of this Act.

(8) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services and Adjudications established in section 113 of the Immigration and Nationality Act, as added by section 104 of this Act.

TITLE I—IMMIGRATION AFFAIRS AGENCY

Subtitle A—Organization

SEC. 101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 102. ESTABLISHMENT OF IMMIGRATION AFFAIRS AGENCY.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

''CHAPTER 2—IMMIGRATION AFFAIRS AGENCY

''SEC. 111. ESTABLISHMENT OF IMMIGRATION AFFAIRS AGENCY.

''(a) ESTABLISHMENT.—There is established within the Department of Justice the Immigration Affairs Agency.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Agency are the following:

''(1) The Director of Immigration Affairs appointed under section 112.

''(2) The Deputy Director of Immigration Services and Adjudications appointed under section 113.

''(3) The Deputy Director of Enforcement and Border Affairs appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Attorney General, the Agency shall perform the following functions:

''(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out—

''(A) the functions of the Agency; and

''(B) such other functions of the Attorney General or the Department of Justice under the immigration laws of the United States as are not covered by subparagraph (A).

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' means the following:

''(1) This Act.

''(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Agency' means the Immigration Affairs Agency established by section 111.'';

(2) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(3) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Immigration Affairs Agency'', ''Agency'', and ''Agency's'', respectively.

(4) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Immigration Affairs Agency'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Immigration Affairs Agency.

SEC. 103. DIRECTOR OF IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 102 of this Act, is amended by adding at the end the following:

''SEC. 112. DIRECTOR OF IMMIGRATION AFFAIRS.

''(a) DIRECTOR OF IMMIGRATION AFFAIRS.—The Agency shall be headed by a Director of

Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE DIRECTOR.—

''(1) IN GENERAL.—The Director shall be charged with any and all responsibilities and authority in the administration of the Agency and of this Act which are conferred upon the Attorney General as may be delegated to the Director by the Attorney General or which may be prescribed by the Attorney General.

''(2) DUTIES.—Subject to the authority of the Attorney General under paragraph (1), the Director shall have the following duties:

''(A) IMMIGRATION POLICY.—The Director shall develop and implement policy under the immigration laws of the United States. The Director, shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Agency.

''(B) ADMINISTRATION.—The Director shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Agency under section 111(c) of this Act; and

''(ii) the administration of the Agency, including the direction, supervision, and coordination of the Bureau of Immigration Services and Adjudications and the Bureau of Enforcement and Border Affairs.

''(C) INSPECTIONS.—The Director shall be directly responsible for the administration and enforcement of the functions of the Attorney General and the Agency under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

''(D) OTHER DELEGATED DUTIES AND POWERS.—The Director shall carry out such other duties and exercise such powers as the Attorney General may prescribe.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Director shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Director shall manage the resources, personnel, and other support requirements of the Agency.

''(B) INFORMATION RESOURCES MANAGEMENT.—Except as otherwise provided in section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, the Director shall manage the information resources of the Agency, including the maintenance of records and databases and the coordination of records and other information within the Agency, and shall ensure that the Agency obtains and maintains adequate information technology systems to carry out its functions.

''(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Director shall coordinate, with the Assistant Attorney General, the Civil Rights Division, or other officials or components of the Department of Justice, as appropriate, the resolution of immigration issues that involve civil rights violations.

''(3) DEFINITION.—In this chapter, the term ''immigration policy, administration, and inspection functions'' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Agency a General Counsel, who shall be appointed by the Attorney General, in consultation with the Director.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Agency; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director with respect to legal matters affecting the Immigration Affairs Agency, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE IMMIGRATION AFFAIRS AGENCY.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Agency a Chief Financial Officer for the Immigration Affairs Agency. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Agency. For purposes of section 902(a)(1) of such title, the Director shall be deemed to be the head of the agency.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Agency.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Agency shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF POLICY AND STRATEGY.—

''(1) IN GENERAL.—There shall be within the Agency a Chief of Policy and Strategy. Under the authority of the Director, the Chief of Policy and Strategy shall be responsible for—

''(A) establishing national immigration policy and priorities;

''(B) performing policy research and analysis on issues arising under the immigration laws of the United States; and

''(C) coordinating immigration policy between the Agency, the Service Bureau, and the Enforcement Bureau.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Policy and Strategy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

''(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Agency a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Director, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF THE DIRECTOR.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Director of Immigration Affairs, Department of Justice.''.

(c) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Immigration Affairs Agency.

''Chief Financial Officer, Immigration Affairs Agency.''.

(d) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Director' means the Director of Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''Director of Immigration Affairs'' and ''Director'', respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Director'';

(B) in the section heading, by striking ''COMMISSIONER'' and inserting ''DIRECTOR'';

(C) in subsection (d), by striking ''Commissioner'' and inserting ''Director''; and

(D) in subsection (e), by striking ''Commissioner'' and inserting ''Attorney General''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Director of Immigration Affairs.

SEC. 104. BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 102 and amended by section 103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Agency a bureau to be known as the Bureau of Immigration Services and Adjudications (in this chapter referred to as the 'Service Bureau').

''(2) DEPUTY DIRECTOR.—The head of the Service Bureau shall be the Deputy Director of Immigration Services and Adjudications (in this chapter referred to as the 'Deputy Director of the Service Bureau'), who—

''(A) shall be appointed by the Attorney General, in consultation with the Director; and

''(B) shall report directly to the Director.

''(b) RESPONSIBILITIES OF THE DEPUTY DIRECTOR.—

''(1) IN GENERAL.—Subject to the authority of the Director, the Deputy Director of the Service Bureau shall administer the immigration service and adjudication functions of the Agency.

''(2) IMMIGRATION SERVICE AND ADJUDICATION FUNCTIONS DEFINED.—In this chapter, the term 'immigration service and adjudication functions' means the following functions under the immigration laws of the United States (as defined in section 111(e)):

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States (as defined in section 111(e)).

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Agency, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Agency's policies with respect to the immigration service and adjudication functions of the Agency are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Deputy Director of the Service Bureau, in consultation with the Director, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) COMPENSATION OF DEPUTY DIRECTOR OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Director of Immigration Services and Adjudications, Immigration Affairs Agency.''.

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—The Director, acting through the Deputy Director of the Service Bureau, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Director shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Director shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Director shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Director shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 105. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 102 and amended by sections 103 and 104, is further amended by adding at the end the following:

''SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Agency a bureau to be known as the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Enforcement Bureau').

''(2) DEPUTY DIRECTOR.—The head of the Enforcement Bureau shall be the Deputy Director of the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Deputy Director of the Enforcement Bureau'), who—

''(A) shall be appointed by the Attorney General, in consultation with the Director; and

''(B) shall report directly to the Director.

''(b) RESPONSIBILITIES OF THE DEPUTY DIRECTOR.—

''(1) IN GENERAL.—Subject to the authority of the Director, the Deputy Director of the Enforcement Bureau shall administer the immigration enforcement functions of the Agency.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States (as defined in section 111(e)):

''(A) The border patrol function.

''(B) The detention function, except as specified in section 113(b)(2)(F).

''(C) The removal function.

''(D) The intelligence function.

''(E) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Agency, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Agency's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Deputy Director of the Enforcement Bureau, in consultation with the Director, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) COMPENSATION OF DEPUTY DIRECTOR OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Director of Enforcement and Border Affairs, Immigration Affairs Agency.''.

(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—The Director, acting through the Deputy Director of the Enforcement Bureau, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Director shall be selected according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Director shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Director shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Director shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 106. OFFICE OF THE OMBUDSMAN WITHIN THE DEPARTMENT OF JUSTICE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 102 and amended by sections 103, 104 and 105, is further amended by adding at the end the following:

''SEC. 115. OFFICE OF THE OMBUDSMAN WITHIN THE DEPARTMENT OF JUSTICE.

''(a) IN GENERAL.—There is established within the Department of Justice the Office of the Ombudsman, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Attorney General. The Ombudsman shall report directly to the Attorney General.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Attorney General so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman shall include—

''(1) to assist individuals in resolving problems with the Agency or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Agency or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Agency, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Agency.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Agency;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE BUREAU OF JUSTICE STATISTICS.

(a) IN GENERAL.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) is amended by adding at the end the following new section:

''SEC. 305. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Immigration Affairs Agency and the Executive Office for Immigration Review.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services and Adjudications, the Bureau of Enforcement and Border Affairs of the Immigration Affairs Agency, and the Executive Office for Immigration Review.

''(c) RELATION TO THE IMMIGRATION AFFAIRS AGENCY AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Immigration Affairs Agency and the Executive Office for Immigration Review shall provide statistical information to the Office from the operational data systems controlled by the Immigration Affairs Agency and the Executive Office for Immigration Review, respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Attorney General, shall ensure the interoperability of the databases of the Immigration Affairs Agency, the Bureau of Immigration Services and Adjudications, the Bureau of Enforcement and Border Affairs, and the Executive Office for Immigration Review to permit the Director of the Office to perform the duties of such office.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Attorney General, for exercise through the Office of Immigration Statistics established by section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review, on the day before the effective date of this title.

(c) CONFORMING AMENDMENT.—Section 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(c)) is amended—

(1) by striking ''and'' at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting ''; and''; and

(3) by adding at the end the following:

''(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Immigration Affairs Agency and the Executive Office for Immigration Review.''.

SEC. 108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Attorney General and the Director.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—IMMIGRATION AFFAIRS AGENCY

''Sec. 111. Establishment of Immigration Affairs Agency.

''Sec. 112. Director of Immigration Affairs.

''Sec. 113. Bureau of Immigration Services and Adjudications.

''Sec. 114. Bureau of Enforcement and Border Affairs.

''Sec. 115. Office of the Ombudsman within the Department of Justice.''.

Subtitle B—Transition Provisions

SEC. 111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Immigration Affairs Agency on such effective date for exercise by the Director in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Director may, for purposes of performing any function transferred to the Immigration Affairs Agency under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function pursuant to this title.

SEC. 112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Director for appropriate allocation in accordance with section 115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred pursuant to this title (and such other functions that the Attorney General determines are properly related to the functions of the Immigration Affairs Agency and that would, if so transferred, further the purposes of the Agency); and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

SEC. 113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

The Director shall determine, in accordance with the corresponding criteria set forth in sections 112(b), 113(b), and 114(b) of the Immigration and Nationality Act (as added by this Act)—

(1) which of the functions transferred under section 111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service and adjudication functions; and

(C) immigration enforcement functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 103 of this Act), the Director shall delegate—

(A) immigration service and adjudication functions to the Deputy Director of the Service Bureau; and

(B) immigration enforcement functions to the Deputy Director of the Enforcement Bureau.

(2) RESERVATION OF FUNCTIONS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 103 of this Act), immigration policy, administration, and inspection functions shall be reserved for exercise by the Director.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a)

may be on a nonexclusive basis as the Director may determine may be necessary to ensure the faithful execution of the Director's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Director may make delegations under this subsection to such officers and employees of the office of the Director, the Service Bureau, and the Enforcement Bureau, respectively, as the Director may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred pursuant to this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to limit the authority of the Director, acting directly or by delegation under the Attorney General, to establish such offices or positions within the Immigration Affairs Agency, in addition to those specified by this Act, as the Director may determine to be necessary to carry out the functions of the Agency.

SEC. 115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE DIRECTOR.—

(1) IN GENERAL.—Subject to paragraph (2) and section 114(b), the Director shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 113, in accordance with the delegation of functions and the reservation of functions made under section 114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITIES OF ATTORNEY GENERAL.—

(1) INCIDENTAL TRANSFERS.—The Attorney General may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title, and the amendments made by this title. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this title and the amendments made by this title.

(2) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(c) TREATMENT OF SHARED RESOURCES.—The Director is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Director, the Service Bureau, the Enforcement Bureau, and offices within the Department of Justice. The Director shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 115 of the Immigration and Nationality Act, and section 305 of the Omnibus Crime Control and Safe Streets Act, as added by title I of this Act, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Director until the date on which a Director is appointed under section 112 of the Immigration and Nationality Act, as added by section 103 of this Act.

SEC. 118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AND ATTORNEY GENERAL AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Executive Office for Immigration Review of the Department of Justice, or any officer, employee, or component thereof, or

(2) the Attorney General with respect to any matter under the immigration laws of the United States, including the institution of any prosecution, or the institution or defense of any action or appeal, in any court of the United States established under Article III of the Constitution,

immediately prior to the effective date of this title.

SEC. 119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this Act, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 120. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Immigration Affairs Agency and its components, the Bureau of Immigration Services and Adjudications, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this Act; and

(B) to carry out any other duty that is made necessary by this Act, or any amendment made by this Act.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Immigration Affairs Agency, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Attorney General.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Immigration Affairs Agency Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the date of enactment of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Attorney General shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

Subtitle C—Effective Date

SEC. 121. EFFECTIVE DATE.

Except as otherwise provided in section 120(e), this title, and the amendments made by this title, shall take effect 18 months after the date of enactment of this Act.

TITLE II—PERSONNEL FLEXIBILITIES

SEC. 201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by adding at the end the following new subpart:

"Subpart J—Immigration Affairs Agency Personnel

"CHAPTER 96—PERSONNEL FLEXIBILITIES RELATING TO THE IMMIGRATION AFFAIRS AGENCY

''Sec.
''9601. Immigration Affairs Agency personnel flexibilities.
''9602. Pay authority for critical positions.
''9603. Streamlined critical pay authority.
''9604. Recruitment, retention, relocation incentives, and relocation expenses.

"§ 9601. Immigration Affairs Agency personnel flexibilities

''(a) Any flexibilities provided by sections 9602 through 9604 of this chapter shall be exercised in a manner consistent with—

''(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

''(2) provisions relating to preference eligibles;

''(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

''(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

''(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Attorney General under section 1104(a)(2).

''(b) The Attorney General shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

"§ 9602. Pay authority for critical positions

''(a) When the Attorney General seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Immigration Affairs Agency, the Office of Management and Budget may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

''(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

"§ 9603. Streamlined critical pay authority

''(a) Notwithstanding section 9602, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Attorney General may, for a period of 10 years after the effective date of title II of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Immigration Affairs Agency, if—

''(1) the positions—

''(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

''(B) are critical to the Immigration Affairs Agency's successful accomplishment of an important mission;

''(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

''(3) the number of such positions does not exceed 40 at any one time;

''(4) designation of such positions are approved by the Attorney General;

''(5) the terms of such appointments are limited to no more than 4 years;

''(6) appointees to such positions were not employees of the Immigration and Naturalization Service prior to the effective date of title II of the Immigration Reform, Accountability, and Security Enhancement Act of 2002;

''(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

''(8) all such positions are excluded from the collective bargaining unit.

''(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

"§ 9604. Recruitment, retention, relocation incentives, and relocation expenses

''(a) For a period of 10 years after the effective date of title II of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, and subject to approval by the Office of Personnel Management, the Attorney General may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives with respect to employees of the Immigration Affairs Agency.

''(b) For a period of 10 years after the effective date of title II of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, and subject to approval by the Office of Personnel Management, the Attorney General may pay from appropriations made to the Immigration Affairs Agency allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9602 or 9603 after such effective date.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following new items:

''SUBPART J—IMMIGRATION AFFAIRS AGENCY PERSONNEL

"96. Personnel flexibilities relating to the Immigration Affairs Agency ... 9601.".

SEC. 202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS FOR INS EMPLOYEES.

(a) DEFINITION.—In this section, the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Immigration and Naturalization Service serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—The Attorney General may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to establish the Immigration Affairs Agency under title I.

(2) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee's separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed $25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2006;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(c) ADDITIONAL IMMIGRATION AND NATURALIZATION SERVICE CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Immigration and Naturalization Service shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION.—In paragraph (1), the term ''final basic pay'', with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefore.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment to the Immigration and Naturalization Service or, in the case of employment or work occurring after the effective date of title I, the Immigration Affairs Agency.

(e) USE OF VOLUNTARY SEPARATIONS.—The Immigration and Naturalization Service may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

SEC. 203. VOLUNTARY SEPARATION INCENTIVE PAYMENTS FOR EMPLOYEES OF THE IMMIGRATION AFFAIRS AGENCY.

(a) DEFINITION.—In this section, the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Immigration Affairs Agency serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—The Attorney General may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to establish the Immigration Affairs Agency under title I.

(2) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee's separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed $25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2006;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(c) ADDITIONAL IMMIGRATION AFFAIRS AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Immigration Affairs Agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION.—In paragraph (1), the term ''final basic pay'', with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefore.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment to the Immigration Affairs Agency.

(e) USE OF VOLUNTARY SEPARATIONS.—The Immigration Affairs Agency may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 204. BASIS FOR EVALUATION OF IMMIGRATION AFFAIRS AGENCY EMPLOYEES.

The Immigration Affairs Agency shall use the fair and equitable treatment of aliens by employees as one of the standards for evaluating employee performance.

SEC. 205. EFFECTIVE DATE.

Except as otherwise provided in section 202(f), this title, and the amendments made by this title, shall take effect 18 months after the date of enactment of this Act.

TITLE III—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 301. SHORT TITLE.

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

SEC. 302. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Children's Services established by section 311.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title I, the Immigration Affairs Agency).

(4) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Attorney General.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

Subtitle A—Structural Changes

SEC. 311. ESTABLISHMENT OF THE OFFICE OF CHILDREN'S SERVICES.

(a) ESTABLISHMENT.—

(1) PROHIBITED WITHIN INS.—There is established within the Department of Justice the Office of Children's Services. The Office shall not be an office within the Immigration and Naturalization Service.

(2) COMPONENTS.—The Office shall include such other components, staff, and resources as the Attorney General may determine necessary to carry out this title.

(b) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office under the general authority of the Attorney General.

(2) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for coordinating and implementing law and policy for unaccompanied alien children who come into the custody of the Department of Justice.

(c) DIRECTOR OF THE OFFICE OF CHILDREN'S SERVICES.—

(1) IN GENERAL.—The Office shall be headed by a Director of Children's Services, who shall be appointed by and report directly to the Attorney General or his designee, if the designee is at a level no lower than Associate Attorney General.

(2) COMPENSATION AT LEVEL IV OF EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Director of the Office of Children's Services, Department of Justice.''.

(3) DUTIES.—The Director shall be responsible for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) coordinating and implementing law and policy for unaccompanied alien children who come into the custody of the Department of Justice;

(E) convening, in the absence of the Attorney General, the Interagency Task Force on Unaccompanied Alien Children established in section 312;

(F) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 322 and 323;

(G) overseeing the persons, entities, and facilities described in sections 322 and 323 to ensure their compliance with such provisions;

(H) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 331 and 332;

(I) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into the custody of—

(I) the Department of Justice (other than as described in subclause (II) or (III);

(II) the Service; or

(III) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(J) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(K) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(4) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director shall assess the extent to which the refugee children foster care system utilized pursuant to section 412(d)(2) of the Immigration and Nationality Act can feasibly be expanded for the placement of unaccompanied alien children.

(5) POWERS.—In carrying out the duties specified in paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 322, 323, 331, and 332; and

(B) compel compliance with the terms and conditions set forth in section 323, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(d) NO EFFECT ON INS, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review of the Department of Justice, or the Department of State.

SEC. 312. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Attorney General.

(2) The Commissioner of Immigration and Naturalization.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director of the Office of Refugee Resettlement of the Department of Health and Human Services.

(5) The Director.

(6) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Attorney General.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 313. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 321. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided in subsection (a) and subparagraph (B), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Attorney General shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—Not later than 72 hours after apprehension of an unaccompanied alien child, the care and custody

of such children not described in paragraph (1)(B) shall be transferred to the Office.

(B) TRANSFER OF CHILDREN WHO HAVE COMMITTED CRIMES.—Upon determining that a child in the custody of the Office is described in paragraph (1)(B), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 325.

SEC. 322. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Attorney General's discretion under paragraph (4) and section 323(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take steps to ensure that unaccompanied alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 323. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 322(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—At a minimum, the Attorney General shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Commissioner of Immigration and Naturalization shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 324. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 325. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 326. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 331. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem who is not—

(i) a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possessing of special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review.

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 332. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 321(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) AVAILABILITY OF FUNDING.—In carrying out this paragraph, the Director may make use of funds derived from—

(i) the premium fee for employment-based petitions and applications authorized by section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)); or

(ii) any other source designated by the Attorney General from discretionary funds available to the Department of Justice.

(D) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency is—

(i) a grantee or contractee for services provided under section 322 or 331; and

(ii) simultaneously a grantee or contractee for services provided under subparagraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into the custody of the Department of Justice.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 333. TRANSITIONAL PILOT PROGRAM.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall establish and begin to carry out a transitional pilot program (in this section referred to as the ''pilot program'') of not more than 90 days in duration to test the implementation of the guardian ad litem provisions in section 331 and the counsel provisions in section 332(a)(3).

(b) PURPOSE.—The purpose of the pilot program is to study and assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in section 331 and the counsel provisions in section 332(a)(3) on a nationwide basis.

(c) SCOPE OF PROGRAM.—

(1) IN GENERAL.—The Attorney General shall select three sites in which to operate the pilot program, including at least one secure facility and at least one shelter care facility.

(2) ELIGIBILITY OF SITES.—To the maximum extent practicable, each such site should have—

(A) at least 25 children held in immigration custody at any given time; and

(B) an existing pro bono legal representation program for such children.

(d) REFERENCES TO DIRECTOR.—For the purpose of operating the pilot program, to the extent that such program is operating prior to the designation of a Director, the Attorney General may designate any officer within the Department of Justice to perform the functions of the Director, if that officer is not an employee of the Immigration and Naturalization Service.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to operate the pilot program.

SEC. 334. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this subtitle shall take effect 180 days after the date of enactment of this Act.

(2) EXCEPTIONS.—Sections 331 and 332(a)(3) shall take effect 270 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in the custody of the Department of Justice on, before, or after the date of enactment of this Act.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 341. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Children's Services of the Department of Justice has certified to the Commissioner that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(C) the Attorney General may waive paragraphs (2)(A) and (2)(B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

SEC. 342. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Attorney General, acting jointly with the Secretary of Health and Human Services, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF INS PERSONNEL.—The Attorney General shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 321(a)(2).

SEC. 343. EFFECTIVE DATES.

The amendment made by section 341 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 351. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Attorney General shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 352. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) EXCEPTION FROM EXPEDITED REMOVAL.—Section 235(b)(1)(F) (8 U.S.C. 1225(b)(1)(F)) is amended by striking ''an alien'' and inserting ''unaccompanied alien child or an alien''.

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following new subparagraph:

''(E) Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child.''.

SEC. 353. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

Subtitle F—Authorization of Appropriations

SEC. 361. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and Adjudications and the Bureau of Enforcement and Border Affairs.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and Adjudications and the Bureau of Enforcement and Border Affairs for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 402. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Director, in consultation with the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files with the Attorney General any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Director shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to other persons described in subsection (a) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Director shall not charge any immigrant, nonimmigrant, employer, or other person described in subsection (a) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Director, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Director shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 60 days after the date of the enactment of this Act, the Director shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Director in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 403. DEPARTMENT OF STATE STUDY ON MATTERS RELATING TO THE EMPLOYMENT OF CONSULAR OFFICERS.

(a) FINDINGS.—Congress finds that—

(1) consular officers perform an important role daily, often under difficult conditions, at United States embassies throughout the world; and

(2) many consular officers, who provide the first line of defense against the admission of undesirable persons into the United States, require appropriate training, supervision, and opportunities for promotion while performing this critical work.

(b) STUDY.—The Secretary of State shall conduct a study on matters relating to the employment of consular officers of the Department of State, including training promotion policies, rotation frequency, level of experience and seniority, and level of oversight provided by senior personnel.

(c) REPORT.—Not later than nine months after the date of enactment of this Act, the Secretary shall submit to the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on International Relations and the Committee on the Judiciary of the House of Representatives a report containing—

(1) the findings of the study conducted under subsection (b); and

(2) recommendations on how to best retain consular officers with the level of training and expertise in visa issuance appropriate to this important function, especially in sensitive, remote, and hostile locations.

SEC. 404. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) IN GENERAL.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Director shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Director shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Director shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term ''asylum seeker'' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Mr. BROWNBACK. Mr. President, the attacks of September 11 exposed the weaknesses in how we protect our borders. Terrorists exploited the shortcomings in our immigration system and the lack of communication between the respective agencies that might have detected and deterred the events of that horrible day.

At the same time, however, September 11 has also brought out the best of this great Nation. As a people and as a government, we have united and stood firm in support of our freedom and our principles.

Significantly, September 11 has reaffirmed our Nation's pride in its immigrant roots. We have not lapsed into xenophobia, nor have we let terrorism cloud our judgment about the value of our immigrant neighbors or our visitors. We can take great pride in the fact that the Border Security bill which this body passed just two weeks ago, was intelligent and balanced. We were true both to our responsibility to protect our great Nation from those that mean us harm and our responsibility to keep our country open to those who mean us well.

We need an agency that is likewise true to both these missions, an agency that can effectively enforce the immigration laws and provide timely and competent immigration services. Sadly, the Immigration and Naturalization Service has failed to perform either mission well, and restructuring INS has long been on the legislative agenda. While I deeply respect the hard work that Commissioner Ziglar has put into reforming that agency, the fact is that the INS requires more fixes than can be done administratively. The fundamental problems with the INS compel legislative intervention.

That is why I am honored to join Senator KENNEDY, Senator HATCH, and my other colleagues in introducing the Immigration Reform, Accountability, and Security Enhancement Act of 2002. I would like to point out that, as with the border security bill, we have a bipartisan, balanced, and intelligent bill that will deal effectively with the challenges that face our Nation. I am proud to be a part of it.

By Mr. KENNEDY (for himself and Mrs. HUTCHISON):

S. 2445. A bill to establish a program to promote child literacy by making books available through early learning, child care, literacy, and nutrition programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, last year we reauthorized the Elementary and Secondary Education Act, one of the most far reaching education reform bills in decades. It was a significant bipartisan achievement, but it isn't enough. We must do more to focus on

the years leading up to school. Today, Senator KAY BAILEY HUTCHISON and I are reintroducing the Book Stamp Act and looking forward to working in a bipartisan manner to improve early learning opportunities for our youngest children.

In her statement before the Senate Health, Education, Labor, and Pensions Committee, First Lady Laura Bush called attention to the problems she saw as a teacher. She described children who were having difficulties learning to read because they had not developed the basic building blocks of language during their preschool years, the building blocks forged through reading, language play, and bedtime stories. In her words, ''a failure to learn to read not only leads to failure in school, but portends failure throughout life.''

It should come as no surprise that the foundation for learning and literacy is laid long before children arrive at our public schools. We can't ignore the facts. Each year, millions of children enter kindergarten unprepared for school. Before the first lessons are taught, they are already behind. Low-income children are particularly at risk of school failure. Children in low-income households are less likely than their peers to enter school with the language skills they need.

According to the Carnegie Foundation report, ''Ready to Learn: a Mandate for the Nation,'' 35 percent of children enter kindergarten unprepared to learn and most lack the language skills that are the prerequisites of literacy acquisition. The research also shows that children who are placed in remedial reading groups early in school, often continue to perform below age expectation. Reading failure in school constitutes a major disability that contributes to school dropout, juvenile delinquency, teen pregnancy, and other societal problems.

In other words, the early childhood years are crucial ones for the development of literacy.

There is widespread consensus that reading aloud by parents is the single most important activity for building the knowledge required for eventual success in reading. There is a long history of research linking reading aloud by parents with verbal language and literacy skills with our children.

Regardless of culture or wealth, one of the most important factors in the development of literacy is access to books. Students from homes with an abundance of books and other language activities are substantially better readers than those with few or no reading materials.

Children living in poverty bear a disproportionate burden of early language delay as well as later reading disability. Children from families with lower incomes, as a group, receive comparatively little stimulation at home. As a group, children from low-income families grow up with fewer books in the home, and are exposed to relatively little reading aloud.

The Book Stamp Act will help remedy this. By providing books to the Child Care Resource and Referral Agencies, pediatricians, WIC clinics, and child care providers in each community, we can get developmentally appropriate books into the hands of low-income families. There are over 825 Resource and Referral Agencies that will provide free books to children enrolled in child care programs that serve low income families. Each child will receive at least one book every 6 months to take home.

However, we can't stop there. It is not enough to just give books to the children. Since young children cannot read to themselves, we must make sure that the adults in their lives understand the importance of reading to children as young as six months. Training the parents and the child's caregiver about the importance of reading is just as critical as getting books into homes. Funds set aside by the Book Stamp Act will also be used to provide such training for parents and caregivers.

Funds will be raised through the sale of a postage stamp similar to the Breast Cancer Stamp. Postal patrons may choose to support this program by purchasing premium stamps which feature as early learning character.

We know what works to combat illiteracy. Through the simple act of getting books into the homes of families who might not otherwise be able to afford them and by providing simple training for parents and caregivers about the best ways to read to children, we can make an enormous difference in a short amount of time. 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. 2445

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 ''Book Stamp Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Literacy is fundamental to all learning.

(2) Between 40 and 60 percent of the Nation's children do not read at grade level, particularly children in families or school districts that are challenged by significant financial or social instability.

(3) Increased investments in child literacy are needed to improve opportunities for children and the efficacy of the Nation's education investments.

(4) Increasing access to books in the home is an important means of improving child literacy, which can be accomplished nationally at modest cost.

(5) Effective channels for book distribution already exist through child care providers, hospitals, pediatrician's offices, entities carrying out faith-based programs, and entities carrying out early literacy programs.

SEC. 3. DEFINITIONS.

In this Act:

(1) EARLY LEARNING PROGRAM.—The term ''early learning'', used with respect to a program, means a program of activities designed to facilitate development of cognitive, language, motor, and social-emotional skills in children under age 6 as a means of enabling the children to enter school ready to learn, such as a Head Start or Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), or a State pre-kindergarten program.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(3) STATE.—The term ''State'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) STATE AGENCY.—The term ''State agency'' means an agency designated under section 658D of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858b).

SEC. 4. GRANTS TO STATE AGENCIES.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish and carry out a program to promote child literacy and improve children's access to books at home and in early learning, child care, literacy, and nutrition programs, by making books available through early learning programs, child care programs, hospital-based or clinic-based literacy programs, library-based literacy programs, nutrition programs at clinics described in section 6(a)(2)(A)(v), faith-based literacy programs, and other literacy programs.

(b) GRANTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall make grants to State agencies from allotments determined under paragraph (2).

(2) ALLOTMENTS.—For each fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the total of the available funds for the fiscal year as the amount the State receives under section 658O(b) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m(b)) for the fiscal year bears to the total amount received by all States under that section for the fiscal year.

(c) APPLICATIONS.—To be eligible to receive an allotment under this section, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(d) ACCOUNTABILITY.—The provisions of sections 658I(b) and 658K(b) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858g(b), 9858i(b)) shall apply to State agencies receiving grants under this Act, except that references in those sections—

(1) to a subchapter shall be considered to be references to this Act; and

(2) to a plan or application shall be considered to be references to an application submitted under subsection (c).

(e) DEFINITION.—In this section, the term ''available funds'', used with respect to a fiscal year, means the total of—

(1) the funds made available under section 417(c)(1) of title 39, United States Code, for the fiscal year; and

(2) the amounts appropriated under section 9 for the fiscal year.

SEC. 5. CONTRACTS TO CHILD CARE RESOURCE AND REFERRAL AGENCIES.

A State agency that receives a grant under section 4 shall use funds made available through the grant to enter into contracts with local child care resource and referral agencies to carry out the activities described in section 6. The State agency may reserve not more than 3 percent of the funds made available through the grant to support a public awareness campaign relating to the activities.

SEC. 6. USE OF FUNDS.

(a) ACTIVITIES.—

(1) BOOK PAYMENTS FOR ELIGIBLE PROVIDERS.—A child care resource and referral agency that receives a contract under section 5 shall use the funds made available through the grant to provide payments for eligible providers, on the basis of local needs, to enable the providers to make books available to promote child literacy and improve children's access to books at home and in early learning, child care, literacy, and nutrition programs.

(2) ELIGIBLE PROVIDERS.—To be eligible to receive a payment under paragraph (1), a provider shall—

(A)(i) be a center-based child care provider, a group home child care provider, or a family child care provider, described in section 658P(5)(A) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5)(A));

(ii) be a Head Start agency designated under section 641 of the Head Start Act (42 U.S.C. 9836), an entity that receives assistance under section 645A of such Act (42 U.S.C. 9840a) to carry out an Early Head Start program, or another provider of an early learning program;

(iii) be an entity that carries out a hospital-based or clinic-based literacy program;

(iv) be an entity that carries out a library-based literacy program serving children under age 6;

(v) be an entity that carries out a nutrition program at a clinic (as defined in part 246.2 of title 7, Code of Federal Regulations (or any corresponding similar regulation or ruling)) under section 17(b)(6) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(6));

(vi) be an entity that carries out a faith-based literacy program serving children under age 6; or

(vii) be another entity carrying out a literacy program serving children under age 6; and

(B) provide services in an area where children face high risks of literacy difficulties, as defined by the Secretary.

(b) RESPONSIBILITIES.—A child care resource and referral agency that receives a contract under section 5 to provide payments to eligible providers shall—

(1) consult with local individuals and organizations concerned with early literacy (including parents, teachers, pediatricians, directors of the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), literacy coalitions, and organizations carrying out the Reach Out and Read, First Book, and Reading Is Fundamental programs) regarding local book distribution needs;

(2) make reasonable efforts to learn public demographic and other information about local families and child literacy programs carried out by the eligible providers, as needed to inform the agency's decisions as the agency carries out the contract;

(3) coordinate local orders of the books made available under this Act;

(4) distribute, to each eligible provider that receives a payment under this Act, not fewer than 1 book every 6 months for each child served by the provider for more than 3 of the preceding 6 months;

(5) use not more than 5 percent of the funds made available through the contract to provide training and technical assistance to the eligible providers on the effective use of books with young children at different stages of development; and

(6) be a training resource for eligible providers that want to offer parent workshops on developing reading readiness.

(c) DISCOUNTS.—

(1) IN GENERAL.—Federal funds made available under this Act for the purchase of books may only be used to purchase books on the same terms as are customarily available in the book industry to entities carrying out nonprofit bulk book purchase and distribution programs.

(2) TERMS.—An entity offering books for purchase under this Act shall be present to have met the requirements of paragraph (1), absent contrary evidence, if the terms include a discount of 43 percent off the catalogue price of the books, with no additional charge for shipping and handling of the books.

(d) ADMINISTRATION.—The child care resource and referral agency may not use more than 6 percent of the funds made available through the contract for administrative costs.

SEC. 7. REPORT TO CONGRESS.

Not later than 2 years after the date of enactment of this Act, the Secretary shall prepare and submit to Congress a report on the implementation of the activities carried out under this Act.

SEC. 8. SPECIAL POSTAGE STAMPS FOR CHILD LITERACY.

Chapter 4 of title 39, United States Code is amended by adding at the end the following:

"§ 417. Special postage stamps for child literacy

''(a) In order to afford the public a convenient way to contribute to funding for child literacy, the Postal Service shall establish a special rate of postage for first-class mail under this section. The stamps that bear the special rate of postage shall promote childhood literacy and shall, to the extent practicable, contain an image relating to a character in a children's book or cartoon.

''(b)(1) The rate of postage established under this section—

''(A) shall be equal to the regular first-class rate of postage, plus a differential of not to exceed 25 percent;

''(B) shall be set by the Governors in accordance with such procedures as the Governors shall by regulation prescribe (in lieu of the procedures described in chapter 36); and

''(C) shall be offered as an alternative to the regular first-class rate of postage.

''(2) The use of the special rate of postage established under this section shall be voluntary on the part of postal patrons.

''(c)(1) Of the amounts becoming available for child literacy pursuant to this section, the Postal Service shall pay 100 percent to the Department of Health and Human Services.

''(2) Payments made under this subsection to the Department shall be made under such arrangements as the Postal Service shall by mutual agreement with such Department establish in order to carry out the objectives of this section, except that, under those arrangements, payments to such agency shall be made at least twice a year.

''(3) In this section, the term 'amounts becoming available for child literacy pursuant to this section' means—

''(A) the total amounts received by the Postal Service that the Postal Service would not have received but for the enactment of this section; reduced by

''(B) an amount sufficient to cover reasonable costs incurred by the Postal Service in carrying out this section, including costs attributable to the printing, sale, and distribution of stamps under this section,

as determined by the Postal Service under regulations that the Postal Service shall prescribe.

''(d) It is the sense of Congress that nothing in this section should—

''(1) directly or indirectly cause a net decrease in total funds received by the Department of Health and Human Services, or any other agency of the Government (or any component or program of the Government), below the level that would otherwise have been received but for the enactment of this section; or

''(2) affect regular first-class rates of postage or any other regular rates of postage.

''(e) Special postage stamps made available under this section shall be made available to the public beginning on such date as the Postal Service shall by regulation prescribe, but in no event later than 12 months after the date of enactment of this section.

''(f) The Postmaster General shall include in each report provided under section 2402, with respect to any period during any portion of which this section is in effect, information concerning the operation of this section, except that, at a minimum, each report shall include information on—

''(1) the total amounts described in subsection (c)(3)(A) that were received by the Postal Service during the period covered by such report; and

''(2) of the amounts described in paragraph (1), how much (in the aggregate and by category) was required for the purposes described in subsection (c)(3)(B).

''(g) This section shall cease to be effective at the end of the 2-year period beginning on the date on which special postage stamps made available under this section are first made available to the public.''.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act $50,000,000 for each of fiscal years 2003 through 2007.

By Mr. SPECTER (for himself, Mr. BIDEN, Mr. DURBIN, and Ms. COLLINS):

S. 2446. A bill to ensure that the death penalty defendants have a true opportunity to have their cases considered by the courts, to provide all prisoners with an opportunity to present exculpatory DNA evidence, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 2441. A bill to provide all prisoners with an opportunity to present exculpatory DNA evidence, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 2442. A bill to ensure that indigent death penalty defendants in State courts receive adequate legal representation, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 2443. A bill to ensure that death penalty defendants have a true opportunity to have their cases considered by the courts, and for other purposes; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation which is designed to have societal rights check law enforcement and to protect defendants' rights to fundamental fairness.

We are seeing an evolution of a number of problems in the criminal courts, especially applicable to capital cases involving the death penalty where I believe we are in danger of losing the death penalty in the United States if

we do not act to see to it that there is fairness.

For example, there is one case specifically where the Supreme Court of the United States had four votes to grant certiorari where the defendant was under the death penalty, and that individual was executed without the Supreme Court hearing the case because there was not a fifth vote to stay the execution.

In the past several years, there has been growing evidence that DNA materials would have exonerated many individuals who have been in jail, and among those quite a number of individuals who have been under the death penalty.

And we have also seen very significant problems with the adequacy of defense counsel in capital cases.

The legislation I am introducing today will address these issues.

During my tenure as district attorney of Philadelphia—from 1966 to 1974—I became convinced that the death penalty is an effective deterrent. I had come to that conclusion earlier when I was an assistant district attorney for 4 years preceding my tenure as Philadelphia's district attorney.

I have seen many cases where individuals will decline to carry weapons on robberies or burglaries because of fear that a killing might occur, and that would be murder in the first degree under the felony murder rule and therefore carry the death penalty.

One case is illustrative of many I have seen. There was a case in the late 1950s in Philadelphia with three defendants, Cater, Rivers, and Williams. Those young men were 17, 18, and 19 years old, respectively. They had IQs of less than 100. They set out to rob a merchant in North Philadelphia, and Williams had a gun. Cater and Rivers said: We are not going to go along on this robbery if you take the gun. They took that position because they were apprehensive that a killing might result and they could face the death penalty under the felony murder rule. That is a rule which says anyone committing one of five enumerated felonies, including robbery, would be subject to murder in the first degree and the death penalty if there was a killing in the course of that robbery.

Williams put the gun in the drawer, slammed it shut, and, as the three of them walked out, unbeknownst to Cater and Rivers, Williams took the gun with him. They robbed the store. In the course of the melee, the merchant was killed. The three of them faced murder in the first degree charges and the death penalty.

In the course of the investigation, the confessions disclosed the essential facts which I have related, and all three got the death penalty. Williams, the gunman, was subsequently executed, in the early 1960s, one of the last people executed in Pennsylvania before ''Furman v. Georgia'' set aside all of the death penalty cases.

Cater's and Rivers's cases came up later. I was an assistant DA at the time and argued that case in the Supreme Court of Pennsylvania.

Later, when I was district attorney, Cater and Rivers argued for commutation. Representing the Commonwealth, I agreed that they should not face the death penalty but should face life imprisonment because they had tried to dissuade Williams from carrying the gun. Although in the eyes of the law their culpability was the same as a co-conspirator, it seemed to me that as a matter of fairness they ought not to have the death penalty.

That case is illustrative of many cases which have convinced me that the death penalty is a deterrent. But if we are to retain the deterrent, we have to be very careful how we use the death penalty.

When I was district attorney of Philadelphia, we had some 500 homicides a year. I would not permit any of my 160 assistants to ask for the death penalty without my personal review. We asked for the death penalty in a very limited number of cases—four, or five, or six a year—really heinous and outrageous cases where it was the conclusion that only the death penalty would suffice.

There has recently been a commission in Illinois which has been very critical of the application of the death penalty.

The Governor of Illinois has declared a moratorium on the death penalty. And with the growing number of DNA cases which are arising, it is my view, that unless some action is taken to see to it that there are not executions of people whose innocence might be established through DNA evidence, that we will soon lose the death penalty.

So it is a matter of protecting society's interest to maintain the death penalty that this legislation is being introduced, and, at the same time, with equal force, it is in order to provide fundamental fairness to defendants. Where DNA evidence is available, it ought to be examined. And we know it has the capacity, in many, many cases, to rule out the defendant.

The science of DNA has progressed to the point where tangible evidence may specifically exclude a defendant. We have seen many cases where incarcerated people, including those awaiting the death penalty, have been released when the DNA evidence has established their innocence.

There is legislation pending, but none reaches what I consider to be the fundamental question—I ask unanimous consent that I may proceed for an additional 3 minutes.

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

Mr. SPECTER. The pending legislation does not reach the critical issue; and that is, to establish a right to DNA evidence as a constitutional right.

Congress, under section V of the 14th amendment, has the authority to legislate in furtherance of the due process clause. Congress has been very inert on establishing constitutional rights under our legislative authority under section V. We have seen the wave of Supreme Court decisions in the constitutional area—''Mapp v. Ohio,'' where the Supreme Court of the United States said it was a constitutional right not be subjected to unreasonable searches and seizures, incorporating the search and seizure provisions of the 4th amendment into the due process clause of the 14th amendment.

The Supreme Court, ''Miranda v. Arizona,'' required warnings for those suspects who are in custodial interrogation. And there have been many cases where it has been up to the Court to establish the constitutional right.

In the obvious landmark case, perhaps the most important case in American constitutional history, ''Brown v. Board of Education of Topeka,'' it was up to the Supreme Court to establish desegregation as a constitutional right. Action should have been taken long before by the Congress, long before by the executive branch, and long before by the State legislatures; but it was up to the Court to establish that constitutional right.

There has been one case in the Eastern District of Pennsylvania, the ''Godschalk'' case, where Judge Weiner established a constitutional right for the defendant to see DNA evidence. And there is a Fourth Circuit opinion which addresses the issue but leaves it up to the Congress to act. And that is a matter that is taken up in this legislation.

On two other items, the bill will first provide for a true opportunity for defendants to have their cases considered by the courts. For example, there was a case where the Supreme Court of the United States had four justices willing to vote to grant certiorari and the defendant was executed because there was not a fifth justice voting for a stay of execution—and I ask unanimous consent that the case be included in the RECORD.

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

ALEXZENE HAMILTON, AS NATURAL MOTHER AND NEXT FRIEND TO JAMES EDWARD SMITH V. TEXAS, NO. 89–7838, SUPREME COURT OF THE UNITED STATES, 498 U.S. 908; 111 S. CT. 281; 112 L. ED. 2D 236; OCTOBER 9, 1990

PRIOR HISTORY:

On petition for writ of certiorari to The Court of Criminal Appeals of Texas.

JUDGES:

Rehnquist, White, Marshall, Blackmun, Stevens, O'Connor, Scalia, Kennedy. Justice Marshall, with whom Justice Blackmun joins, concurring. Justice Stevens, with whom Justice Blackmun joins, concurring. Justice Souter took no part in the consideration or decision of this motion and this petition.

OPINION:

[*908] [***236] [**281] The motion of Chris Lonchar Kellogg for leave to intervene is denied. The petition for a writ of certiorari is denied.

CONCURBY:

MARSHALL; Stevens

CONCUR:

Justice Marshall, with whom Justice Blackmun joins, concurring.

I agree with Justice Stevens that the issue raised in this petition is important and merits resolution by this Court. I write to express my frustration with the Court's failure to avail itself of the ordinary procedural mechanisms that would have permitted us to resolve that issue in this case.

It is already a matter of public record that four Members of this Court voted to grant certiorari before petitioner was executed. [*909] See *Hamilton* v. *Texas*, 497 U.S. (1990) (Brennan, J., dissenting from denial of application for stay). According to established practice, this fact should have triggered a fifth vote to grant petitioner's application for a stay of [**282] execution. * Indeed, this result flows naturally from the standard by which we evaluate stay applications, a central component of which is ''whether four Justices are likely to vote to grant certiorari.'' *Coleman* v. *Paccar*, 424 U.S. 1301, 1302 (1976) (Rehnquist, J., in chambers) (emphasis added); see also *Maggio* v. *Williams*, 464 U.S. 46, 48 (1983) (*per curiam*) (same).

*See *Autry* v. *Estelle*, 464 U.S. 1, 2 (1983) (*per curiam*) (''Had applicant convinced four Members of the Court that certiorari would be granted on any of his claims, a stay would issue''); *Darden* v. *Wainwright*, 473 U.S. 928, 928–929 (1985) (Powell, J., concurring in granting of stay); *Straight* v. *Wainwright*, 476 U.S. 1132, 1333, n. 2 (1986) (Powell J., concurring in denial of stay, joined by Burger, C. J., Rehnquist, and O'Connor, JJ.) (noting that ''the Court has ordinarily stayed executions when four Members have voted to grant certiorari''); *id.*, at 1134–1135 (Brennan, J., dissenting from denial of stay, joined by Marshall and Blackmun, JJ.) (''When four vote to grant certiorari in a capital case, but there is not a fifth vote to stay the scheduled execution, one of the five Justices, who does not believe the case worthy of granting certiorari will nonetheless vote to stay; this is so that the 'Rule of Four' will not be rendered meaningless by an execution that occurs before the Court considers the case on the merits'').

In my view, the Court's willingness in this case to dispense with the procedures that it ordinarily employs to preserve its jurisdiction only continues the distressing rollback of the legal safeguards traditionally afforded. Compare *Boyde* v. *California*, 494 U.S., (1990) (Marshall, J., dissenting) (criticizing diminution in standard used to assess unconstitutional jury instructions in capital cases); *Barefoot* v. *Estelle*, 463 U.S. 880, 912–914 (1983) (Marshall, J. dissenting) (criticizing Court's endorsement of summary appellate procedures in capital cases); *Autry* v. *McKaskle*, 465 U.S. 1085, 1085–1086 (1984) (Marshall, J., dissenting from denial of certiorari) [***237] (criticizing expedited consideration of petitions for certiorari in capital cases).

Justice Stevens, with whom Justice Blackmun joins, concurring

This petition for a writ of certiorari raises important, recurring questions of law that should be decided by this Court. These questions concern the standards that the Due Process Clause of [*910] the Fourteenth Amendment mandates in a hearing to determine whether a death row inmate is competent to waive his constitutional right to challenge his conviction and sentence and whether he has made a knowing and intelligent waiver of this right.

James Edward Smith was convicted of murder and sentenced to death in Harris County, Texas, in 1984. Smith had a substantial history of mental illness, and his mental difficulties prompted a finding by the Texas trial court that he was not competent to represent himself on appeal. Pet. for Cert., Exh. 2, p. 13, Exhs. 4–8, 10–12. After his conviction, Smith vacillated between forceful insistence on prosecuting his own appeal and equally forceful insistence on abandoning any challenge to this conviction or his sentence. Pet. for Cert., Exh. 2, pp. 10–11, p. 2.

Petitioner is Smith's natural mother. Proceeding as Smith's ''next friend,'' she attempted to establish her standing to litigate on her son's behalf and to have his execution stayed until his competence was established after a full adversarial hearing. She was unsuccessful. On May 23, 1990, without notice to petitioner, the Texas trial court held a nonadversarial hearing, made a finding that Smith was competent to make a decision regarding his execution, and set his execution for 12:01 A. M. on June 26, 1990. Pet. for Cert., Exh. 3.

[**283] On June 22, over the dissent of Justice Teague, n1 the Texas Court of Criminal Appeals for Stay of Execution and Objections to Trial Court's Prior Proceedings.'' Ex Parte Hamilton. No. 18,380–02 (Tex. Crim. App., June 22, 1990) (en banc) (per curiam) (order denying application for stay). On June 24, petitioner filed in this Court her petition for a writ of certiorari and her application for a stay of [*911] Smith's execution. Four Members of the Court voted to grant certiorari, n2 and to stay the execution. Nevertheless, the stay application was denied, and Smith was executed on schedule.

n1 ''Teague, J., notwithstanding that such might, but probably only will cause a slight delay in carrying out applicant's obvious desire to carry into effect his long held death wish, as well as his strong belief that he will be reincarnated after he is killed, but believing that this Court, at least implicitly, has ruled that in a case such as this one, where the reasonable probability that the defendant is not competent to request that he be put to a premature death, or, to put it another way, to commit legal suicide through the hands of others, has been raised, it is necessary for the trial court to conduct a 'full adversarial hearing' should now be conducted in this cause. See Ex parte Jordan, 758 S. W. 2d 250 (Tex. Cr. App. 1988). Also see Ford v. Wainwright, 477 U.S. 399, 106 S. Ct. 2595, 92 L. Ed. 2d 335 (1986).'' Ex Parte Hamilton, No. 18, 380–02 (Tex. Crim. App., June 22, 1990) (Teague, J., dissenting from order denying application for stay).

n2 See Hamilton v. Texas, 497 U.S. (1990) (Brennan, J., dissenting from denial of application for stay).

[***238] Smith's execution obviously mooted this case. The Court has therefore properly denied the petition for a writ of certiorari. This denial, however, does not evidence any lack of merit in the petition; n3 instead, the reason for the denial emphasizes the importance of confronting on the merits the substantial questions that were raised in this case.

n3 See Singleton v. Commissioner, 439 U.S. 940, 942 (1978) (opinion of Stevens, J., respecting denial of petition for writ of certiorari).

Mr. SPECTER. The legislation further addresses the issue of adequacy of counsel.

I will now describe the specific provisions of the bill I am offering today, and the cases and history that shows the manifest need for such legislation.

The bill contains three titles. The first Title will ensure that defendants facing the death penalty will not be executed while the Supreme Court considers their petitions for certiorari or their cases on the merits. The second Title will ensure that both federal and state defendants have a meaningful opportunity to present DNA evidence in their defense. Finally, the third Title will establish minimal standards for defense counsel representing defendants in death penalty cases in state court. I am additionally introducing these three Titles as three separate bills, as I will explain later. The first is ''Title I: Right to Review of the Death Penalty While a Case is Pending Before the Supreme Court.''

There have been death penalty cases where, despite the fact that the Supreme Court was either considering to grant certiorari or had actually granted certiorari and the case was pending, the Court did not issue a stay of execution in the interim. In the 1990 case of ''(*Alexzene*) *Hamilton* v. *Texas*,'' 497 U.S. 1016, the Supreme Court failed to issue a stay of execution while considering a cert. petition, and the defendant was executed before the Court ruled on the petition. James Smith was convicted in 1984 of committing murder while perpetrating a robbery in 1983. He was sentenced to death. Smith appealed his conviction to the Texas Court of Criminal Appeals, citing seven points of errors, ranging from insufficiency of evidence to sustain a death sentence to challenges to the jury selection process in the trial. ''*Smith* v. *State*,'' 744 S.W.2d 86, Tex. Crim. App. 1987. In 1987, that court affirmed his conviction and sentence. In April, 1988, Smith waived any further appellate review of his case. His mother, Alexzene Hamilton, then entered the case, and filed a state habeas corpus petition in the Court of Criminal Appeals, claiming that her son was incompetent. The state responded to the mother's petition, and the Texas court denied relief. Ms. Hamilton then brought a petition for certiorari in the Supreme Court. The Supreme Court granted a stay of execution pending disposition of the cert. petition. ''*Hamilton* v. *Texas*,'' 485 U.S. 1042, 1988. The Court entered an order stating that the ''stay of execution of sentence of death . . . is granted pending the disposition by [the] Court of petition for writ of certiorari. Should the petition for a writ of certiorari be denied, this stay terminates automatically. In the event the petition . . . is granted, this stay shall continue pending the issuance of the mandate of [the] Court.'' Id. On April 3, 1990, the cert. petition was denied. ''*Hamilton* v. *Texas*,'' 496 U.S. 913, 1990. In May, 1990, the state trial court conducted a hearing and found that Smith still wanted to waive his appellate rights and that he was still competent. The trial court scheduled his execution for June 26, 1990. Ms. Hamilton again brought a writ of habeas corpus in the state courts on June 20, 1990, challenging the court's finding that Smith was competent. On June 22, 1990, the state courts denied this petition.

Ms. Hamilton then filed a habeas petition in federal district court on June 23, 1990, which the court denied on June 24th. However, Dr. Brown, one of the several doctors that had previously

opined that Smith was competent, stated that he now had some doubts of Smith's competency due to his review of some medical records he had not previously seen. The federal district court found that this new opinion did not affect its findings, and denied Ms. Hamilton's request for reconsideration. On June 25th, the state trial court had Dr. Brown re-examine Smith, and Dr. Brown then returned to his original opinion that Smith was competent. On the same day, the trial court then denied Ms. Hamilton's habeas corpus petition. The Texas Court of Criminal Appeals also dismissed Ms. Hamilton's motion for reconsideration on the same day. Additionally, on the same day, the United States Court of Appeals for the Fifth Circuit affirmed the federal district court's dismissal of the habeas petition and denied her motion for a stay of execution. ''*Hamilton* v. *Collins*,'' 905 F.2d 825, 5th Cir. 1990. Ms. Hamilton then filed petitions for certiorari, asking the Supreme Court to review both the state and federal court decisions and for a stay of execution. On June 26, 1990, the originally scheduled execution date, four Supreme Court Justices voted to grant certiorari, but for some unknown procedural reason, the Court did not formally act on the petition. The Court also did not vote to grant a stay of execution. Smith was subsequently executed before the Supreme Court decided on his cert. petition. The Supreme Court then denied Smith's petitions of certiorari. ''*Hamilton* v. *Collins*,'' 498 U.S. 895, 1990; ''*Hamilton* v. *Texas*,'' 498 U.S. 908, 1990. In denying the petition from the state court decision, the Court noted that it was dismissing the petition as ''moot.'' 498 U.S. 908, Stevens, J., concurring in the dismissal of the petition.

In the 1992 case of ''*Herrera* v. *Collins*,'' 502 U.S. 1085, the Court actually granted certiorari but failed to issue the stay. Herrera had been convicted of the 1981 murder of two police officers. Herrera then pursued two lines of appeals through the Texas state system—direct appeal and then collateral proceedings. Herrera then pursued two sequential federal habeas corpus proceedings. During these proceedings, certiorari had been denied three times, but on the second federal habeas proceeding, certiorari was granted. Herrera's claim was that he was actually innocent in this proceeding. After granting certiorari, the Supreme Court failed to grant a stay of execution. However, in that case, the Texas Court of Criminal Appeals granted a stay while the case was pending before the Supreme Court. Herrera's claim was ultimately denied by the Supreme Court and he was executed.

The reason for this sequence is a procedural twist. By Supreme Court practice, it takes only four votes to grant certiorari. Although certiorari is recognized by statute as the procedure for getting a case before the Court, the statute does not state how many votes are needed. The four vote standard is the practice of the Court. However, to grant a stay, there must be a majority—five votes—and the standard the Court applies is different from that for granting certiorari. There may be good reasons why the standard is different, and in almost all other cases, the failure to grant a stay when certiorari has been granted or while the Court is still considering whether to grant certiorari does not have the dispositive effect that it does in a capital punishment case. However, in a capital case, the failure to grant a stay while the Court considers whether to even hear the case sends the signal that the Court is, in effect, affirming the decision of a lower court before it even decides that the lower court's decision is worthy of affirmation. In a case where the Court has actually granted certiorari and failed to issue a stay the Court, in effect, tells the world that a case is important enough to be heard, but not important enough to postpone an execution.

Until relatively recently, the Supreme Court had an ''informal'' practice where a fifth Justice would vote to grant a stay when four justices had voted to grant certiorari. The late Justice Brennan articulated the rationale for this rule:

A minority of the Justices has the power to grant a petition for certiorari over the objection of five Justices. The reason for this ''antimajoritarianism'' is evident: in the context of a preliminary 5–4 vote to deny, 5 give the 4 an opportunity to change at least one mind. Accordingly, when four vote to grant certiorari in a capital case, but there is not a fifth vote to stay the scheduled execution, one of the five Justices who does not believe the case worthy of granting certiorari will nonetheless vote to stay; this is so that the ''Rule of Four'' will not be rendered meaningless by an execution that occurs before the Court considers the case on the merits. ''Straight v. Wainwright,'' 476 U.S. 1132, 1134–35, 1986, Brennan, J., dissenting. Justice Brennan's argument requires no further elaboration.

Justice Brennan's opinion involved a ''hold'' case, where he was arguing that a stay should have been granted. The ''hold'' is an informal practice whereby at least three Justices of the Supreme Court can ''hold'' the Court from acting on a petition for certiorari so that the Court does not deny the petition. A ''hold'' is placed on a case when the Court has another case pending before the Court, the disposition of which may have an affect on the first case.

In addition to Justice Brennan's argument, there are other reasons why a stay should be granted. In my experience as District Attorney in Philadelphia, and conducting oversight of the Justice Department while serving in the Senate, one theme is constant concerning our system of criminal justice: It rests on a bedrock that all Americans see the system as being fair to all. When the average American questions the fundamental fairness of any aspect of the criminal justice system, then it is in trouble. To the average American, when the Supreme Court has not yet decided whether it should consider a case or, has in fact, decided to consider a case by granting certiorari, but then fails to act to ensure that it can in actuality hear the case, that raises fundamental questions about fairness, regardless of the procedural nuances that legally allow for such a result. If we are to maintain confidence in our criminal justice system, then it has to be seen as fair to all.

When the Supreme Court takes action like this, in my judgment, it denies the defendant his constitutional right of ''due process'' of law which, in these circumstances, is colloquially referred to as ''procedural due process.'' When the government takes action against an individual, the essential core of procedural due process is notice and an opportunity to be heard. In the instant case, we are not concerned with the notice aspect because the defendant knows why he was convicted. But when the Supreme Court has a case pending before it-that is a motion to stay execution or a petition for certiorari has been filed or the Court has issued a writ of certiorari-and then fails to grant a stay so that it can actually consider the petition or hear the case, it denies the defendant due process of law because the defendant is deprived of his right to be heard. A motion for a stay of execution should be treated as a petition for certiorari in these circumstances because, in effect, the motion is a preliminary petition for certiorari.

As I noted earlier, the writ of certiorari is codified in Title 28 of the U.S. Code. No defendant has a constitutional right to have his or her case heard by the Supreme Court. But once the defendant files a petition, then the defendant has a statutory right to have, at the very least, his petition considered by the court and, if the petition is granted, then the right to have his case considered by the Court. This is the method that Congress has created for the consideration of these cases, which does not allow a right of direct appeal. As Congress has created this two step procedural mechanism, Congress has the authority to ensure that it is effective. The Court does not have to grant a petition, but it must, at the very least, not allow a petition to become moot before it even makes this very basic decision. The same logic applies if the Court grants the petition.

The Court cannot consider the petition or the case if the defendant is executed before the Court acts. When a defendant is executed in these circumstances, he is being denied his right to be heard on his petition or his case and is therefore denied his basic right to ''procedural due process.''

The legislation I propose addresses this issue both at the federal and state level. With respect to federal cases, my

proposed bill would prohibit the Bureau of Prisons or the military from executing a death row inmate when a defendant has filed a petition for certiorari and when the Supreme Court has granted certiorari. Congress created the federal death penalty, and Congress can establish the conditions when it can or cannot be carried out. With respect to state cases, my bill would address this issue in two different ways.

First, just as with federal cases, my bill would prohibit the executive officer of a state from executing a defendant when a cert. petition is pending or has been granted. Congress's authority to legislate in this arena is derived from Section V of the 14th Amendment which reads that ''[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article.'' Section 1 of that Amendment reads in pertinent part that no ''State [shall] deprive any person of life . . . without due process of law. . . .'' As noted above, when a person is executed before the Supreme Court has granted or denied certiorari or acted on a case once cert. is granted, that person is deprived of his or her life without due process of law. My bill would also require the Court to treat a motion for a stay of execution as a petition for certiorari.

Furthermore, this bill would also require all federal judges, to include Supreme Court justices, to issue a stay whenever a habeas corpus case is pending before the judge or judges and the habeas petitioner defendant has been sentenced to death. A case is considered to be pending if a defendant has filed a notice of appeal, filed a motion for a stay of execution, filed a petition for certiorari, or when certiorari has been granted. Most death penalty cases, both federal and state cases, have their final hearings through federal habeas corpus review. Congress has broad authority in the area of habeas corpus legislation. Indeed, Congress enacted a similar provision as part of the Antiterrorism and Effective Death Penalty Act of 1996. 28 U.S. Code Section 2262 requires a federal court to issue a stay of execution in those circumstances where a defense counsel has been appointed to an indigent defendant and a state is seeking to fall within the streamlined habeas corpus procedures contained in the Act.

Additionally, my bill would require a lower court to issue a stay if a higher court did not in these circumstances.

Finally, my bill would require that if four Justices vote to grant certiorari in a death penalty case, then certiorari will be granted. When a person petitions the Supreme Court to hear his or her case, that person expects to have the case heard if four Justices believe it should be heard. This is the expectation of all those seeking Supreme Court review, an expectation resulting from the practices of the Court. The Court already has great discretion not to hear almost all cases it does not wish to consider. Congress has given the Court this discretion by eliminating almost all avenues of appeal by right to the Court and instead giving the Court the power to pick the cases it wants to hear through the certiorari process. Accordingly, Congress should have the power to require the Court to review those cases where four Justices vote to hear the case. The procedures for obtaining access to our courts should be as transparent as possible, and it simply defies logic and makes a mockery of the phrase ''equal justice'' when four votes in one set of circumstances can result in Supreme Court review of a case, but not in other circumstances.

The second title is ''TITLE II: DNA Testing.''

My bill also addresses the issue of DNA testing for prisoners who claim that such testing would exonerate them. This bill would establish the procedures for federal prisoners who seek such review. It would also mandate that states adopt similar procedures. My bill would establish federal procedures that set a middle ground between the two DNA bills that are currently pending before the Senate.

My bill requires that a person seeking DNA testing not take a position inconsistent with any affirmative defense he may have raised at trial. An affirmative defense is one such as self-defense, where a defendant is not denying that he committed one or more of the acts constituting the charged offense, but the defendant is denying criminal responsibility. One of the other pending bills does not have any similar provision, and another bill requires that the defendant's current theory of defense not be inconsistent with a prior theory of defense. However, my bill would allow a defendant who pled guilty to request DNA testing. Unfortunately, there are instances where due to inadequate representation or lack of sophistication on a defendant's part, or for a variety of other reasons, a defendant will plead guilty to a crime that he did not commit. My bill would allow such a defendant to seek DNA testing.

Another difference is that my bill has a five year limitation on its application, with one exception regarding newly discovered evidence. One of the other pending bills has no time limitation, and the other has a three year time limitation. The thrust of all the pending DNA bills is to allow a prisoner to seek potentially exculpatory DNA testing, even though such a request would otherwise be barred on procedural grounds, such as timeliness requirements.

My bill would benefit those defendants currently incarcerated who did not have access to DNA testing at the time of their trials. My bill defines lack of access rather broadly. If 1, the technology was actually not available, or 2, it was not generally known that such testing was available at the time of trial, or 3, if the technology was available and the testing was not requested and the applicant shows that the failure to have requested testing is attributable to deficient performance on his counsel's part, then the applicant is deemed not to have had access to the testing. The bill would allow a prisoner to seek testing for up to five years after the enactment of the bill, with the exceptions I noted above. Five years would give all defendants currently incarcerated enough time to bring their claims.

I do not propose that there be no time limitation, because I do not want to create an exception that could conceivably swallow the time limitations currently existing in federal law.

However, that concern may be misplaced. A track record of five years can tell us if this bill is ripe for abuse. If not, then the bill can be reenacted with no time limit. If, however, there is evidence that is being abused by prisoners, then the law would expire. Based on my experience as a prosecutor, I am concerned that the three year limitation is not long enough to develop a good track record on the use of this testing.

There would be an exception for this five year limitation. If a prisoner can show that there is newly discovered evidence in his case, and such evidence could not have been discovered through due diligence, or the failure to discover the evidence is attributable to deficient performance on his counsel's part, then he could bring a claim beyond the five year limit. This exception is consistent with the laws currently in force concerning newly discovered evidence.

Some may question the need for these DNA testing procedures in federal cases, as the level of practice and standard of representation is considered to be of the highest caliber. Even at that level there can be problems. Even though it did not involve DNA testing, we had the case of Timothy McVeigh when only days before his scheduled execution the FBI announced that it had discovered documents it had failed to provide the defense before trial. This highlights that even at the federal level mistakes can be made. This bill would provide one safeguard against such mistakes.

My bill would also mandate that states provide similar procedures to state prisoners in all cases. One of the pending bills has such a requirement, but only in capital cases. DNA evidence is such a powerful tool that can exonerate the unjustly convicted that I believe Congress has the authority pursuant to Section V of the 14th Amendment to impose post-conviction DNA testing requirements on the states.

In 1963, the United States Supreme Court decided the seminal case of ''Brady v. Maryland,'' 373 U.S. 83, where the Court held that ''suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or punishment . . . .'' The Court also noted that ''[s]ociety wins not only when the guilty are convicted but when criminal trials are

fair; our system of the administration of justice suffers when any accused is treated unfairly.'' Congress has the authority to enact legislation to enforce the protections of the ''due process'' clause through Section V of the 14th Amendment.

DNA evidence is the most powerful evidence that can be ''favorable to an accused,'' because it can prove that the accused did not commit the crime. But when DNA evidence remains in the hands of the state untested, we do not know if it is favorable or unfavorable to the accused. It really is not ''evidence'' until it is tested, because its relevancy to guilt or innocence cannot be determined without testing. When a state does not provide a defendant with the opportunity to determine whether evidence may exculpate him, the state is, in effect, ''suppressing . . . favorable evidence'' by not allowing a defendant to determine whether it is favorable or not.

DNA evidence has proven to be extremely valuable to the criminal justice system. It has aided prosecutions and freed unjustly convicted persons. Since 1973, over 100 people have been freed from Death Row, at least 10 due to DNA testing. Additionally, over a total of 100 people have been freed after having been exonerated in both capital cases and non-capital cases due to DNA testing. The FBI has found that since 1989, DNA testing has cleared about 25% of sexual assault suspects whose samples are sent to the FBI for testing. Indeed, DNA evidence can be a stronger indicator of innocence than guilt. If the defendant's DNA does not match the DNA evidence, that is conclusive evidence. However, when a match results, in actuality, it is only a probability, albeit a very high probability, that the defendant was the source of the DNA.

In questioning whether the death penalty was being fairly administered in the United States, Supreme Court Justice Sandra O'Connor noted the number of Death Row inmates freed due to being exonerated, to include by DNA testing. Indeed, she commented that ''[i]f statistics are any indication, the system may well be allowing some innocent defendants to be executed.'' This concern was made manifest when the Governor of Illinois ordered a moratorium on the death penalty after 13 Death Row inmates were exonerated. Justice O'Connor also noted that the availability of DNA testing in the various states varied widely, with some states affording this post-conviction DNA testing and others not providing any at all. Even in those states that offer such testing, there is a wide variation in procedures. My bill would require the states to adopt procedures similar to the federal standards and thereby promote consistency among the states.

Indeed, the recent groundswell of opinion questioning the death penalty has been based on doubts about its accuracy. Providing Death Row defendants with the opportunity for DNA testing would do much to allay those concerns.

But the death penalty is not the only reason for enacting this bill. Many federal and state prisoners are currently incarcerated for long sentences due to mandatory minimums and Sentencing Guidelines. Indeed, the prisoner most recently freed due to DNA testing had served 21 years of an 80 year sentence for rape. Additionally, DNA evidence is relevant in many types of cases, beyond the classic sex assault cases and violent crimes where there is blood evidence. For example, in a bank robbery case, the FBI was able to connect a suspected robber to the case by recovering some hairs from a woolen cap the robber used as a mask. Obviously, such evidence could also be used to exonerate a defendant.

However, in order for this DNA testing to be of any use, there must be evidence to test. That is why this bill requires the preservation of biological evidence for the five year period after the enactment of this bill or, if someone requests testing pursuant to this bill, while those proceedings are underway.

This bill does more than provide justice to wrongfully convicted defendants. It also protects the public. When a person is wrongfully convicted of murder or rape, that allows the real perpetrator to remain at large. And based on my experience as District Attorney, sexual predators, especially those who prey on children, have the highest levels of recidivism.

As noted above, the authority for enacting this provision is Section V of the 14th Amendment to the Constitution. When a state fails to provide DNA testing that might bear on the guilt or innocence of a defendant, then the state is depriving the defendant of his life or liberty without due process of law. The state's interest in the finality of a conviction is strong. However, when balancing that interest against a prisoner's interest in not being wrongfully executed, justice cries out for access to DNA testing.

The need for Congress to address this issue was highlighted by two recent federal court decisions that addressed giving state prisoners access to DNA testing. In the 2001 case of ''Godschalk v. Montgomery County District Attorney's Office,'' 177 F.Supp.2d 366, Judge Charles R. Weiner of the United States District Court for the Eastern District of Pennsylvania ruled that a prisoner who sought DNA testing had a right to such testing pursuant to the Due Process clause of the 14th Amendment because such evidence could be exculpatory evidence as defined by ''Brady v. Maryland'' and its progeny. In 1987, Godschalk had been convicted of two rapes committed in 1986. At the time of trial, DNA testing was not available. At the trial, the prosecution introduced an audiotaped confession by Godschalk that contained details of the crimes not known to the public. Godschalk's state appeals of his convictions were denied, as well as his petitions for DNA testing. Godschalk then brought an action pursuant to 42 U.S. Code Section 1983 seeking DNA testing. The evidence from only one of the rapes was still in a condition so that it could be tested, but there was no dispute that the same person committed both rapes. The court ordered the DNA testing, noting that ''[w]hile [Godschalk's] detailed confessions to the rapes are powerful inculpatory evidence, so to any DNA testing that would exclude [Godschalk] as the source of the genetic material taken from the victims would be powerful exculpatory evidence. . . . Given the well-known powerful exculpatory effect of DNA testing, confidence in the jury's finding of [Godschalk's] guilt at his past trial, where such evidence was not considered, would be undermined.'' 177 F.Supp.2d at 370. The evidence was tested, and it did not match Godschalks's DNA, and he was subsequently freed.

The United States Court of Appeals for the Fourth Circuit reached a different result in the 2002 case of ''Harvey v. Horan,'' 278 F.3d at 370. In that case, Harvey had been convicted of rape and forcible sodomy. Harvey brought a Section 1983 action to have the evidence in that case tested with a new DNA technology that had not been available at the time of his trial. The district court granted his request, but on appeal the Fourth Circuit found his request to be procedurally barred. The court found that Section 1983 was not the proper path for such a request and that Harvey's request was, in effect, a petition for habeas corpus, which was statutorily barred as a successive petition. The court specifically noted that Harvey's path of redress was either through the state courts and legislature or Congress, stating that ''[f]ederal and state legislatures and state courts are free in ways that [the federal court is] not to set the ground rules by which further collateral attacks on state convictions such as Harvey's may be entertained.'' 278 F.3d at 380. The purpose of my bill is to establish those ''ground rules.''

The third title is ''Title III: Counsel Standards.''

Finally, my bill would establish minimal standards for defense counsel in state court cases where the defendant is facing the death penalty. In 1991, when my distinguished colleague and friend Senator BIDEN chaired the Judiciary Committee, he asked Professor James Liebman of Columbia Law School to calculate the frequency of relief in capital habeas corpus cases. This ultimately led Professor Liebman to conduct a study of the error rates in capital cases. His study found that one of the two most common errors prompting a majority of reversals at the state post-conviction stage was ''egregiously incompetent defense lawyers who didn't even look for and demonstrably missed important evidence

that the defendant was innocent or did not deserve to die . . . .'' In a more recent study released this year, Professor Liebman again cited the poor quality of defense counsel as a contributing factor to erroneous results in capital cases. And we all have heard the stories of defense counsel sleeping during the course of a capital trial.

My bill would establish minimal standards for defense counsel in capital cases who represent indigent defendants. The standards I propose are the same that are required in federal courts and establish an absolute floor for competence of counsel, both at the trial level and the appellate level. Unlike the other two pending bills, my bill would establish and mandate actual standards. If these standards are good enough for the federal courts, they should be good enough for state courts. They are specific enough to ensure that a defendant receives competent representation but also general enough so that they could be applied throughout the United States. Among other requirements, the bill would require that any counsel have several years of felony experience, and that a defendant would have a right to two defense counsel at trial.

One of the requirements is that defense counsel be ''learned in the law applicable to capital cases.'' Concededly, this is a rather general requirement which we can develop and explore at hearings on this bill and bring more definition to through legislative history or amending the bill. However, such generic language would allow flexibility between the different states, where the number of capital cases vary widely. For example, there may be a very experienced felony defense counsel who has never actually tried a capital case, but has attended several training sessions put on by the ABA or an equivalent organization. Why should not such a person be deemed competent to serve as defense counsel in a capital case even though he or she may have never defended such a case before? And this ''generic'' requirement will have a strict enforcement mechanism described below that will ensure it has ''teeth.''

In the seminal 1963 case of ''Gideon v. Wainwright,'' 372 U.S. 335, the Supreme Court recognized that indigent defendants have a constitutional right to be represented by counsel in criminal cases. In the 1984 case of ''Strickland v. Washington,'' 466 U.S. 668, the Supreme Court held that a defendant has a constitutional right to effective assistance of counsel guaranteed by the 6th Amendment to the Constitution, and that this requirement applied to the states through the due process clause of the 14th Amendment. Interestingly, ''Strickland'' was a death penalty case.

As these rights are guaranteed by the Constitution and apply to the states through the ''due process'' clause of the 14th Amendment, Congress has the authority to enforce these rights through Section V of that Amendment. There is no doubt that there is state action in these circumstances, as the state is responsible for appointing and compensating the counsel representing indigent defendants.

My bill, however, also contains an additional enforcement mechanism. ''Strickland'' identified a two-part analysis in determining whether there was a constitutional violation due to ineffective assistance of counsel. The first prong of that analysis is a determination whether ''counsel's performance was deficient,'' that is, whether the ''counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.'' ''Strickland,'' 466 U.S. at 687. The second prong requires a determination as to whether the ''counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.'' Id. A defendant must establish both prongs to make a successful challenge. My bill would, in effect, eliminate the first prong of the analysis in a habeas corpus proceeding. If a defendant's counsel did not meet the standards established by my bill, then the first prong of ''deficient performance'' would be deemed to have been met. The defendant would then only have to satisfy the requirements of the second prong, thus allowing him to challenge the decisions his counsel made that influenced the outcome of the trial, without having to fear that the habeas court would deem such decisions to be ''tactical'' decisions that were within the realm of reasonable practice. However, if a state adopted the standards contained in my bill, a defendant would have to make both showings, as required by current law. A habeas court's review as to whether these standards were met will be ''de novo'' and the State would have the burden of proving that the standards had been met.

This overall enforcement provision is analogous to the provision I referred to earlier in the 1996 antiterrorism act, that provided for expedited habeas review if a state adopted certain procedures for indigent defendants.

The provisions of my bill are all aimed at achieving one goal—securing for all defendants throughout the criminal justice process all the protections guaranteed by the ''due process'' clause and thereby ensuring that they receive fair treatment throughout the process, regardless of their income level.

Mr. President, I ask unanimous consent that the bill containing these three provisions be printed in the RECORD.

Additionally, in order to facilitate hearings or perhaps legislative enactment of these bills, I am introducing the three separately: a separate bill on DNA evidence; a separate bill on staying execution, where the Supreme Court has granted certiorari; and a separate bill on adequacy of counsel, so that, in total, four bills are being introduced, and I ask that these bills also be printed in the RECORD.

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

S. 2446

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Confidence in Criminal Justice Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—RIGHT TO REVIEW OF THE DEATH PENALTY UPON THE GRANT OF CERTIORARI
Sec. 101. Protecting the rights of death row inmates to review of cases granted certiorari.
Sec. 102. Habeas corpus.
TITLE II—POSTCONVICTION DNA TESTING
Sec. 201. Postconviction DNA testing.
Sec. 202. Prohibition pursuant to section 5 of the 14th amendment.
TITLE III—MANDATORY MINIMAL DEFENSE COUNSEL STANDARDS IN STATE COURTS FOR CAPITAL CASES.
Sec. 301. Right to legal representation for indigent defendants.
Sec. 302. Minimum experience required for defense counsel.
Sec. 303. Adequate representation.
Sec. 304. Attorney fees and costs.
Sec. 305. Irrebuttable presumption of deficient performance.

TITLE I—RIGHT TO REVIEW OF THE DEATH PENALTY UPON THE GRANT OF CERTIORARI

SEC. 101. PROTECTING THE RIGHTS OF DEATH ROW INMATES TO REVIEW OF CASES GRANTED CERTIORARI.

Section 2101 of title 28, United States Code, is amended by adding at the end the following:

''(h) Upon notice by a party that has filed a motion for a stay of execution or filed for certiorari with, or has been granted certiorari by, the United States Supreme Court in an appeal from a case in which the sentence is death, the Governor of the State in which the death sentence is to be carried out, in a State case, or the Director of the Bureau of Prisons, the Secretary of a military branch, or any other Federal official with authority to carry out the death sentence, in a Federal case, shall suspend the execution of the sentence of death until the United States Supreme Court enters a stay of execution or until certiorari is acted upon and the case is disposed of by the United States Supreme Court.

''(i) For purposes of this section, the United States Supreme Court shall treat a motion for a stay of execution as a petition for certiorari.

''(j) In an appeal from a case in which the sentence is death, a writ of certiorari shall be issued by the United States Supreme Court upon the vote of at least 4 qualified justices.''.

SEC. 102. HABEAS CORPUS.

(a) STATE COURT PROCEEDINGS.—Section 2251 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' at the beginning of the text;

(2) by inserting ''(b)'' before the second sentence; and

(3) by adding at the end the following:

''(c)(1) Notwithstanding any other provision of law, a justice or judge of the United States before whom a habeas corpus proceeding that involves the death sentence is

pending shall stay the execution of the death sentence until the proceeding is completed. If the issuance of such a stay requires more than 1 judge to concur or vote on the stay, the court before which the proceeding is pending shall grant the stay.

''(2) For purposes of this subsection, a case is pending before a court in the Circuit Court of Appeals if a notice of appeal has been filed and is pending before the United States Supreme Court, if a petition for certiorari has been filed, or if a motion to stay execution has been filed.

''(3) A case described in paragraph (2) remains pending before the court until the petition for certiorari is denied. If the petition is granted, the case remains pending.

''(4) If a higher court is unable or fails to issue a stay pursuant to this subsection, a lower court before which the case had been pending shall issue the stay of execution.

''(d) For purposes of this section, a motion to stay execution shall be treated as a petition for certiorari.''.

(b) FEDERAL COURT PROCEEDINGS.—Section 2255 of title 28, United States Code, is amended by adding at the end the following:

''Notwithstanding any other provision of law, a justice or judge of the United States, before whom a habeas corpus proceeding that involves a Federal death sentence is pending, shall stay the execution of the death sentence until the proceeding is completed. If the issuance of such a stay requires more than 1 judge to concur or vote on the stay, the court before which the proceeding is pending shall grant the stay.

''If a higher court is unable or fails to issue a stay pursuant to the preceding paragraph, a lower court before which the case had been pending shall issue the stay of execution. For purposes of this section, a motion to stay execution shall be treated as a petition for certiorari. A case described in the preceding paragraph—

''(1) is pending before a court in the Circuit Court of Appeals if a notice of appeal has been filed; and

''(2) is pending before the United States Supreme Court if—

''(A) a petition for certiorari has been filed and has not been denied; or

''(B) a motion to stay execution has been filed.''.

TITLE II—POST-CONVICTION DNA TESTING

SEC. 201. POST-CONVICTION DNA TESTING.

(a) FEDERAL CRIMINAL PROCEDURE.—

(1) IN GENERAL.—Part II of title 18, United States Code, is amended by inserting after chapter 228 the following:

''CHAPTER 228A—POST-CONVICTION DNA TESTING

''Sec.
''3600. DNA testing.
''3600A. Prohibition on destruction of biological evidence.

''§ 3600. DNA testing

''(a) MOTION.—

''(1) IN GENERAL.—An individual imprisoned because of a conviction of a criminal offense in a court of the United States (referred to in this section as the 'applicant') may make a written motion to the court that entered the judgment of conviction for the performance of forensic DNA testing on specified evidence that was secured in relation to the investigation or prosecution that resulted in the conviction.

''(2) CONTENTS.—The motion shall—

''(A) include an assertion by the applicant, under penalty of perjury, that the applicant is actually innocent of the crime for which the applicant is imprisoned or of uncharged conduct, if the exoneration of the applicant of such conduct would result in a mandatory reduction in the sentence of the applicant;

''(B) identify the specific evidence secured in relation to the investigation or prosecution that resulted in the conviction for which testing is requested;

''(C) identify a theory of defense—

''(i) the validity of which would establish the actual innocence of the applicant, and explain how the requested DNA testing would substantiate that theory; and

''(ii) that is not inconsistent with any affirmative defense issued by the applicant in the original prosecution;

''(D) make a prima facie showing that the conditions set forth in subsection (c) for issuance of a testing order are satisfied; and

''(E) certify that the applicant will provide a DNA sample from the applicant for purposes of comparison.

''(3) FILING.—A motion filed under this section is timely if—

''(A) it is filed within 60 months of the date of enactment of this section;

''(B) the applicant can show that—

''(i) the evidence identified pursuant to paragraph (2)(B) is newly discovered; and

''(ii)(I) such evidence could not have been discovered through the exercise of due diligence; or

''(II) the proximate cause for not having previously discovered such evidence was the deficient performance of the attorney of the applicant; or

''(C) the applicant can show that—

''(i)(I) the technology for the requested DNA testing was not available at the time of trial;

''(II) it was not generally known that such technology was available at the time of trial; or

''(III) the failure to request such testing using the technology was due to the deficient performance of the attorney of the applicant; and

''(ii) if any of the evidence was previously subjected to DNA testing, the testing now requested uses a newer technology for DNA testing that is reasonably certain to provide results that are substantially more accurate and probative than any previous DNA testing of the evidence.

''(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

''(1) NOTICE TO THE GOVERNMENT.—Upon receipt of a motion under subsection (a), the court shall promptly notify the government of the motion and afford the government an opportunity to respond to the motion.

''(2) PRESERVATION ORDER.—The court may direct the government to preserve any evidence to which a motion under subsection (a) relates to the extent necessary to carry out proceedings under this section.

''(3) APPOINTMENT OF COUNSEL.—The court may appoint counsel for an indigent applicant under this section in accordance with section 3006A of this title.

''(c) ORDER FOR DNA TESTING.—The court shall order the DNA testing requested in a motion filed under this section if—

''(1) the motion satisfies the requirements of subsection (a);

''(2)(A) the identity of the perpetrator was at issue in the trial that resulted in the conviction of the applicant; or

''(B) in a case where the applicant pled guilty, the identity of the perpetrator would have been at issue at trial;

''(3) the evidence to be tested is in the possession of the government and has been subject to a chain of custody and retained under conditions sufficient to ensure that it has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the requested DNA testing;

''(4)(A)(i) the technology for the requested DNA testing was not available at the time of trial;

''(ii) it was not generally known that such technology was available; or

''(iii) the applicant can show that the failure to request such testing was due to the deficient performance of the attorney of the applicant; and

''(B) if any of the evidence was previously subjected to DNA testing, the testing now requested uses a newer DNA testing technique which is reasonably certain to provide results that are substantially more accurate and probative than any previous DNA testing of the evidence;

''(5) the proposed DNA testing uses scientifically sound methods and is consistent with accepted forensic practice;

''(6) the proposed DNA testing is reasonable in scope; and

''(7) the court determines, after review of the record of the trial of the applicant and any other relevant evidence, that there is a reasonable probability that the results of the proposed DNA testing will enable the applicant to establish that the applicant is entitled to a new trial under the standard of subsection (e)(3).

''(d) TESTING PROCEDURES; REPORTING OF TEST RESULTS.—

''(1) TESTING PROCEDURES.—The court shall direct that any DNA testing ordered under this section be carried out by—

''(A) a laboratory mutually selected by the government and the applicant; or

''(B) if the government and the applicant are unable to agree on a laboratory, a laboratory selected by the court ordering the testing.

''(2) LABORATORY APPROVAL.—With respect to DNA testing by a laboratory in accordance with this subsection, other than an FBI laboratory, the court must approve the selection of the laboratory and make all necessary orders to ensure the integrity of the evidence and the testing process and the reliability of the test results.

''(3) LABORATORY COSTS.—The applicant shall pay the cost of any testing by a laboratory in accordance with this subsection, other than an FBI laboratory, except that the court shall pay, in accordance with section 3006A of this title, the cost if the applicant would otherwise be financially incapable of securing such testing.

''(4) DISCLOSURE OF TEST RESULTS.—The results of any DNA testing ordered under this section—

''(A) shall be disclosed to—

''(i) the court;

''(ii) the applicant;

''(iii) the government; and

''(iv) the appropriate agency under subsection (e)(3)(B)(ii); and

''(B) shall be included in the Combined DNA Index System if the conditions set forth in subsection (e)(2) are met.

''(e) POSTTESTING PROCEDURES.—

''(1) INCONCLUSIVE RESULT.—If the DNA testing results are inconclusive, the court may order further testing, as appropriate, or may deny the applicant relief.

''(2) POSITIVE RESULT.—If DNA testing results obtained under this section show that the applicant was the source of the DNA identified as evidence under subsection (a)(2)(B), the court shall—

''(A) deny the applicant relief;

''(B) submit the DNA testing results to the Department of Justice for inclusion in the Combined DNA Index System; and

''(C) on motion of the government, proceed as provided in paragraph (5)(A).

''(3) NEGATIVE RESULT.—If DNA testing results obtained under this section show that the applicant was not the source of the DNA identified as evidence under subsection (a)(2)(B)—

''(A) the court shall promptly—

''(i) order any further DNA testing needed to clarify the import of the test results, including any testing needed to exclude persons other than the perpetrator of the crime as potential sources of the DNA evidence; and

''(ii) determine whether the applicant is entitled to relief under paragraph (4); and

''(B) the Attorney General shall—

''(i) compare the DNA evidence collected from the applicant with DNA evidence in the Combined DNA Index System that has been collected from unsolved crimes;

''(ii) if the comparison yields a DNA match with an unsolved crime, notify the appropriate agency and preserve the DNA sample; and

''(iii) if the comparison fails to yield a DNA match with an unsolved crime, destroy the DNA sample collected from the applicant.

''(4) EXCULPATORY EVIDENCE.—If the DNA testing conducted under this section produces exculpatory evidence—

''(A) the applicant may, during the 60-day period beginning on the date on which the applicant is notified of the test results, make a motion to the court that ordered the testing for a new trial based on newly discovered evidence under rule 33 of the Federal Rules of Criminal Procedure, notwithstanding any provision of law that would bar such a motion as untimely; and

''(B) upon receipt of a motion under subparagraph (A), the court that ordered the testing shall consider the motion under rule 33 of the Federal Rules of Criminal Procedure, notwithstanding any provision of law that would bar such consideration as untimely.

''(5) FAILURE TO OBTAIN RELIEF.—

''(A) IN GENERAL.—If the applicant fails to obtain relief under this subsection, the court, on motion by the government, shall make a determination whether the assertion of innocence by the applicant was false.

''(B) FALSE ASSERTION.—If the court finds that the assertion of innocence by the applicant was false, the court—

''(i) may hold the applicant in contempt;

''(ii) shall assess against the applicant the cost of any DNA testing carried out under this section; and

''(iii) shall forward the finding to the Director of the Bureau of Prisons.

''(C) BUREAU OF PRISONS.—On receipt of a finding by the court under this paragraph, the Director of the Bureau of Prisons may deny, wholly or in part, the good conduct credit authorized under section 3624 of this title, on the basis of that finding.

''(D) PAROLE COMMISSION.—If the applicant is subject to the jurisdiction of the United States Parole Commission, the court shall forward its finding under this paragraph to the Parole Commission, and the Parole Commission may deny parole on the basis of that finding.

''(E) PENALTY.—In any prosecution of an applicant under chapter 79 of this title, for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of 1 year, which shall run consecutively to any other term of imprisonment the applicant is serving.

''(f) FINAL ORDER.—An order granting or denying DNA testing under subsection (c), or an order granting or denying a new trial under subsection (e), is a final order for purposes of section 1291 of title 28.

''(g) TIME LIMITS INAPPLICABLE; OTHER REMEDIES UNAFFECTED.—Notwithstanding any time limit otherwise applicable to motions for new trials based on newly discovered evidence, a court may grant relief under subsection (e) to an applicant, at any time.

''(h) OTHER REMEDIES UNAFFECTED.—This section does not affect the circumstances under which a person may obtain DNA testing or postconviction relief under any other law or rule.

''§ 3600A. Prohibition on destruction of biological material

''(a) PROHIBITION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, during the period described in paragraph (2), the government shall not destroy any biological material preserved if the defendant is serving a term of imprisonment following conviction in a case.

''(2) PERIOD DESCRIBED.—The period described in this paragraph is the period beginning on the date of enactment of this section and ending on the later of—

''(A) the expiration of the 60-month period beginning on that date of enactment; or

''(B) the date on which any proceedings under section 3600 relating to the case are completed.

''(b) SANCTIONS FOR INTENTIONAL VIOLATION.—The court may impose appropriate sanctions, including criminal contempt, for an intentional violation of subsection (a).

''(c) EXCEPTIONS.—The government may dispose of evidence before the expiration of the period of time described in subsection (a) if—

''(1) other than subsection (a), no statute, regulation, court order, or other provision of law requires that the evidence be preserved; and

''(2)(A)(i) the government notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for that person (or, if there is no counsel of record, the public defender for the judicial district in which the conviction for that person was imposed), of the intention of the government to dispose of the evidence and the provisions of this chapter; and

''(ii) the government affords such person not less than 180 days after such notification to make a motion under section 3600(a) for DNA testing of the evidence; or

''(B)(i) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

''(ii) the government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 228 the following:

''228A. Postconviction DNA Testing .. 3600''.

(b) APPLICABILITY.—The provisions and amendments in this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.

(c) REPORT BY THE ATTORNEY GENERAL.—

(1) TRACKING SYSTEM.—

(A) IN GENERAL.—The Attorney General shall establish a system for reporting and tracking motions under section 3600 of title 18, United States Code.

(B) REQUESTED ASSISTANCE.—The judicial branch shall provide to the Attorney General any requested assistance in operating a reporting and tracking system and in ensuring the accuracy and completeness of information included in that system.

(2) INFORMATION.—Not later than 180 days before the expiration of the time period referenced in section 3600(a)(3)(A) of title 18, United States Code, the Attorney General shall submit a report to Congress containing—

(A) a summary of the motions filed under section 3600 of title 18, United States Code;

(B) information on whether DNA testing was ordered pursuant to such motions;

(C) information on whether the applicant obtained relief on the basis of DNA test results; and

(D) information on whether further proceedings occurred following a granting of relief and the outcome of those proceedings.

(3) ASSESSMENT.—The report submitted under paragraph (2) may also include—

(A) any other information that the Attorney General believes will be useful in assessing the operation, utility, or costs of section 3600 of title 18, United States Code; and

(B) any recommendations that the Attorney General may have relating to future legislative action concerning section 3600 of title 18, United States Code.

SEC. 202. PROHIBITION PURSUANT TO SECTION 5 OF THE 14TH AMENDMENT.

(a) APPLICATION FOR DNA TESTING.—No State shall deny an application for DNA testing made by a prisoner in State custody who would be eligible for such testing under the provisions of sections 3600 and 3600A of title 18, United States Code.

(b) DNA TESTING PROCEDURES.—The procedures for DNA testing for a prisoner in State custody shall be substantially similar to the DNA testing procedures established for Federal courts under sections 3600 and 3600A of title 18, United States Code.

(c) REMEDY.—A prisoner in State custody may enforce subsections (a) and (b) in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States, naming an executive or judicial officer of the State as a defendant.

TITLE III—MANDATORY MINIMAL DEFENSE COUNSEL STANDARDS IN STATE COURTS FOR CAPITAL CASES

SEC. 301. RIGHT TO LEGAL REPRESENTATION FOR INDIGENT DEFENDANTS.

(a) PRECONVICTION REPRESENTATION.—Notwithstanding any other provision of law, a defendant in a criminal action in a State court, which may result in punishment by death, who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time—

(1) before judgment; or

(2) after the entry of a judgment imposing a sentence of death, but before the execution of that judgment;

shall be entitled to the appointment of 1 or more attorneys and the furnishing of such other services in accordance with the provisions of this title.

(b) POSTCONVICTION REPRESENTATION.—In a postconviction proceeding in which a defendant seeks to vacate or set aside a death sentence, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of 1 or more attorneys and the furnishing of such other services in accordance with the provisions of this title.

SEC. 302. MINIMUM EXPERIENCE REQUIRED FOR DEFENSE COUNSEL.

(a) PREJUDGMENT APPOINTMENT.—

(1) IN GENERAL.—If the appointment of legal counsel under this title is made before judgment, at least 1 attorney so appointed—

(A) must have been admitted to practice for not less than 5 years in the court in which the prosecution is to be tried; and

(B) must have not less than 3 years experience in the actual trial of felony prosecutions in that court.

(2) JUDICIAL APPOINTMENT.—The court before which the defendant is to be tried, or a

judge thereof, shall promptly, upon the request of the defendant, assign 2 attorneys to the case.

(3) EXPERTISE; ACCESSIBILITY.—At least 1 of the attorneys assigned under paragraph (2)—

(A) shall be learned in the law applicable to capital cases; and

(B) shall have free access to the accused at all reasonable hours.

(4) RECOMMENDATION.—In assigning counsel under this section, the court shall consider—

(A) the recommendation of the State public defender organization, community defender organization, or equivalent organization; or

(B) if no such organization exists in the relevant jurisdiction, the administrative office of the local court or any governmental entity, bar association, or organization with knowledge regarding the skills and qualifications of local defense counsel.

(5) WITNESSES.—The court shall allow a defendant, under this title, to produce lawful witnesses to testify in support of the defendant, and shall compel such witnesses to appear at trial in the same manner that witnesses are compelled to appear on behalf of the prosecution.

(b) POSTJUDGMENT APPOINTMENT.—If the appointment is made after judgment, at least 1 attorney appointed shall—

(1) have been admitted to practice for not less than 5 years in the appropriate State appellate court;

(2) have not less than 3 years experience in the handling of felony appeals in that court; and

(3) be learned in the law applicable to capital cases.

(c) LEARNED STANDARD.—In determining whether an attorney is learned in the law of capital cases under this section, the State court shall apply the standard used in the courts of the United States.

SEC. 303. ADEQUATE REPRESENTATION.

(a) APPOINTMENT OF SUBSTITUTE COUNSEL.—With respect to this section, the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable the attorney to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

(b) SCOPE OF LEGAL REPRESENTATION.—Unless replaced by similarly qualified counsel upon the motion of the attorney or the defendant, each attorney appointed under this title shall represent the defendant throughout every stage of available judicial proceedings, including—

(1) pretrial motions and procedures;

(2) competency proceedings;

(3) trial;

(4) sentencing;

(5) executive and other clemency proceedings;

(6) motions for new trial;

(7) appeals;

(8) applications for stays of execution; and

(9) applications for writ of certiorari to the Supreme Court of the United States.

(c) ADDITIONAL SERVICES.—

(1) IN GENERAL.—Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the attorneys for the defendant to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses for such services pursuant to section 304.

(2) EX PARTE COMMUNICATIONS.—No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

SEC. 304. ATTORNEY FEES AND COSTS.

(a) ATTORNEY FEES.—Compensation shall be paid to attorneys appointed under this title at a rate equivalent to that of attorneys representing defendants in Federal capital cases pursuant to section 408(q)(10)(A) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(A)).

(b) ADDITIONAL EXPENSES.—Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under this section shall be equivalent to fees paid in Federal capital cases pursuant to section 408(q)(10)(B) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(B)).

(c) PUBLIC DISCLOSURE.—The amounts paid for services under this section shall be disclosed to the public, after the disposition of the petition.

SEC. 305. IRREBUTTABLE PRESUMPTION OF DEFICIENT PERFORMANCE.

(a) IN GENERAL.—In a proceeding in Federal court pursuant to section 2254 of title 28, United States Code, the failure to comply with the procedures of this title shall create an irrebuttable presumption that the performance of the counsel for the petitioner was deficient.

(b) ENTITLEMENT TO RELIEF; BURDEN OF PROOF; STANDARD OF REVIEW.—A petitioner is not entitled to relief unless the petitioner shows that the result of the proceeding would have been different if the performance of the counsel for the petitioner had not been deficient. The party opposing the petition has the burden of establishing that the standards in this section have been met. The court shall conduct a de novo review to settle this issue.

(c) OTHER REMEDIES.—The provisions of this section are not intended to limit any other Federal or State court from enforcing this section by any other appropriate remedy.

S. 2441

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Post-Conviction DNA Testing Act of 2002''.

SEC. 2. POST-CONVICTION DNA TESTING.

(a) FEDERAL CRIMINAL PROCEDURE.—

(1) IN GENERAL.—Part II of title 18, United States Code, is amended by inserting after chapter 228 the following:

''CHAPTER 228A—POST-CONVICTION DNA TESTING

''Sec.
''3600. DNA testing.
''3600A. Prohibition on destruction of biological evidence.

''§ 3600. DNA testing

''(a) MOTION.—

''(1) IN GENERAL.—An individual imprisoned because of a conviction of a criminal offense in a court of the United States (referred to in this section as the 'applicant') may make a written motion to the court that entered the judgment of conviction for the performance of forensic DNA testing on specified evidence that was secured in relation to the investigation or prosecution that resulted in the conviction.

''(2) CONTENTS.—The motion shall—

''(A) include an assertion by the applicant, under penalty of perjury, that the applicant is actually innocent of the crime for which the applicant is imprisoned or of uncharged conduct, if the exoneration of the applicant of such conduct would result in a mandatory reduction in the sentence of the applicant;

''(B) identify the specific evidence secured in relation to the investigation or prosecution that resulted in the conviction for which testing is requested;

''(C) identify a theory of defense—

''(i) the validity of which would establish the actual innocence of the applicant, and explain how the requested DNA testing would substantiate that theory; and

''(ii) that is not inconsistent with any affirmative defense issued by the applicant in the original prosecution;

''(D) make a prima facie showing that the conditions set forth in subsection (c) for issuance of a testing order are satisfied; and

''(E) certify that the applicant will provide a DNA sample from the applicant for purposes of comparison.

''(3) FILING.—A motion filed under this section is timely if—

''(A) it is filed within 60 months of the date of enactment of this section;

''(B) the applicant can show that—

''(i) the evidence identified pursuant to paragraph (2)(B) is newly discovered; and

''(ii)(I) such evidence could not have been discovered through the exercise of due diligence; or

''(II) the proximate cause for not having previously discovered such evidence was the deficient performance of the attorney of the applicant; or

''(C) the applicant can show that—

''(i)(I) the technology for the requested DNA testing was not available at the time of trial;

''(II) it was not generally known that such technology was available at the time of trial; or

''(III) the failure to request such testing using the technology was due to the deficient performance of the attorney of the applicant; and

''(ii) if any of the evidence was previously subjected to DNA testing, the testing now requested uses a newer technology for DNA testing that is reasonably certain to provide results that are substantially more accurate and probative than any previous DNA testing of the evidence.

''(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

''(1) NOTICE TO THE GOVERNMENT.—Upon receipt of a motion under subsection (a), the court shall promptly notify the government of the motion and afford the government an opportunity to respond to the motion.

''(2) PRESERVATION ORDER.—The court may direct the government to preserve any evidence to which a motion under subsection (a) relates to the extent necessary to carry out proceedings under this section.

''(3) APPOINTMENT OF COUNSEL.—The court may appoint counsel for an indigent applicant under this section in accordance with section 3006A of this title.

''(c) ORDER FOR DNA TESTING.—The court shall order the DNA testing requested in a motion filed under this section if—

''(1) the motion satisfies the requirements of subsection (a);

''(2)(A) the identity of the perpetrator was at issue in the trial that resulted in the conviction of the applicant; or

''(B) in a case where the applicant pled guilty, the identity of the perpetrator would have been at issue at trial;

''(3) the evidence to be tested is in the possession of the government and has been subject to a chain of custody and retained under conditions sufficient to ensure that it has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the requested DNA testing;

''(4)(A)(i) the technology for the requested DNA testing was not available at the time of trial;

''(ii) it was not generally known that such technology was available; or

''(iii) the applicant can show that the failure to request such testing was due to the deficient performance of the attorney of the applicant; and

''(B) if any of the evidence was previously subjected to DNA testing, the testing now requested uses a newer DNA testing technique which is reasonably certain to provide results that are substantially more accurate and probative than any previous DNA testing of the evidence;

''(5) the proposed DNA testing uses scientifically sound methods and is consistent with accepted forensic practice;

''(6) the proposed DNA testing is reasonable in scope; and

''(7) the court determines, after review of the record of the trial of the applicant and any other relevant evidence, that there is a reasonable probability that the results of the proposed DNA testing will enable the applicant to establish that the applicant is entitled to a new trial under the standard of subsection (e)(3).

''(d) TESTING PROCEDURES; REPORTING OF TEST RESULTS.—

''(1) TESTING PROCEDURES.—The court shall direct that any DNA testing ordered under this section be carried out by—

''(A) a laboratory mutually selected by the government and the applicant; or

''(B) if the government and the applicant are unable to agree on a laboratory, a laboratory selected by the court ordering the testing.

''(2) LABORATORY APPROVAL.—With respect to DNA testing by a laboratory in accordance with this subsection, other than an FBI laboratory, the court must approve the selection of the laboratory and make all necessary orders to ensure the integrity of the evidence and the testing process and the reliability of the test results.

''(3) LABORATORY COSTS.—The applicant shall pay the cost of any testing by a laboratory in accordance with this subsection, other than an FBI laboratory, except that the court shall pay, in accordance with section 3006A of this title, the cost if the applicant would otherwise be financially incapable of securing such testing.

''(4) DISCLOSURE OF TEST RESULTS.—The results of any DNA testing ordered under this section—

''(A) shall be disclosed to—

''(i) the court;

''(ii) the applicant;

''(iii) the government; and

''(iv) the appropriate agency under subsection (e)(3)(B)(ii); and

''(B) shall be included in the Combined DNA Index System if the conditions set forth in subsection (e)(2) are met.

''(e) POSTTESTING PROCEDURES.—

''(1) INCONCLUSIVE RESULT.—If the DNA testing results are inconclusive, the court may order further testing, as appropriate, or may deny the applicant relief.

''(2) POSITIVE RESULT.—If DNA testing results obtained under this section show that the applicant was the source of the DNA identified as evidence under subsection (a)(2)(B), the court shall—

''(A) deny the applicant relief;

''(B) submit the DNA testing results to the Department of Justice for inclusion in the Combined DNA Index System; and

''(C) on motion of the government, proceed as provided in paragraph (5)(A).

''(3) NEGATIVE RESULT.—If DNA testing results obtained under this section show that the applicant was not the source of the DNA identified as evidence under subsection (a)(2)(B)—

''(A) the court shall promptly—

''(i) order any further DNA testing needed to clarify the import of the test results, including any testing needed to exclude persons other than the perpetrator of the crime as potential sources of the DNA evidence; and

''(ii) determine whether the applicant is entitled to relief under paragraph (4); and

''(B) the Attorney General shall—

''(i) compare the DNA evidence collected from the applicant with DNA evidence in the Combined DNA Index System that has been collected from unsolved crimes;

''(ii) if the comparison yields a DNA match with an unsolved crime, notify the appropriate agency and preserve the DNA sample; and

''(iii) if the comparison fails to yield a DNA match with an unsolved crime, destroy the DNA sample collected from the applicant.

''(4) EXCULPATORY EVIDENCE.—If the DNA testing conducted under this section produces exculpatory evidence—

''(A) the applicant may, during the 60-day period beginning on the date on which the applicant is notified of the test results, make a motion to the court that ordered the testing for a new trial based on newly discovered evidence under rule 33 of the Federal Rules of Criminal Procedure, notwithstanding any provision of law that would bar such a motion as untimely; and

''(B) upon receipt of a motion under subparagraph (A), the court that ordered the testing shall consider the motion under rule 33 of the Federal Rules of Criminal Procedure, notwithstanding any provision of law that would bar such consideration as untimely.

''(5) FAILURE TO OBTAIN RELIEF.—

''(A) IN GENERAL.—If the applicant fails to obtain relief under this subsection, the court, on motion by the government, shall make a determination whether the assertion of innocence by the applicant was false.

''(B) FALSE ASSERTION.—If the court finds that the assertion of innocence by the applicant was false, the court—

''(i) may hold the applicant in contempt;

''(ii) shall assess against the applicant the cost of any DNA testing carried out under this section; and

''(iii) shall forward the finding to the Director of the Bureau of Prisons.

''(C) BUREAU OF PRISONS.—On receipt of a finding by the court under this paragraph, the Director of the Bureau of Prisons may deny, wholly or in part, the good conduct credit authorized under section 3624 of this title, on the basis of that finding.

''(D) PAROLE COMMISSION.—If the applicant is subject to the jurisdiction of the United States Parole Commission, the court shall forward its finding under this paragraph to the Parole Commission, and the Parole Commission may deny parole on the basis of that finding.

''(E) PENALTY.—In any prosecution of an applicant under chapter 79 of this title, for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of 1 year, which shall run consecutively to any other term of imprisonment the applicant is serving.

''(f) FINAL ORDER.—An order granting or denying DNA testing under subsection (c), or an order granting or denying a new trial under subsection (e), is a final order for purposes of section 1291 of title 28.

''(g) TIME LIMITS INAPPLICABLE; OTHER REMEDIES UNAFFECTED.—Notwithstanding any time limit otherwise applicable to motions for new trials based on newly discovered evidence, a court may grant relief under subsection (e) to an applicant, at any time.

''(h) OTHER REMEDIES UNAFFECTED.—This section does not affect the circumstances under which a person may obtain DNA testing or postconviction relief under any other law or rule.

''§ 3600A. Prohibition on destruction of biological material

''(a) PROHIBITION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, during the period described in paragraph (2), the government shall not destroy any biological material preserved if the defendant is serving a term of imprisonment following conviction in a case.

''(2) PERIOD DESCRIBED.—The period described in this paragraph is the period beginning on the date of enactment of this section and ending on the later of—

''(A) the expiration of the 60-month period beginning on that date of enactment; or

''(B) the date on which any proceedings under section 3600 relating to the case are completed.

''(b) SANCTIONS FOR INTENTIONAL VIOLATION.—The court may impose appropriate sanctions, including criminal contempt, for an intentional violation of subsection (a).

''(c) EXCEPTIONS.—The government may dispose of evidence before the expiration of the period of time described in subsection (a) if—

''(1) other than subsection (a), no statute, regulation, court order, or other provision of law requires that the evidence be preserved; and

''(2)(A)(i) the government notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for that person (or, if there is no counsel of record, the public defender for the judicial district in which the conviction for that person was imposed), of the intention of the government to dispose of the evidence and the provisions of this chapter; and

''(ii) the government affords such person not less than 180 days after such notification to make a motion under section 3600(a) for DNA testing of the evidence; or

''(B)(i) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

''(ii) the government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 228 the following:

''228A. Postconviction DNA Testing .. 3600''.

(b) APPLICABILITY.—The provisions and amendments in this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.

(c) REPORT BY THE ATTORNEY GENERAL.—

(1) TRACKING SYSTEM.—

(A) IN GENERAL.—The Attorney General shall establish a system for reporting and tracking motions under section 3600 of title 18, United States Code.

(B) REQUESTED ASSISTANCE.—The judicial branch shall provide to the Attorney General any requested assistance in operating a reporting and tracking system and in ensuring the accuracy and completeness of information included in that system.

(2) INFORMATION.—Not later than 180 days before the expiration of the time period referenced in section 3600(a)(3)(A) of title 18, United States Code, the Attorney General shall submit a report to Congress containing—

(A) a summary of the motions filed under section 3600 of title 18, United States Code;

(B) information on whether DNA testing was ordered pursuant to such motions;

(C) information on whether the applicant obtained relief on the basis of DNA test results; and

(D) information on whether further proceedings occurred following a granting of relief and the outcome of those proceedings.

(3) ASSESSMENT.—The report submitted under paragraph (2) may also include—

(A) any other information that the Attorney General believes will be useful in assessing the operation, utility, or costs of section 3600 of title 18, United States Code; and

(B) any recommendations that the Attorney General may have relating to future legislative action concerning section 3600 of title 18, United States Code.

SEC. 3. PROHIBITION PURSUANT TO SECTION 5 OF THE 14TH AMENDMENT.

(a) APPLICATION FOR DNA TESTING.—No State shall deny an application for DNA testing made by a prisoner in State custody who would be eligible for such testing under the provisions of sections 3600 and 3600A of title 18, United States Code.

(b) DNA TESTING PROCEDURES.—The procedures for DNA testing for a prisoner in State custody shall be substantially similar to the DNA testing procedures established for Federal courts under sections 3600 and 3600A of title 18, United States Code.

(c) REMEDY.—A prisoner in State custody may enforce subsections (a) and (b) in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States, naming an executive or judicial officer of the State as a defendant.

S. 2442

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Capital Defense Counsel Standards Act of 2002''.

SEC. 2. RIGHT TO LEGAL REPRESENTATION FOR INDIGENT DEFENDANTS.

(a) PRECONVICTION REPRESENTATION.—Notwithstanding any other provision of law, a defendant in a criminal action in a State court, which may result in punishment by death, who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time—

(1) before judgment; or

(2) after the entry of a judgment imposing a sentence of death, but before the execution of that judgment;

shall be entitled to the appointment of 1 or more attorneys and the furnishing of such other services in accordance with the provisions of this Act.

(b) POSTCONVICTION REPRESENTATION.—In a postconviction proceeding in which a defendant seeks to vacate or set aside a death sentence, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of 1 or more attorneys and the furnishing of such other services in accordance with the provisions of this Act.

SEC. 3. MINIMUM EXPERIENCE REQUIRED FOR DEFENSE COUNSEL.

(a) PREJUDGMENT APPOINTMENT.—

(1) IN GENERAL.—If the appointment of legal counsel under this Act is made before judgment, at least 1 attorney so appointed—

(A) must have been admitted to practice for not less than 5 years in the court in which the prosecution is to be tried; and

(B) must have not less than 3 years experience in the actual trial of felony prosecutions in that court.

(2) JUDICIAL APPOINTMENT.—The court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the request of the defendant, assign 2 attorneys to the case.

(3) EXPERTISE; ACCESSIBILITY.—At least 1 of the attorneys assigned under paragraph (2)—

(A) shall be learned in the law applicable to capital cases; and

(B) shall have free access to the accused at all reasonable hours.

(4) RECOMMENDATION.—In assigning counsel under this section, the court shall consider—

(A) the recommendation of the State public defender organization, community defender organization, or equivalent organization; or

(B) if no such organization exists in the relevant jurisdiction, the administrative office of the local court or any governmental entity, bar association, or organization with knowledge regarding the skills and qualifications of local defense counsel.

(5) WITNESSES.—The court shall allow a defendant, under this Act, to produce lawful witnesses to testify in support of the defendant, and shall compel such witnesses to appear at trial in the same manner that witnesses are compelled to appear on behalf of the prosecution.

(b) POSTJUDGMENT APPOINTMENT.—If the appointment is made after judgment, at least 1 attorney appointed shall—

(1) have been admitted to practice for not less than 5 years in the appropriate State appellate court;

(2) have not less than 3 years experience in the handling of felony appeals in that court; and

(3) be learned in the law applicable to capital cases.

(c) LEARNED STANDARD.—In determining whether an attorney is learned in the law of capital cases under this section, the State court shall apply the standard used in the courts of the United States.

SEC. 4. ADEQUATE REPRESENTATION.

(a) APPOINTMENT OF SUBSTITUTE COUNSEL.—With respect to this section, the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable the attorney to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

(b) SCOPE OF LEGAL REPRESENTATION.—Unless replaced by similarly qualified counsel upon the motion of the attorney or the defendant, each attorney appointed under this Act shall represent the defendant throughout every stage of available judicial proceedings, including—

(1) pretrial motions and procedures;

(2) competency proceedings;

(3) trial;

(4) sentencing;

(5) executive and other clemency proceedings;

(6) motions for new trial;

(7) appeals;

(8) applications for stays of execution; and

(9) applications for writ of certiorari to the Supreme Court of the United States.

(c) ADDITIONAL SERVICES.—

(1) IN GENERAL.—Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the attorneys for the defendant to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses for such services pursuant to section 5.

(2) EX PARTE COMMUNICATIONS.—No ex parte proceeding, communication, or request may be considered under this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

SEC. 5. ATTORNEY FEES AND COSTS.

(a) ATTORNEY FEES.—Compensation shall be paid to attorneys appointed under this Act at a rate equivalent to that of attorneys representing defendants in Federal capital cases under section 408(q)(10)(A) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(A)).

(b) ADDITIONAL EXPENSES.—Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under this section shall be equivalent to fees paid in Federal capital cases under section 408(q)(10)(B) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(B)).

(c) PUBLIC DISCLOSURE.—The amounts paid for services under this section shall be disclosed to the public, after the disposition of the petition.

SEC. 6. IRREBUTTABLE PRESUMPTION OF DEFICIENT PERFORMANCE.

(a) IN GENERAL.—In a proceeding in Federal court under section 2254 of title 28, United States Code, the failure to comply with the procedures of this Act shall create an irrebuttable presumption that the performance of the counsel for the petitioner was deficient.

(b) ENTITLEMENT TO RELIEF; BURDEN OF PROOF; STANDARD OF REVIEW.—A petitioner is not entitled to relief unless the petitioner shows that the result of the proceeding would have been different if the performance of the counsel for the petitioner had not been deficient. The party opposing the petition has the burden of establishing that the standards in this section have been met. The court shall conduct a de novo review to settle this issue.

(c) OTHER REMEDIES.—The provisions of this section are not intended to limit any other Federal or State court from enforcing this section by any other appropriate remedy.

S. 2443

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 ''Death Penalty Review Act of 2002''.

SEC. 2. PROTECTING THE RIGHTS OF DEATH ROW INMATES TO REVIEW OF CASES GRANTED CERTIORARI.

Section 2101 of title 28, United States Code, is amended by adding at the end the following:

''(h) Upon notice by a party that has filed a motion for a stay of execution or filed for certiorari with, or has been granted certiorari by, the United States Supreme Court in an appeal from a case in which the sentence is death, the Governor of the State in which the death sentence is to be carried out, in a State case, or the Director of the Bureau of Prisons, the Secretary of a military branch, or any other Federal official with authority to carry out the death sentence, in a Federal case, shall suspend the execution of the sentence of death until the United States Supreme Court enters a stay of execution or

until certiorari is acted upon and the case is disposed of by the United States Supreme Court.

''(i) For purposes of this section, the United States Supreme Court shall treat a motion for a stay of execution as a petition for certiorari.

''(j) In an appeal from a case in which the sentence is death, a writ of certiorari shall be issued by the United States Supreme Court upon the vote of at least 4 qualified justices.''.

SEC. 3. HABEAS CORPUS.

(a) STATE COURT PROCEEDINGS.—Section 2251 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' at the beginning of the text;

(2) by designating the second sentence as subsection (b); and

(3) by adding at the end the following:

''(c)(1) Notwithstanding any other provision of law, a justice or judge of the United States before whom a habeas corpus proceeding that involves the death sentence is pending shall stay the execution of the death sentence until the proceeding is completed. If the issuance of such a stay requires more than 1 judge to concur or vote on the stay, the court before which the proceeding is pending shall grant the stay.

''(2) For purposes of this subsection, a case is pending before—

''(A) a court in the Circuit Court of Appeals, if a notice of appeal has been filed; and

''(B) the United States Supreme Court, if a petition for certiorari has been filed, or if a motion to stay execution has been filed.

''(3) A case described in paragraph (2) remains pending before the court until the petition for certiorari is denied. If the petition is granted, the case remains pending.

''(4) If a higher court is unable or fails to issue a stay pursuant to this subsection, a lower court before which the case had been pending shall issue the stay of execution.

''(d) For purposes of this section, a motion to stay execution shall be treated as a petition for certiorari.''.

(b) FEDERAL COURT PROCEEDINGS.—Section 2255 of title 28, United States Code, is amended by adding at the end the following:

''Notwithstanding any other provision of law, a justice or judge of the United States, before whom a habeas corpus proceeding that involves a Federal death sentence is pending, shall stay the execution of the death sentence until the proceeding is completed. If the issuance of such a stay requires more than 1 judge to concur or vote on the stay, the court before which the proceeding is pending shall grant the stay.

''If a higher court is unable or fails to issue a stay pursuant to the preceding paragraph, a lower court before which the case had been pending shall issue the stay of execution. For purposes of this section, a motion to stay execution shall be treated as a petition for certiorari. A case described in the preceding paragraph—

''(1) is pending before a court in the Circuit Court of Appeals if a notice of appeal has been filed; and

''(2) is pending before the United States Supreme Court if—

''(A) a petition for certiorari has been filed and has not been denied; or

''(B) a motion to stay execution has been filed.''.

By Mr. HOLLINGS (for himself, Mrs. CLINTON, Mr. STEVENS, Mr. INOUYE, Mr. ROCKEFELLER, and Mr. DORGAN):

S. 2448. A bill to improve nationwide access to broadband services; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, I rise today to introduce the Broadband Telecommunications Act of 2002. This legislation is designed to promote the deployment of broadband technology in rural and under-served areas of the market.

The Internet has unquestionably revolutionized our society, making it possible to transmit data and engage in commerce in a manner not previously experienced. However, notwithstanding its enormous benefits, the Internet is still in its building stage, with its greatest capacity yet to be reached. An important element in enhancing the Internet's capability is the technology known as ''broadband.'' This refers to the technologies and facilities that enhance the speed and efficiency by which voice, video, data communications are transmitted.

Many, in fact, believe that broadband is the key to securing the Internet as the central medium of interstate and global commerce. Once extensively and fully deployed and accepted by consumers and the marketplace, broadband will undoubtedly produce marvelous advantages: permitting physicians to consult with each other and share information instantaneously, thus enriching the learning process; allowing consumers to access entertainment including music and movies, as well as other products at any given time; and offering workers greater options, as it will facilitate the ability of workers to access from home, electronic files as well as communicate with coworkers by voice and video.

Before this great vision can be realized, however, several key issues will have to be addressed. These include ensuring that broadband is deployed to all Americans and promoting consumer confidence in the Internet, while simultaneously preserving competition in the telecommunications and Internet markets.

With respect to broadband deployment, telephone and cable companies have been upgrading their networks, in order to provide broadband service. As it stands today, broadband availability for residential Internet users is approximately 85 percent. However, even though this number is admirable, there are still specific areas where broadband capability has yet to take hold. This predicament mostly involves rural, as well as some inner city areas. Ensuring the availability of broadband in these markets is the public policy challenge we face today. Clearly, Congress' main responsibility is ensuring that the right policy is pursued and implemented to accomplish this goal.

Reports indicate that small telephone companies, have been diligently rolling out broadband service in rural areas. Nevertheless, to achieve the goal of broadband deployment in all rural and underserved areas, the government will need to provide some assistance. In recognition of this need, Senators ROCKEFELLER and DORGAN both members of the Commerce Committee, have sponsored bills to support such deployments with options such as low interest loans and tax credits.

The approach taken by Senators ROCKEFELLER and DORGAN represent a constructive approach to achieving greater broadband deployment. Financial assistance, through measures such as loans, grants, and tax incentives, is necessary to help defray the cost of these additional deployments. By providing loans and grants, the bill I introduce today takes a similar approach to achieving broadband deployment.

In addition to deployment of broadband facilities, there also is an issue concerning broadband speeds. Currently, the broadband facilities that are being deployed to residential consumers provide speeds of up to 1.5 megabits per second. However, groups such as TechNet, maintain that in order to realize the real potential of broadband—telemedicine, distance learning, teleworking, and entertainment over the Internet, telecommunications facilities must be able to provide speeds of 50 to 100 megabits. If this is correct, as policy makers we must, at a minimum, determine what is necessary both technologically and financially to accomplish this goal. Such findings will provide the basis to determine the policies Congress will be compelled to pursue if a determination is made that speeds of 50 to 100 megabits per second are necessary.

Even as we discuss broadband speeds of 50–100 megabits, we must acknowledge that consumers do not seem seduced by the available broadband speeds of 1.5 megabits. In fact, reports show, that about 10 percent actually subscribe to broadband, leading many to believe that low demand is the problem, not slow deployment. If achieving a broadband environment is a priority, in addition to spurring deployment, we must eliminate the impediments that block consumers from obtaining the content, services, and applications necessary to make broadband service a useful and productive tool.

Another essential issue concerning the promotion of broadband involves the issue of privacy. Consumers use of the Internet is a fundamental first step to promoting interest in broadband. This will not be possible, however, unless consumers are confident that their privacy and personal information are protected and secured. To accomplish this goal, sufficient precautions will have to be taken to ensure that highly sensitive personal data—including financial, medical, social security numbers—cannot be stolen or misused. The Commerce Committee has established a substantial record on the issue of Internet privacy. That record demonstrates that consumers will use the Internet for more personal purposes only when they are confident that their information is secure. I have introduced separate legislation on this matter.

The broadband bill entitled the Broadband Telecommunications Act of

2002, that I introduce today represents a step towards fostering the deployment and adoption of broadband services. It uses monies from the telephone excise tax to fund a number of loan and grant programs. It stimulates broadband deployment in rural and underserved areas by providing low interest loans to upgrade facilities including remote terminals and fiber between a remote terminal and central office. It authorizes NIST to study how we can facilitate broadband deployment in rural and under-served areas. It promotes competition by establishing pilot projects for wireless and other non-wireline broadband technologies in rural and underserved areas. The bill begins to help us understand what is necessary to accomplish broadband with speeds of 50 to 100 megabits per second by providing grants to NTIA's Lab, NIST Labs, National Science Board and to universities for research. In order to address the demand issue, we provide grants to digitize library and museum collections as well as grants to Universities to conduct technical research to develop Internet applications useful to consumers. The bill also provides grants to connect underrepresented colleges and communities to the Internet.

Ultimately, if we decide as a nation that a broadband world must be achieved, we must move beyond the rhetoric of parity and regulation versus deregulation. We must move forward and begin to deal with the real issues that impact broadband deployment and use. These include stimulating deployment in unserved and under-served areas, promoting competition to existing monopolies, ensuring the availability of content and other Internet applications, preserving the privacy of consumers as they use the Internet, safeguarding cyber security, in addition to advancing policies such as e-government, teleworking, telemedicine, and distance learning. I ask my colleagues to join me in an open and forthright debate on these issues.

By Mr. BINGAMAN (for himself, Mr. MCCAIN, Mr. TORRICELLI, and Mr. CORZINE):

S. 2449. A bill to amend title XIX of the Social Security Act to allow Federal payments to be made to States under the medicaid program for providing pregnancy-related services or services for the testing or treatment for communicable diseases to aliens who are not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators MCCAIN, TORRICELLI, and CORZINE entitled the ''Federal Responsibility for Immigrant Health Act of 2002'' is designed to address the hardship caused by Federal limitations on Medicaid reimbursement to health care providers and states for health services provided to immigrants. Despite the fact that immigration is a Federal responsibility, medical providers, who have a legal and ethical responsibility to save lives regardless of immigration status, and State and local governments bear most of the costs for services provided to immigrants.

The bill expressly allows States and health care providers to receive Medicaid reimbursement for dialysis and chemotherapy services, prenatal care, and the testing and treatment of communicable diseases provided to immigrants; reauthorizes funding, which was provided between fiscal years 1998 and 2001 but expired this year, in the increased amount of $50 million annually for fiscal years 2003 to 2007 for unreimbursed emergency health services provided to immigrants; and clarifies that the federal government should not limit the ability of state or local governments to use their own funding to address the health care needs of immigrants within their communities.

The Constitution of the United States establishes sole authority in the Federal Government to control immigration to this country. Despite that fact, the Federal Government often fails to take financial responsibility for the costs of immigration. Numerous studies also indicate that immigrants pay more to the Federal Government in the form of taxes than they receive in services, but State government and local communities and providers bear most of the costs of services provided to them.

In Luna County, NM, for example, the Columbus Volunteer Fire Department and Ambulance Service has a contract with the county to provide emergency medical services to the people in Luna County. Luna County is one of the poorest counties in the Nation with almost one-third of its citizens below poverty and with a per capita income at just 49 percent of the national average. Luna County has an extremely difficult time addressing the needs of its own citizens due to a high level of need and limited resources.

And yet, with respect to emergency medical services, Luna County, the Columbus Volunteer Fire Department and Ambulance Service, and Mimbres Memorial Hospital must also respond to the numerous calls from federal officials at the port-of-entry near Columbus, NM, to treat or transport an injured or ill immigrants. The Columbus Volunteer Fire Department and Ambulance Service is located just three miles from the Columbus port-of-entry and is 32 miles from Mimbres Memorial Hospital in Deming, NM.

Moreover, the ambulance service is also called in when individuals are apprehended after crossing illegally if injury or illness results, often while in the custody of the Federal Immigration and Naturalization Service, INS. Once treated, the Luna County Sheriff's Office is called to take them back from Deming to the Columbus port-of-entry where they are returned across the border to their homes in Mexico.

According to data collected by the United States/Mexico Border Counties Coalition through a grant from the Department of Justice, in 1999, the Columbus Volunteer Fire Department and Ambulance Service responded to 264 calls, of which 56 percent were at the port-of-entry and 52 percent were for patients residing outside of the United States. Of services billed, 59 percent were for treatment of non-U.S. resident patients and the vast majority of those bills went unpaid. In fact, for both the EMS system and the hospital, a large majority of billings sent to patients residing outside of the United States are returned as either unclaimed or undeliverable much less paid.

To help the County and ambulance service, I secured $200,000 last year through the Labor-HHS Appropriations bill for the costs of emergency medical services delivered to immigrants in this fiscal year. The funding, however, is just a temporary band-aid to a system that is poorly funded and cannot survive without the federal government living up to its responsibility to help pay the costs of health services delivered to immigrants. This bill helps address that responsibility.

As Ronald Reagan, then Governor of the State of California, testified before the Senate Finance Committee in 1972, ''the support of citizens of other countries shall be a fiscal obligation of the federal government.'' He added, ''States should not be required to support citizens of another country, when the state and county governments have no effective voice in determining admission standards.''

In response to such concerns, the Federal Government has taken two important steps over the years, providing for federal reimbursement for emergency care to low-income immigrants in 1986 and providing additional funding to states for unreimbursed costs delivered to immigrants in emergency situations in 1997. The first needs a technical change and the second, unfortunately, expired in 2001 and needs to be reauthorized.

The first step that was taken occurred through the leadership of Senator Lloyd Bentsen and Representative HENRY WAXMAN in 1986 and was signed into law by President Reagan. It provides for federal reimbursement through the Medicaid program to health providers for emergency care services provided to low-income immigrants. Services delivered to immigrants who are residents in the country may have the cost of their emergency care reimbursed through Medicaid—a joint federal and state program serving low-income and disabled people. However, in the case of Luna County, the majority of its cases are to immigrants who reside outside of the country, and therefore, do not qualify. This legislation clarifies that States may waive the residency requirement for an immigrant who either comes

across the border under a temporary visa or is paroled into the country by INS.

The bill also clarifies that, since dialysis and chemotherapy are life-threatening conditions, these services qualify as emergency care and are eligible for reimbursement by Medicaid. Unfortunately, the Centers for Medicare and Medicaid Services, CMS, recently denied payment to the State of Arizona for such services and have forced the State to pay for such treatment with 100 percent state funding. This is, once again, a case of the federal government not fulfilling its responsibility and our bill corrects this problem.

The ''Federal Responsibility for Immigrant Health Act of 2002'' would also provide states the option to reimburse providers for the costs of prenatal care and the testing and treatment of communicable diseases to low-income immigrants. A January 2000 study in the American Journal of Obstetrics and Gynecology found that undocumented women with no prenatal care were four times more likely to deliver low birthweight American citizen infants and seven times more likely to deliver premature infants than undocumented women with prenatal care. Moreover, a child born in the United States of undocumented parents is a United States citizen.

Simply stated, if a pregnant women is denied access to prenatal care due to immigration status, it is her child who is denied the opportunity to be ''well-born'' and the financial costs associated with poor outcomes are high.

In addition, States and local governments often seek to ensure that all of their residents, including immigrants, are tested and treated for certain communicable diseases. It is in the interest of all citizens to ensure that everybody residing in this country is treated for communicable diseases. As Dr. Richard Brown, Director of UCLA's Center for Health Policy Research says, ''Tuberculosis and other communicable diseases do not respect distinctions between citizens and non-citizens . . . The key to controlling an outbreak of tuberculosis, hepatitis, sexually transmitted diseases, or other communicable diseases is early identification of the source of infection and immediate intervention to treat all infected persons.'' Again, to address these problems, the bill would allow states to reimburse providers for the costs of prenatal care and the testing and treatment of communicable diseases to low-income immigrants through the Medicaid program.

Another area where the Federal Government did take an important step to assume its responsibility for the costs of emergency health services delivered to immigrants was through $25 million in payments to States between fiscal year 1998 through 2001. The following 12 States were eligible for this additional funding over the four-year period, which expired at the end of last year: California, $11.3 million, Texas, $4.0 million, New York, $3.1 million, Florida, $2.0 million, Illinois, $1.6 million, New Jersey, $765,000, Arizona, $652,000, Massachusetts, $482,000, Virginia, $312,000, Washington, $295,000, Colorado, $255,000, and Maryland, $249,000. Unfortunately, that provision in law expired in 2001 and needs to be reauthorized.

The ''Federal Responsibility for Immigrant Health Act of 2002'' reauthorizes the program at $50 million between fiscal years 2003 and 2007, extends the number of qualifying States to 15, and requires that States pass those payments on to health care providers who are providing this care. This helps cover the costs associated with care to immigrants needing emergency care that do not qualify for Medicaid, such as men who do not meet the categorical requirements for Medicaid coverage. In addition, the bill clarifies that the 15 qualifying States are those that have the highest percentage of immigrants rather than the highest numbers, which assures States such as New Mexico are not inappropriately left out of the funding in the future.

And finally, the bill clarifies that the Federal Government should not limit State or local governments from using their own funding to provide health services to immigrants in their communities. The 10th Amendment prevents the Federal Government from interfering in the authority by State and local governments to spend their own revenue as they see fit.

Unfortunately, a provision in the Personal Responsibility and Work Opportunity Reconciliation Act, PRWORA, in 1996 has been interpreted by Texas Attorney General John Cornyn and some in the State of New Mexico, including the University of New Mexico Hospital, to preclude state and local governments from providing non-emergency care services, with the exceptions of immunizations and the testing and treatment of communicable diseases, unless the State decides to override the law by passing its own legislation specifically authorizing such services.

Others have disagreed. El Paso County Attorney Jose Rodriquez disagreed with the opinion of the Texas Attorney General in a August 14, 2001, letter by saying, ''There is nothing in the PRWORA that expressly prohibits providing health care to undocumented aliens . . . There are no enforcement mechanisms in the PRWORA, and there are no penalties directed at state or local governments.'' As a result, the public hospitals in El Paso, TX, and elsewhere in Texas have largely ignored the Texas Attorney General's opinion.

However, in New Mexico, the University of New Mexico Hospital has chosen to tighten eligibility requirements for its health care services. They argue they are complying with the ambiguous law.

An article that appears in an Internet-based publication entitled Borderlines entitled ''Debate Over Immigrant Health Care Heats Up in New Mexico'' in November 2001 notes, ''Critics say the move to deny health care to some U.S. residents, regardless of the reasons, is dangerous, impractical, and inhumane. It is dangerous, they argue, because anyone with a communicable disease, illegal immigrant or not, can spread that disease if not treated. The policy is impractical, they add, because an untreated health problem will likely worsen and require more expensive treatments later, often in emergency rooms. And denying non-emergency health care to people with serious, chronic diseases like diabetes, asthma, or cancer means they must endure more pain and suffering, often as their conditions deteriorate.''

As Dr. Catherine Torres of First Step Women's Health Center in Las Cruces, NM, and a member of the U.S.-Mexico Border Health Commission notes, ''When do you treat a child with asthma? When [the child] can't breathe?''

This provision has also led to the unfortunate situation of imposing additional liability or malpractice exposure on health providers that work for state or local governmental health programs for denying needed health services to an individual. Health providers should not have to violate medical ethics of purposely denying needed health services to anyone and nor should they be exposed to additional liability because of a convoluted provision in federal law.

As Dan Reyna, director of New Mexico's Border Health Office in Las Cruces, NM, adds, ''First, we're near an international border, we're not going to change that. Second, health care providers, both public and private, are not immigration officers for the Federal Government. And third, it's to the benefit of every state to protect community health and the quality of life of every resident. If you accept these primary premises, you have to provide preventative care services to everyone who needs it.''

I urge the passage of this legislation. Although it may not be popular, the federal government should help assume its responsibility for immigration and the costs associated with health services. We talk a great deal about personal responsibility when talking about welfare reform. It is time for the federal government to take on its responsibility as well. State and local governments and health providers, already stressed by the fact that our country has around 40 million uninsured residents, cannot take on these additional costs.

I would like to thank Senators McCAIN, TORRICELLI, and CORZINE for their support and help on this legislation. 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. 2449

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 ''Federal Responsibility for Immigrant Health Act of 2002''.

SEC. 2. FEDERAL PAYMENTS UNDER MEDICAID FOR EMERGENCY MEDICAL CONDITIONS OF CERTAIN ALIENS.

(a) IN GENERAL.—Section 1903(v)(2)(A) of the Social Security Act (42 U.S.C. 1396b(v)(2)(A)) of the Social Security Act is amended to read as follows:

''(A) such care and services are—

''(i) necessary for the treatment of an emergency medical condition of the alien or necessary for the prevention of an emergency medical condition (including dialysis and chemotherapy services),

''(ii) services related to pregnancy (including prenatal, delivery, postpartum, and family planning services) and to other conditions that may complicate pregnancy, or

''(iii) services for the testing or treatment for communicable diseases,''.

(b) STATE OPTION TO ELIMINATE RESIDENCY REQUIREMENT FOR CERTAIN ALIENS.—Section 1903(v)(2)(B) of the Social Security Act (42 U.S.C. 1396b(v)(2)(B)) is amended by inserting '', or, at State option, in the case of an alien granted parole under section 212(d)(5) of the Immigration and Nationality Act or an alien admitted into the United States as a nonimmigrant alien under section 101(a)(15) of such Act, any residency requirement imposed under the State plan'' after ''payment''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance provided on or after the date of enactment of this Act.

SEC. 3. FUNDING FOR EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

(a) FUNDING.—Section 4723(a) of the Balanced Budget Act of 1997 (8 U.S.C. 1611 note) is amended to read as follows:

''(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENTS.—There are available for allotments for payments to certain States under this section—

''(1) for each of fiscal years 1998 through 2001, $25,000,000; and

''(2) for each of fiscal years 2003 through 2007, $50,000,000.''.

(b) DETERMINATION OF STATE ALLOTMENTS.—Section 4723(b) of the Balanced Budget Act of 1997 (8 U.S.C. 1611 note) is amended—

(1) in paragraph (1), in the first sentence, by striking ''The Secretary'' and inserting ''Subject to paragraph (3), the Secretary''; and

(2) by adding at the end the following new paragraph:

''(3) FISCAL YEARS 2003 THROUGH 2007 ALLOTMENTS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the Secretary of Health and Human Services shall compute an allotment for each of fiscal years 2003 through 2007 for each of the 15 States with the highest percentage of undocumented aliens. The amount of such allotment for each such State for a fiscal year shall bear the same ratio to the total amount available for allotments under subsection (a) for the fiscal year as the ratio of the percentage of undocumented aliens in the State in the fiscal year bears to the total of such percentages for all such States for such fiscal year. The amount of allotment to a State provided under this paragraph for a fiscal year that is not paid out under subsection (c) shall be available for payment during the subsequent fiscal year.

''(B) DETERMINATION.—For purposes of subparagraph (A), the percentage of undocumented aliens in a State under this section shall be determined based on the most recent available estimates of the resident illegal alien population residing in each State prepared by the Statistics Division of the Immigration and Naturalization Service.''.

(c) REQUIRING USE OF FUNDS TO ASSIST HOSPITALS AND RELATED PROVIDERS OF EMERGENCY HEALTH SERVICES TO UNDOCUMENTED ALIENS.—Section 4723(c) of the Balanced Budget Act of 1997 (8 U.S.C. 1611 note) is amended to read as follows:

''(c) USE OF FUNDS.—

''(1) IN GENERAL.—From the allotments made under subsection (b), the Secretary shall pay to each State amounts described in a State plan, submitted to the Secretary, under which the amounts so allotted will be paid—

''(A) to hospitals and related providers of emergency health services to undocumented aliens that are located in areas that the Secretary or a State determines to be substantially impacted by health costs related to undocumented aliens; and

''(B) on the basis of—

''(i) each eligible hospital's or related provider's payments under the State plan approved under title XIX of the Social Security Act for emergency medical services described in section 1903(v)(2)(A) of such Act (42 U.S.C. 1396b(v)(2)(A)); or

''(ii) an appropriate alternative proxy for measuring the volume of emergency health services provided to undocumented aliens by eligible hospitals and related providers.

''(2) DEFINITIONS; SPECIAL RULES.—For purposes of this subsection:

''(A) The term 'hospital' has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)).

''(B) The term 'provider' includes a physician, another health care professional, and an entity that furnishes emergency ambulance services.

''(C) A provider shall be considered to be 'related' to a hospital to the extent that the provider furnishes emergency health services to an individual for whom the hospital also furnishes emergency health services.

''(D) Amounts paid under this subsection shall not—

''(i) be substituted for Federal payments made under title XIX of the Social Security Act to reimburse a State for expenditures for the provision of emergency medical services described in section 1903(v)(2)(A) of such Act; or

''(ii) be used by a State for the State share of expenditures for such services under title XIX of such Act.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply beginning with fiscal year 2003.

SEC. 4. PERMITTING STATES AND LOCALITIES TO PROVIDE HEALTH CARE TO ALL INDIVIDUALS.

(a) IN GENERAL.—Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621) is amended—

(1) in subsection (b)—

(A) by striking paragraphs (1) and (3); and

(B) by redesignating paragraphs (2) and (4) as paragraphs (1) and (2), respectively; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''(2) and (3)'' and inserting ''(2), (3), and (4)''; and

(ii) in subparagraph (B), by striking ''health,''; and

(B) by adding at the end the following new paragraph

''(4) Such term does not include any health benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to health care furnished before, on, or after the date of the enactment of this Act.

By Mr. LIEBERMAN (for himself, Mr. SPECTER, and Mr. GRAHAM):

S. 2452. A bill to establish the Department of National Homeland Security and the National Office for Combating Terrorism; to the Committee on Governmental Affairs.

Mr. LIEBERMAN. Mr. President, today I am pleased to introduce, with Senators SPECTER and GRAHAM, the National Homeland Security and Combating Terrorism Act of 2002. This legislation seeks to strengthen the Federal Government's ability to confront terrorism and other threats to our homeland security.

Specifically, this legislation would create a new Department of National Homeland Security to focus an array of agencies and programs that are vital to securing our borders and critical infrastructure, and to preparing for and responding to homeland threats. It also would create a White House terrorism director to forge an effective strategy to combat terrorism across the entire Federal Government. In addition to the bill we introduce here, I am pleased to note that companion legislation is being introduced today by Representatives THORNBERRY, HARMAN, TAUSCHER and GIBBONS.

The events of September 11 brought home to us the very real threat of terrorism not only on foreign shores, but also here at home. Though the pain of that day will stay in our hearts and minds forever, we now have an opportunity to step back from that single most horrid event in our modern history and take action to prevent something like it from ever happening again.

It seems that nearly every day, the media or government investigators expose a new crack in America's homeland defense foundation, at our borders, our ports, or within our cyberspace. The fact is, without a government that is permanently reoriented to meet unexpected challenges here at home, new vulnerabilities will emerge. That's why we must mobilize government so that it can quickly and effectively prevent terrorist threats here at home and respond should the worst occur.

Our approach, combining a homeland security department with a White House office for combating terrorism, addresses the need to permanently restructure critical homeland security functions under a cabinet-level secretary with real operational authority and the ability to personally direct a homeland security plan. At the same time, we would allow for the highest

level of coordination with other Federal agencies—Health and Human Services, the Defense Department, the Energy Department, for example, and real budget certification authority.

Our proposal stems from a series of hearings I convened last fall as chairman of the Governmental Affairs Committee. We held about a dozen different sessions looking into various aspects of homeland security, ranging from protection of our critical infrastructure to the state and local role in protecting Americans at home. Those hearings confirmed what experts and commissions had already warned us: that our government is poorly prepared to deal with the threat of terrorism. Although the government has an array of programs related to terrorism and other homeland threats, these efforts are poorly coordinated and lack overall strategic leadership. We need focused, accountable leadership to forge these efforts into a cohesive homeland security program.

Among the witnesses we heard from were former Senators Warren Rudman and Gary Hart, who co-chaired the so-called Hart-Rudman Commission on National Security/21st Century. Guided by recommendations of that Commission, Senator SPECTER and I introduced legislation to create a Homeland Security Department. After negotiations through the winter with Senator GRAHAM, we combined our proposal with his idea of conferring statutory authority on a White House terrorism office.

As our bill is written, the department will be led by a Cabinet official with real line and budget authority over critical homeland security programs. The new department will bring together under one roof our key border security agencies, Coast Guard, Customs, INS law enforcement, as well as the Federal Emergency Management Agency, which is the cornerstone of our emergency preparation and response efforts. The department will also include programs to protect our critical infrastructure, and an office to promote research and development of technologies vital to our homeland security. The new department will provide state and local authorities with a clear resource and point of contact to forge a truly national response to this problem.

Yet we recognize that, no matter how robust a department we create, it can not include every agency that plays a role in homeland security, which is why our legislation incorporates Senator GRAHAM's proposal to confer statutory authority on a White House office. That office—the National Office for Combating Terrorism—would coordinate a national anti-terrorism strategy. The office would be led by a presidentially-appointed, Senate-confirmed director charged with coordinating a comprehensive assessment of terrorist threats and, along with the department secretary, developing a strategy and a budget to fight terrorism here at home. The director would coordinate execution of the strategy by relevant federal agencies—particularly those concerned with intelligence and law enforcement.

Naturally, our new formation would require a major restructuring of the Federal Government's public safety-related responsibilities. I know this will not be easy. Machiavelli trenchantly observed ''there is nothing more difficult to plan, more doubtful of success nor more dangerous to manage than the creation of a new system.'' Within the agencies, and within Congress as well, as Governor Ridge has already discovered, there are powerful reflexes to protect administrative turf. Bureaucracies are slow to change. Change is disruptive. It creates uncertainty and it distorts existing balances of power.

But we must look at September 11 as an urgent reason to create something better. A restructuring of the kind we envision is not unprecedented. We have undertaken bold organizational change in periods of crisis before. Consider General Marshall's transformation of the army which helped win World War II or the National Security Act of 1947 that created the CIA and Department of Defense in the midst of the Cold War. More recently, the Goldwater-Nichols Act of 1986, in streamlining the military command, helped us to prosecute the Persian Gulf War.

The bottom line is if statutory and budget authority are not conferred upon the director of homeland security, the homeland defense of this nation will be less than what it should be. In the one area where compromise can be catastrophic, this is an unacceptable compromise.

Let's be motivated by the words of Winston Churchill, who in 1941 said to the Axis powers, ''You do your worst and we will do our best.'' We can tinker around the edges of change. Or, we can understand that September 11 confirmed our worst fears: warfare has changed and we are no longer safe at home. We are in a terrible, new era and we urgently need a government that is invigorated and effectively organized to meet the challenge.

I thank my colleagues and ask unanimous consent that the text of our legislation be printed in the RECORD.

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

S. 2452

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Homeland Security and Combating Terrorism Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—DEPARTMENT OF NATIONAL HOMELAND SECURITY

Sec. 101. Establishment of the Department of National Homeland Security.
Sec. 102. Transfer of authorities, functions, personnel, and assets to the Department.
Sec. 103. Establishment of directorates and office.
Sec. 104. Steering Group; Coordination Committee; and Acceleration Fund.
Sec. 105. Reporting requirements.
Sec. 106. Planning, programming, and budgeting process.
Sec. 107. Environmental protection, safety, and health requirements.
Sec. 108. Savings provisions.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

Sec. 201. National Office for Combating Terrorism.
Sec. 202. Funding for Strategy programs and activities.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

Sec. 301. Strategy.
Sec. 302. National Homeland Security Panel.

TITLE IV—EFFECTIVE DATE

Sec. 401. Effective Date.

SEC. 2. DEFINITIONS.

In this Act:

(1) DIRECTOR.—Except as provided under section 104, the term ''Director'' means the Director of the National Office for Combating Terrorism.

(2) DEPARTMENT.—The term ''Department'' means the Department of National Homeland Security established under title I.

(3) FEDERAL TERRORISM PREVENTION AND RESPONSE AGENCY.—The term ''Federal terrorism prevention and response agency'' means any Federal department or agency charged under the Strategy with responsibilities for carrying out the Strategy.

(4) OFFICE.—The term ''Office'' means the National Office for Combating Terrorism established under title II.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of National Homeland Security.

(6) STRATEGY.—The term ''Strategy'' means the National Strategy for Combating Terrorism and the Homeland Security Response developed under this Act.

TITLE I—DEPARTMENT OF NATIONAL HOMELAND SECURITY

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF NATIONAL HOMELAND SECURITY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the Department of National Homeland Security.

(2) EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by adding at the end the following:

''The Department of National Homeland Security.''.

(b) SECRETARY OF NATIONAL HOMELAND SECURITY.—

(1) IN GENERAL.—The Secretary of National Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The responsibilities of the Secretary shall be the following:

(A) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security.

(B) To develop, with the Director, a comprehensive strategy in accordance with title III.

(C) Develop processes to integrate the elements and goals of the Strategy into the strategies and plans of Federal, State, and local departments and agencies, including interagency and intergovernmental shared policies.

(D) To evaluate the programs of the Federal Government relating to homeland security that involve activities of State and local governments as part of the Strategy.

(E) To advise the Director on the development of a comprehensive annual budget for the programs and activities under the Strategy, and have the responsibility for budget recommendations relating to border security, critical infrastructure protection, emergency preparation and response, and State and local activities.

(F) To plan, coordinate, and integrate those United States Government activities relating to border security, critical infrastructure protection and emergency preparedness, and to act as the focal point regarding natural and manmade crises and emergency planning and response.

(G) To work and coordinate with State and local governments and executive agencies in providing United States homeland security, and to communicate with and support State and local officials through the use of regional offices around the Nation.

(H) To provide overall operational planning guidance to executive agencies regarding United States homeland security.

(I) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(J) To annually develop a Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(K) To identify and promote technological innovation that will enhance homeland security.

(L)(i) To develop and implement within the Department a coordinating center with representatives from other Federal departments or agencies with homeland security responsibilities.

(ii) To designate departments and agencies to provide a representative under clause (i) and require those departments and agencies to furnish a representative on a permanent, part-time, or as needed basis, as determined by the Secretary.

(iii) To request additional personnel from appropriate departments and agencies as may be necessary and coordinate with those departments and agencies.

(iv) To request State and local authorities to provide representatives to the coordination center.

(3) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

''Secretary of National Homeland Security.''.

(4) MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

''(5) the Secretary of National Homeland Security; and

''(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.''.

(c) DEPUTY SECRETARY OF NATIONAL HOMELAND SECURITY.—

(1) IN GENERAL.—There shall be in the Department a Deputy Secretary of National Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Deputy Secretary of National Homeland Security shall—

(A) assist the Secretary in the administration and operations of the Department;

(B) perform such responsibilities as the Secretary shall prescribe; and

(C) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

(3) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Secretary of National Homeland Security.''.

(d) INSPECTOR GENERAL.—

(1) IN GENERAL.—There shall be in the Department an Inspector General for the Department. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(2) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in paragraph (1), by inserting ''National Homeland Security,'' after ''Labor,''; and

(B) in paragraph (2), by inserting ''National Homeland Security,'' after ''Labor,''.

(e) DIRECTOR OF THE COORDINATING CENTER.—

(1) IN GENERAL.—There shall be in the Department a Director of the Coordinating Center who shall report directly to the Deputy Secretary. The Coordinating Center shall be developed and implemented in accordance with subsection (b)(2)(L).

(2) RESPONSIBILITIES.—The Director of the Coordinating Center shall be responsible for—

(A) ensuring that the law enforcement, immigration, and intelligence databases information systems containing information relevant to homeland security are compatible; and

(B) with respect to the functions under this paragraph, ensuring compliance with Federal laws relating to privacy and intelligence information.

SEC. 102. TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.

The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department.

(2) The United States Customs Service, which shall be maintained as a distinct entity within the Department.

(3) The law enforcement components of the Immigration and Naturalization Service relating to Border Patrol, Inspections, Investigations (interior enforcement), Intelligence, Detention and Removal, and International Affairs.

(4) The United States Coast Guard, which shall be maintained as a distinct entity within the Department.

(5) The Critical Infrastructure Assurance Office of the Department of Commerce.

(6) The National Infrastructure Protection Center and the National Domestic Preparedness Office of the Federal Bureau of Investigation.

(7) The Animal and Plant Health Inspection Service of the Department of Agriculture, that portion of which administers laws relating to agricultural quarantine inspections at points of entry.

SEC. 103. ESTABLISHMENT OF DIRECTORATES AND OFFICE.

(a) ESTABLISHMENT OF DIRECTORATES.—The following staff directorates are established within the Department:

(1) DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.—The Directorate of Border and Transportation Protection, which shall be responsible for the following:

(A) Overseeing and coordinating all United States border security activities.

(B) Developing border and maritime security policy for the United States.

(C) Developing and implementing international standards for enhanced security in transportation nodes.

(D) Performing such other duties assigned by the Secretary.

(2) DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.—The Directorate of Critical Infrastructure Protection, which shall be responsible for the following:

(A) Acting as the Critical Information Technology, Assurance, and Security Officer of the Department to coordinate efforts to address the vulnerability of the United States to electronic or physical attacks on critical infrastructure of the United States, including utilities, transportation nodes, and energy resources.

(B) Overseeing the protection of such infrastructure and the physical assets and information networks that make up such infrastructure.

(C) Ensuring the maintenance of a nucleus of cyber security experts within the United States Government.

(D) Enhancing sharing of information regarding cyber security and physical security of the United States, tracking vulnerabilities and proposing improved risk management policies, and delineating the roles of various government agencies in preventing, defending, and recovering from attacks.

(E) Coordinating with the Federal Communications Commission in helping to establish cyber security policy, standards, and enforcement mechanisms, and working closely with the Federal Communications Commission on cyber security issues with respect to international bodies.

(F) Coordinating the activities of Information Sharing and Analysis Centers to share information on threats, vulnerabilities, individual incidents, and privacy issues regarding United States homeland security.

(G) Assuming the responsibilities carried out by the Critical Infrastructure Assurance Office before the effective date of this Act.

(H) Assuming the responsibilities carried out by the National Infrastructure Protection Center before the effective date of this Act.

(I) Performing such other duties assigned by the Secretary.

(3) DIRECTORATE FOR EMERGENCY PREPAREDNESS AND RESPONSE.—The Directorate for Emergency Preparedness and Response, which shall be responsible for the following:

(A) Carrying out all emergency preparedness and response activities carried out by the Federal Emergency Management Agency before the effective date of this Act.

(B) Assuming the responsibilities carried out by the National Domestic Preparedness Office before the effective date of this Act.

(C) Organizing and training local entities to respond to emergencies and providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction.

(D) Overseeing Federal, State, and local emergency preparedness training and exercise programs in keeping with current intelligence estimates and providing a single staff for Federal assistance for any emergency (including emergencies caused by flood, earthquake, hurricane, disease, or terrorist bomb).

(E) Creating a National Crisis Action Center to act as the focal point for monitoring emergencies and for coordinating Federal support for State and local governments and the private sector in crises.

(F) Establishing training and equipment standards, providing resource grants, and encouraging intelligence and information sharing among the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, State emergency management officials, and local first responders.

(G) Coordinating and integrating operational activities of the Department of Defense, the National Guard, and other Federal agencies into a Federal response plan.

(H) Coordinating activities among private sector entities, including entities within the medical community, with respect to recovery, consequence management, and planning for continuity of services.

(I) Developing and managing a single response system for national incidents in coordination with the Department of Justice, the Federal Bureau of Investigation, the Department of Health and Human Services, the Centers for Disease Control, and other appropriate Federal departments and agencies.

(J) Maintaining Federal asset databases and supporting up-to-date State and local databases.

(K) Performing such other duties as assigned by the Secretary.

(b) ESTABLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY.—

(1) IN GENERAL.—There is established in the Department an Office of Science and Technology.

(2) PURPOSE.—The Office of Science and Technology shall advise the Secretary regarding research and development efforts and priorities for the directorates established in subsection (a).

SEC. 104. STEERING GROUP; COORDINATION COMMITTEE; AND ACCELERATION FUND.

(a) DEFINITIONS.—In this section:

(1) COORDINATION COMMITTEE.—The term ''Coordination Committee'' means the Homeland Security Science and Technology Coordination Committee established under this section.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office of Science and Technology.

(3) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(4) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development of technologies that are applicable in the detection of, prevention of, protection against, response to, and recovery from homeland security threats, particularly acts of terrorism.

(5) STEERING GROUP.—The term ''Steering Group'' means the Homeland Security Science and Technology Senior Steering Group established under this section.

(b) PURPOSES.—The purposes of this section are to—

(1) establish a fund to leverage existing research and development and accelerate the deployment of technology that will serve to enhance homeland defense;

(2) establish a committee and steering group to coordinate and advise on issues relating to homeland security research and development and administer the Fund; and

(3) establish the responsibilities of the Director of the Office of Science and Technology relating to homeland security research and development.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies.

(2) USE OF FUND.—The Fund may be used to—

(A) accelerate research, development, testing, and evaluation of critical homeland security technologies; and

(B) support homeland security research and development.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 to the Fund for fiscal year 2003.

(d) STEERING GROUP.—

(1) ESTABLISHMENT.—There is established the Homeland Security Science and Technology Senior Steering Group within the Office of Science and Technology. The Director shall chair the Steering Group.

(2) RESPONSIBILITIES.—The Steering Group shall—

(A) provide recommendations and priorities to the Director; and

(B) assist the Director in establishing priorities and forwarding recommendations on homeland security technology to the Secretary.

(3) COMPOSITION.—The Steering Group shall be composed, as named by the Director, of senior research and development officials representing all appropriate Federal departments and agencies that conduct research and development relevant for homeland security and combating terrorism.

(4) QUALIFICATIONS.—Each representative shall—

(A) possess extensive experience in managing research and development projects; and

(B) be appointed by the head of the respective department or agency.

(5) SUBGROUPS.—

(A) IN GENERAL.—At the discretion of the Director, the Steering Group may be composed of subgroups with expertise in specific homeland security areas.

(B) SUBGROUP AREAS.—The Director may establish subgroups in areas including—

(i) information technology infrastructure;

(ii) critical infrastructure;

(iii) interoperability issues in communications technology;

(iv) bioterrorism;

(v) chemical, biological, radiological defense; and

(vi) any other area as determined necessary.

(e) COORDINATION COMMITTEE.—

(1) ESTABLISHMENT.—There is established a Homeland Security Science and Technology Coordination Committee within the Office of Science and Technology. The Director shall chair the Coordination Committee.

(2) COMPOSITION.—The Coordination Committee shall be a working level group composed of representatives managing relevant agency research and development portfolios, appointed by the head of each department or agency described under subsection (d)(2).

(3) SUBGROUPS.—

(A) IN GENERAL.—At the discretion of the Director, the Coordination Committee may be composed of subgroups with relevant expertise in specific homeland security areas.

(B) SUBGROUP AREAS.—The Director may establish subgroups in areas, including—

(i) information technology infrastructure;

(ii) critical infrastructure;

(iii) interoperability issues in Communications Technology;

(iv) bioterrorism;

(v) chemical, biological, radiological defense; and

(vi) any other area as determined necessary.

(4) RESPONSIBILITIES.—The Coordination Committee shall have the following responsibilities:

(A) To facilitate effective communication among departments, agencies, and other entities of the Federal Government, with respect to the conduct of research and development related to homeland security.

(B) To identify, by consensus and on a yearly basis, specific technology areas for which the Fund shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities. The identified technology areas shall, as determined by the Coordination Committee, be areas in which there exist research and development projects that address identified homeland security vulnerabilities and, assuming single-year funding, can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying.

(C) To administer the Fund, including—

(i) issuing an annual multiagency program announcement soliciting proposals from governmental entities, industry, and academia;

(ii) competitively selecting, on the basis of a merit-based review, proposals that advance the state of deployed technologies in the areas identified for that year;

(iii) at the discretion of the Coordination Committee, assigning 1 or more program managers from any department or agency represented on the Coordination Committee to oversee, administer, and execute a Fund project as the agent of the Coordination Committee; and

(iv) providing methods of funding administration, including grant, cooperative agreement, or any other transaction.

(f) OFFICE OF SCIENCE AND TECHNOLOGY RESPONSIBILITIES.—The Director shall—

(1) assist the Secretary, the Directorates, and cooperating agencies in—

(A) assessing and testing homeland security vulnerabilities and possible threats;

(B) evaluating and advising on maintaining talent resources in key technology and skill areas required for homeland security, including information security experts;

(C) developing a system for sharing key homeland security research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities; and

(D) proposing risk management strategies based on technology developments;

(2) assist the Directorate of Critical Infrastructure Protection in the responsibilities of that Directorate;

(3) with respect to expenditures from the Fund, exercise acquisition authority consistent with the authority described under section 2371 of title 10, United States Code, relating to authorizing cooperative agreements and other transactions;

(4) in hiring personnel to assist in the administration of the Office of Science and Technology, have the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261); and

(5) develop and oversee the implementation of periodic homeland security technology demonstrations, held at least annually, for the purpose of improving contact between technology developers, vendors, and acquisition personnel associated with related industries.

SEC. 105. REPORTING REQUIREMENTS.

(a) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(b) ADDITIONAL REPORT.—Not later than 1 year after the effective date of this Act, the

Secretary shall submit to Congress a report—

(1) assessing the progress of the Department in—

(A) implementing this title; and

(B) ensuring the core functions of each entity transferred to the Department are maintained and strengthened; and

(2) recommending any conforming changes in law necessary as a result of the enactment and implementation of this title.

SEC. 106. PLANNING, PROGRAMMING, AND BUDGETING PROCESS.

The Secretary shall establish procedures to ensure that the planning, programming, budgeting, and financial activities of the Department comport with sound financial and fiscal management principles. At a minimum, those procedures shall provide for the planning, programming, and budgeting of activities of the Department using funds that are available for obligation for a limited number of years.

SEC. 107. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and substantive requirements; and

(2) develop procedures for meeting such requirements.

SEC. 108. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, recognitions of labor organizations, collective bargaining agreements, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this title; and

(2) which are in effect at the time this Act takes effect, or were final before the effective date of this Act and are to become effective on or after the effective date of this Act, shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of National Homeland Security or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS NOT AFFECTED.—The provisions of this title shall not affect suits commenced before the effective date of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against an agency, or by or against any individual in the official capacity of such individual as an officer of an agency, shall abate by reason of the enactment of this title.

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by an agency relating to a function transferred under this title may be continued by the Department of National Homeland Security with the same effect as if this title had not been enacted.

(f) EMPLOYMENT AND PERSONNEL.—

(1) INTERIM AUTHORITY FOR APPOINTMENT AND COMPENSATION.—Funds available to any official or component of any entity the functions of which are transferred to the Department, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer or employee under this title until such time as funds for that purpose are otherwise available.

(2) EMPLOYEE RIGHTS.—

(A) IN GENERAL.—The Department or a subdivision within the Department shall not be excluded under section 7103(b)(1) of title 5, United States Code, from coverage under chapter 71 of that title unless the President determines that a majority of employees within the Department or applicable subdivision have, as their primary job duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(B) NATIONAL SECURITY POSITIONS.—Employees transferred under this title shall not be considered to perform work which directly affects national security within the meaning of section 7112(b)(6) of title 5, United States Code, unless their primary job duty involves intelligence, counterintelligence, or investigative duties directly related to terrorism investigation. All employees transferred under this title who are not in the counterterrorism positions described in the preceding sentence shall continue to be afforded the full rights and protections under chapter 71 of title 5, United States Code.

(g) NO AFFECT ON INTELLIGENCE AUTHORITIES.—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions, by the Department of Homeland Security under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets, are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

(h) REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department, agency, or office from which a function is transferred by this title—

(1) to the head of such department, agency, or office is deemed to refer to the Secretary of National Homeland Security; or

(2) to such department, agency, or office is deemed to refer to the Department of National Homeland Security.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

SEC. 201. NATIONAL OFFICE FOR COMBATING TERRORISM.

(a) ESTABLISHMENT.—There is established within the Executive Office of the President the National Office for Combating Terrorism.

(b) OFFICERS.—

(1) DIRECTOR.—The head of the Office shall be the Director of the National Office for Combating Terrorism, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following: ''Director of the National Office for Combating Terrorism.''.

(3) OTHER OFFICERS.—The President shall assign to the Office such other officers as the President, in consultation with the Director, considers appropriate to discharge the responsibilities of the Office.

(c) RESPONSIBILITIES.—Subject to the direction and control of the President, the responsibilities of the Office shall include the following:

(1) To develop national objectives and policies for combating terrorism.

(2) To direct and review the development of a comprehensive national assessment of terrorist threats and vulnerabilities to those threats, which shall be—

(A) conducted by the heads of relevant Federal agencies; and

(B) used in preparation of the Strategy.

(3) To develop with the Secretary of National Homeland Security, the Strategy under title III.

(4) To coordinate, oversee, and evaluate the implementation and execution of the Strategy by agencies of the Federal Government with responsibilities for combating terrorism under the Strategy, particularly those involving military, intelligence, law enforcement, and diplomatic assets.

(5)(A) To coordinate, with the advice of the Secretary of National Homeland Security, the development of a comprehensive annual budget for the programs and activities under the Strategy, including the budgets of the military departments and agencies within the National Foreign Intelligence Program relating to international terrorism, but excluding military programs, projects, or activities relating to force protection.

(B) To have the lead responsibility for budget recommendations relating to military, intelligence, law enforcement, and diplomatic assets in support of the Strategy.

(6) To exercise funding authority for Federal terrorism prevention and response agencies in accordance with section 202.

(7) To serve as an advisor to the National Security Council.

(d) RESOURCES.—In consultation with the Director, the President shall assign or allocate to the Office such resources, including funds, personnel, and other resources, as the President considers appropriate in order to facilitate the discharge of the responsibilities of the Office.

(e) OVERSIGHT BY CONGRESS.—The establishment of the Office within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office or any study conducted by or at the direction of the Director; or

(2) any personnel of the Office.

SEC. 202. FUNDING FOR STRATEGY PROGRAMS AND ACTIVITIES.

(a) BUDGET REVIEW.—In consultation with the Director of the Office of Management and Budget, the Secretary of National Homeland Security, and the heads of other executive departments and agencies, the Director shall—

(1) identify programs that contribute to the Strategy; and

(2) in the development of the budget submitted by the President to Congress under section 1105 of title 31, United States Code, review and provide advice to the heads of executive departments and agencies on the amount and use of funding for programs identified under paragraph (1).

(b) SUBMITTAL OF PROPOSED BUDGETS TO THE DIRECTOR.—

(1) IN GENERAL.—The head of each Federal terrorism prevention and response agency shall submit to the Director each year the proposed budget of that agency for the fiscal year beginning in that year for programs and activities of that agency under the Strategy during that fiscal year.

(2) DATE FOR SUBMISSION.—The proposed budget of an agency for a fiscal year under paragraph (1) shall be submitted to the Director—

(A) not later than the date on which the agency completes the collection of information for purposes of the submission by the President of a budget to Congress for that fiscal year under section 1105 of title 31, United States Code; and

(B) before that information is submitted to the Director of the Office of Management and Budget for such purposes.

(3) FORMAT.—In consultation with the Director of the Office of Management and Budget, the Director shall specify the format for the submittal of proposed budgets under paragraph (1).

(c) REVIEW OF PROPOSED BUDGETS.—

(1) IN GENERAL.—The Director shall review each proposed budget submitted to the Director under subsection (b).

(2) INADEQUATE FUNDING DETERMINATION.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is inadequate, in whole or in part, to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency—

(A) a notice in writing of the determination; and

(B) a statement of the proposed funding, and any specific initiatives, that would (as determined by the Director) permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year.

(3) ADEQUATE FUNDING DETERMINATION.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is adequate to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency a notice in writing of that determination.

(4) MAINTENANCE OF RECORDS.—The Director shall maintain a record of—

(A) each notice submitted under paragraph (2), including any statement accompanying such notice; and

(B) each notice submitted under paragraph (3).

(d) AGENCY RESPONSE TO REVIEW OF PROPOSED BUDGETS.—

(1) INCORPORATION OF PROPOSED FUNDING.—The head of a Federal terrorism prevention and response agency that receives a notice under subsection (c)(2) with respect to the proposed budget of the agency for a fiscal year shall incorporate the proposed funding, and any initiatives, set forth in the statement accompanying the notice into the information submitted to the Office of Management and Budget in support of the proposed budget for the agency for the fiscal year under section 1105 of title 31, United States Code.

(2) ADDITIONAL INFORMATION.—The head of each agency described under paragraph (1) for a fiscal year shall include as an appendix to the information submitted to the Office of Management and Budget under that paragraph for the fiscal year the following:

(A) A summary of any modifications in the proposed budget of such agency for the fiscal year under that paragraph.

(B) An assessment of the effect of such modifications on the capacity of such agency to perform its responsibilities during the fiscal year other than its responsibilities under the Strategy.

(3) SUBMISSION TO CONGRESS.—

(A) IN GENERAL.—Subject to subparagraph (B), the head of each agency described under paragraph (1) for a fiscal year shall submit to Congress a copy of the appendix submitted to the Office of Management and Budget for the fiscal year under paragraph (2) at the same time the budget of the President for the fiscal year is submitted to Congress under section 1105 of title 31, United States Code.

(B) ELEMENTS WITHIN INTELLIGENCE PROGRAMS.—In the submission of the copy of the appendix to Congress under subparagraph (A), those elements of the appendix which are within the National Foreign Intelligence Program shall be submitted to—

(i) the Select Committee on Intelligence of the Senate; and

(ii) the Permanent Select Committee on Intelligence of the House of Representatives.

(e) SUBMITTAL OF REVISED PROPOSED BUDGETS.—

(1) IN GENERAL.—At the same time the head of a Federal terrorism prevention and response agency submits its proposed budget for a fiscal year to the Office of Management and Budget for purposes of the submission by the President of a budget to Congress for the fiscal year under section 1105 of title 31, United States Code, the head of the agency shall submit a copy of the proposed budget to the Director.

(2) REVIEW AND DECERTIFICATION AUTHORITY.—The Director of the National Office for Combating Terrorism—

(A) shall review each proposed budget submitted under paragraph (1); and

(B) in the case of a proposed budget for a fiscal year to which subsection (c)(2) applies in the fiscal year, if the Director determines as a result of the review that the proposed budget does not include the proposed funding, and any initiatives, set forth in the notice under that subsection with respect to the proposed budget—

(i) may decertify the proposed budget; and

(ii) with respect to any proposed budget so decertified, shall submit to Congress—

(I) a notice of the decertification;

(II) a copy of the notice submitted to the agency concerned for the fiscal year under subsection (c)(2)(B); and

(III) the budget recommendations made under this section.

(f) NATIONAL TERRORISM PREVENTION AND RESPONSE PROGRAM BUDGET.—

(1) IN GENERAL.—For each fiscal year, following the submittal of proposed budgets to the Director under subsection (b), the Director shall, in consultation with the Secretary of National Homeland Security and the head of each Federal terrorism prevention and response agency concerned—

(A) develop a consolidated proposed budget for such fiscal year for all programs and activities under the Strategy for such fiscal year; and

(B) subject to paragraph (2), submit the consolidated proposed budget to the President and to Congress.

(2) ELEMENTS WITHIN INTELLIGENCE PROGRAMS.—In the submission of the consolidated proposed budget to Congress under paragraph (1)(B), those elements of the budget which are within the National Foreign Intelligence Program shall be submitted to—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(3) DESIGNATION OF CONSOLIDATED PROPOSED BUDGET.—The consolidated proposed budget for a fiscal year under this subsection shall be known as the National Terrorism Prevention and Response Program Budget for the fiscal year.

(g) REPROGRAMMING AND TRANSFER REQUESTS.—

(1) APPROVAL BY THE DIRECTOR.—The head of a Federal terrorism prevention and response agency may not submit to Congress a request for the reprogramming or transfer of any funds specified in the National Terrorism Prevention and Response Program Budget for programs or activities of the agency under the Strategy for a fiscal year in excess of $5,000,000 without the approval of the Director.

(2) APPROVAL BY THE PRESIDENT.—The President may, upon the request of the head of the agency concerned, permit the submittal to Congress of a request previously disapproved by the Director under paragraph (1) if the President determines that the submittal of the request to Congress will further the purposes of the Strategy.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

SEC. 301. STRATEGY.

(a) DEVELOPMENT.—The Secretary and the Director shall develop the National Strategy for Combating Terrorism and Homeland Security Response for detection, prevention, protection, response, and recovery to counter terrorist threats, including the plans, policies, training, exercises, evaluation, and interagency cooperation that address each such action relating to such threats.

(b) RESPONSIBILITIES.—

(1) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall have responsibility for portions of the Strategy addressing border security, critical infrastructure protection, emergency preparation and response, and integrating State and local efforts with activities of the Federal Government.

(2) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have overall responsibility for development of the Strategy, and particularly for those portions of the Strategy addressing intelligence, military assets, law enforcement, and diplomacy.

(c) CONTENTS.—The contents of the Strategy shall include—

(1) policies and procedures to maximize the collection, translation, analysis, exploitation, and dissemination of information relating to combating terrorism and the homeland security response throughout the Federal Government and with State and local authorities;

(2) plans for countering chemical, biological, radiological, nuclear and explosives, and cyber threats;

(3) plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks on the homeland;

(4) specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks;

(5) a review of measures needed to enhance transportation security with respect to potential terrorist attacks; and

(6) other critical areas.

(d) COOPERATION.—At the request of the Secretary or Director, departments and

agencies shall provide necessary information or planning documents relating to the Strategy.

(e) INTERAGENCY COUNCIL.—

(1) ESTABLISHMENT.—There is established the National Combating Terrorism and Homeland Security Response Council to assist with preparation and implementation of the Strategy.

(2) MEMBERSHIP.—The members of the Council shall be the heads of the Federal terrorism prevention and response agencies or their designees. The Secretary and Director shall designate such agencies.

(3) CO-CHAIRS AND MEETINGS.—The Secretary and Director shall co-chair the Council, which shall meet at their direction.

(f) SUBMISSION TO CONGRESS.—Not later than December 1, 2003, and each year thereafter in which a President is inaugurated, the Secretary and the Director shall submit the Strategy to Congress.

(g) UPDATING.—Not later than December 1, 2005, and on December 1, of every 2 years thereafter, the Secretary and the Director shall submit to Congress an updated version of the Strategy.

(h) PROGRESS REPORTS.—Not later than December 1, 2004, and on December 1, of each year thereafter, the Secretary and the Director may submit to Congress a report that—

(1) describes the progress on implementation of the Strategy; and

(2) provides recommendations for improvement of the Strategy and the implementation of the Strategy.

SEC. 302. NATIONAL COMBATING TERRORISM STRATEGY PANEL.

(a) ESTABLISHMENT.—The Secretary and the Director shall establish a nonpartisan, independent panel to be known as the National Combating Terrorism Strategy Panel (in this section referred to as the ''Panel'').

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Panel shall be composed of a chairperson and 8 other individuals appointed by the Secretary and the Director, in consultation with the chairman and ranking member of the Committee on Governmental Affairs of the Senate and the chairman and ranking member of the Committee on Government Reform of the House of Representatives, from among individuals in the private sector who are recognized experts in matters relating to the homeland security of the United States.

(2) TERMS.—

(A) IN GENERAL.—An individual shall be appointed to the Panel for an 18-month term.

(B) TERM PERIODS.—Terms on the Panel shall not be continuous. All terms shall be for the 18-month period which begins 12 months before each date a report is required to be submitted under subsection (l)(2)(A).

(C) MULTIPLE TERMS.—An individual may serve more than 1 term.

(c) DUTIES.—The Panel shall—

(1) conduct and submit to the Secretary the assessment of the Strategy; and

(2) conduct the independent, alternative assessment of homeland security measures required under this section.

(d) ALTERNATIVE ASSESSMENT.—The Panel shall submit to the Secretary an independent assessment of the optimal policies and programs to combat terrorism, including homeland security measures. As part of the assessment, the Panel shall, to the extent practicable, estimate the funding required by fiscal year to achieve these optimal approaches.

(e) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—Subject to paragraph (2), the Panel may secure directly from any Federal department or agency such information as the Panel considers necessary to carry out this section. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the Panel.

(2) INTELLIGENCE INFORMATION.—The provision of information under this paragraph related to intelligence shall be provided in accordance with procedures established by the Director of Central Intelligence and in accordance with section 103(d)(3) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(3)).

(f) COMPENSATION OF MEMBERS.—Each member of the Panel shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel.

(g) TRAVEL EXPENSES.—The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(h) STAFF.—

(1) IN GENERAL.—The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its duties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) COMPENSATION.—The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF PANEL.—Subparagraph (A) shall not be construed to apply to members of the Panel.

(4) REDUCTION OF STAFF.—During periods that members are not serving terms on the Panel, the executive director shall reduce the number and hours of employees to the minimum necessary to—

(A) provide effective continuity of the Panel; and

(B) minimize personnel costs of the Panel.

(i) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(j) ADMINISTRATIVE PROVISIONS.—

(1) USE OF MAIL AND PRINTING.—The Panel may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(2) SUPPORT SERVICES.—The Secretary shall furnish the Panel any administrative and support services requested by the Panel.

(3) GIFTS.—The Panel may accept, use, and dispose of gifts or donations of services or property.

(k) PAYMENT OF PANEL EXPENSES.—The compensation, travel expenses, and per diem allowances of members and employees of the Panel shall be paid out of funds available to the Department for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department. The other expenses of the Panel shall be paid out of funds available to the Department for the payment of similar expenses incurred by the Department.

(l) REPORTS.—

(1) PRELIMINARY REPORT.—

(A) REPORT TO SECRETARY.—Not later than July 1, 2004, the Panel shall submit to the Secretary and the Director a preliminary report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORT TO CONGRESS.—Not later than 30 days after the submission of the report under subparagraph (A), the Secretary and the Director shall submit to the committees referred to under subsection (b) a copy of that report with the comments of the Secretary on the report.

(2) QUADRENNIAL REPORTS.—

(A) REPORTS TO SECRETARY.—Not later than December 1, 2004, and not later than December 1 every 4 years thereafter, the Panel shall submit to the Secretary and the Director a report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORTS TO CONGRESS.—Not later than 60 days after each report is submitted under subparagraph (A), the Secretary shall submit to the committees referred to under subsection (b) a copy of the report with the comments of the Secretary and the Director on the report.

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

This Act shall take effect 180 days after the date of enactment of this Act.

By Mr. THURMOND (for himself and Mr. ALLARD):

S. 2453. A bill to provide for the disposition of weapons-usable plutonium at the Savannah River Site South Carolina; to the Committee on Energy and Natural Resources.

Mr. THURMOND. Mr. President, I rise today to introduce legislation that will provide for the disposition of weapons usable plutonium at the Savannah River Site, South Carolina. This bill will ensure the State of South Carolina will have an enforceable agreement on the construction and operation of a mixed-oxide, MOX, fuel fabrication facility at the Savannah River Site. The bill also provides for clear pathway to remove any weapons-usable plutonium from our State if the MOX facility is delayed or fails to operate as planned.

The Plutonium Disposition program is an important element of our National Security. Under agreements made by the United States and the Russian Federation, each Nation agreed to dispose of designated amounts of weapons-grade plutonium. This agreement is a significant step toward safeguarding nuclear materials and preventing their diversion to rogue states. In addition, it has been widely acknowledged that Russian criminal

groups are attempting to steal weapons-usable plutonium from poorly secured sites for known terrorist organizations, and therefore most certainly this is a matter of extreme National Security.

The MOX facility will be an important economic factor in my State. As a result of this bill, Department of Energy officials will also know that SRS, the largest industrial employer in my State, will be ready and eager to accept new missions and create jobs. Helping the Savannah River Site SRS, grow and remain the ''Crown Jewel'' among Department of Energy facilities has been one of my proudest achievements of public service as a Senator and Governor of my State. South Carolina and the Department of Energy have had an outstanding working relationship to bring jobs to SRS while helping to defend our National Security.

I deeply regretted the recent dispute over the mixed oxide (MOX) fuel fabrication facility and the Federal lawsuit that was recently filed. I have called for reasoned and mature thinking to prevail in this matter. This legislation is intended to provide the assurances to both parties and restore the elements of trust and cooperation, while protecting the interests of the State and the health, safety and economy of its citizens. Interested parties must not fail to view this matter without taking all the factors into consideration. The health and security of South Carolinians must always be protected. current and future jobs in South Carolina must be protected. The National Security of the United States must be protected. The legislation I am introducing today will accomplish all of these objectives.

This initiative is good government and I encourage its support by my colleagues. I yield the floor.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 260—DESIGNATING MAY 1, 2002, AS ''NATIONAL CHILD CARE WORTHY WAGE DAY''

Mr. CORZINE (for himself, Mr. DURBIN, Mr. CLELAND, Mr. DODD, Mr. KERRY, Mr. KENNEDY, Mr. FEINGOLD, Mrs. CARNAHAN, and Mrs. MURRAY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 260

Whereas approximately 14,000,000 children are in out-of-home care during part or all of the day so that their parents may work;

Whereas the average salary of early childhood educators is $16,000 per year, and only ⅓ have health insurance and even fewer have a pension plan;

Whereas the quality of child care and other early childhood education programs is directly linked to the quality of early childhood educators, and low wages make it difficult to attract qualified individuals to the profession;

Whereas the turnover rate of early childhood educators is approximately 30 percent per year because of low wages and lack of benefits, making it difficult to retain high quality educators, and research has demonstrated that young children require caring relationships to have a consistent presence in their lives for their positive development;

Whereas the compensation of early childhood educators must be commensurate with the importance of the job of helping the young children of the United States develop their social, emotional, physical, and intellectual skills to be ready for school;

Whereas the cost of adequate compensation cannot be funded by further burdening parents with higher child care fees but requires public as well as private resources so that quality care and education is accessible for all families; and

Whereas the Center for the Child Care Workforce and other early childhood education organizations recognize May 1st as National Child Care Worthy Wage Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates May 1, 2002, as ''National Child Care Worthy Wage Day''; and

(2) requests that the President issue a proclamation calling on the people of the United States to observe ''National Child Care Worthy Wage Day'' by—

(A) honoring early childhood educators and programs in their communities; and

(B) working together to resolve the early childhood educator compensation crisis.

Mr. CORZINE. Mr. President, I rise today to submit a resolution designating May 1, 2002 as National Child Care Worthy Wage Day. On May 1 each year, child care providers and other early childhood professionals nationwide conduct public awareness and education efforts highlighting the importance of early childhood education. I hope these efforts will bring attention to early childhood education and the importance of attracting and retaining qualified child care workers.

Every day, approximately 14 million children are cared for outside the home so that their parents can work. This figure includes six million of our Nation's infants and toddlers. Children begin to learn at birth, and the quality of care they receive will affect them for the rest of their lives. Early child care affects language development, math skills, social behavior, and general readiness for school. Experienced child care workers can identify children who have development or emotional problems and provide the care they need to take on life's challenges. Through the creative use of play, structured activities and individual attention, child care workers help their charges learn about the world around them and how to interact with others.

The dedicated individuals who nurture and teach our Nation's young children are undervalued despite the importance of their work. The average salary of a child care worker is approximately $16,000 annually. According to the Department of Labor, in 1998, the middle 50 percent of child care workers and pre-school teachers earned between $5.82 and $8.13 an hour. The lowest 10 percent of child care workers were paid an hourly wage of $5.49 or less. Only one third of our Nation's child care workers have health insurance and even fewer have pension plans. This grossly inadequate level of wages and benefits for child care staff has led to difficulties in attracting and retaining high quality caretakers and educators. As a result, the turnover rate for child care providers is 30 percent a year. This high turnover rate interrupts consistent and stable relationships that children need to have with their caregivers.

To address this issue, Senator DODD and I have introduced the ''Focus On Committed and Underpaid Staff for Children's Sake Act,'' a bill that would establish a grant and scholarship program for child care providers.

I encourage my colleagues to join me in recognizing the importance of the service that child care workers provide and the need to increase their compensation accordingly. The Nation's child care workforce, the families who depend on them, and the next generation of children that they care for deserve our support.

SENATE CONCURRENT RESOLUTION 104—RECOGNIZING THE AMERICAN SOCIETY OF CIVIL ENGINEERS ON THE OCCASION OF THE 150TH ANNIVERSARY OF ITS FOUNDING AND FOR THE MANY VITAL CONTRIBUTIONS OF CIVIL ENGINEERS TO THE QUALITY OF LIFE OF THE PEOPLE OF THE UNITED STATES, INCLUDING THE RESEARCH AND DEVELOPMENT PROJECTS THAT HAVE LED TO THE PHYSICAL INFRASTRUCTURE OF MODERN AMERICA

Mr. JEFFORDS (for himself and Mr. SMITH of New Hampshire) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 104

Whereas, founded in 1852, the American Society of Civil Engineers is the oldest national engineering society in the United States;

Whereas civil engineers work to constantly improve buildings, water systems, and other civil engineering works through research, demonstration projects, and the technical codes and standards developed by the American Society of Civil Engineers;

Whereas the American Society of Civil Engineers incorporates educational, scientific, and charitable efforts to advance the science of engineering, improve engineering education, maintain the highest standards of excellence in the practice of civil engineering, and protect the public health, safety, and welfare;

Whereas the American Society of Civil Engineers represents the profession primarily responsible for the design, construction, and maintenance of the roads, bridges, airports, railroads, public buildings, mass transit systems, resource recovery systems, water systems, waste disposal and treatment facilities, dams, ports, waterways, and other public facilities that are the foundation on which the economy of the United States stands and grows; and

Whereas the civil engineers of the United States, through innovation and the highest

professional standards in the practice of civil engineering, protect the public health and safety and ensure the high quality of life enjoyed by the people of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the American Society of Civil Engineers on the occasion of the 150th anniversary of its founding;

(2) commends the many achievements of the civil engineers of the United States; and

(3) encourages the American Society of Civil Engineers to continue its tradition of excellence in service to the profession of civil engineering and to the public.

Mr. JEFFORDS. Mr. President, from the pyramids of Egypt, to the roadways and waterworks of Rome, through the great Gothic cathedrals of Europe, to today's water treatment facilities and transportation systems, civil engineers have been building societies.

For the past 150 years, The American Society of Civil Engineers, ASCE, has served as the professional organization for, and represented, this great body of engineers within our country. The professional standards and quality of work in the civil engineering community have been ensured through the efforts of the Society.

Without the efforts of our Nation's civil engineers, and those who lead within the profession, this country would not be the great Nation that it is today. With the help of ASCE and the professional expertise of the Society's membership, we are working together to ensure that our children and grandchildren have a clean and safe environment in which to live.

It is with pleasure, as the Chairman of the Senate Committee on Environment and Public Works, along with Senator SMITH, the committee's ranking member, that I recognize, through this concurrent resolution, the 150th anniversary of the American Society of Civil Engineers. We appreciate the leadership and efforts of ASCE and its membership.

SENATE CONCURRENT RESOLUTION 105—EXPRESSING THE SENSE OF CONGRESS THAT THE NATION SHOULD TAKE ADDITIONAL STEPS TO ENSURE THE PREVENTION OF TEEN PREGNANCY BY ENGAGING IN MEASURES TO EDUCATE TEENAGERS AS TO WHY THEY SHOULD STOP AND THINK ABOUT THE NEGATIVE CONSEQUENCES BEFORE ENGAGING IN PREMATURE SEXUAL ACTIVITY

Mr. LIEBERMAN (for himself and Ms. SNOWE) submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 105

Whereas 4 in 10 girls in the United States will become pregnant before the age of 20;

Whereas childbearing by teenagers costs taxpayers at least $7,000,000,000 each year in direct costs associated with health care, foster care, criminal justice, and public assistance;

Whereas the United States has the highest rates of teenage pregnancy and birth in the industrialized world;

Whereas more than half of all mothers on welfare had their first child as a teenager;

Whereas 80 percent of births to teenagers are to unmarried teenagers, and teenage mothers have more children, on average, than women who delay childbearing, which makes it more difficult for them and their children to escape a life of poverty;

Whereas teenagers who give birth are less likely to complete high school and to go on to college, thereby reducing their potential for economic self-sufficiency; and

Whereas the children of teenage mothers are more likely to be born prematurely and at low birth-weight, and suffer from higher rates of abuse and neglect than other children: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the Nation should take additional steps to ensure the prevention of teen pregnancy by engaging in measures to educate teenagers as to why they should stop and think about the negative consequences before engaging in premature sexual activity.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3388. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 3009, to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; which was ordered to lie on the table.

SA 3389. Mr. REID (for Mr. LIEBERMAN (for himself, Mr. DASCHLE, Mr. SMITH, of Oregon, Mr. ALLARD, Mr. BROWNBACK, Mr. BUNNING, Mrs. CARNAHAN, Mr. CLELAND, Mrs. CLINTON, Ms. COLLINS, Mr. DEWINE, Mr. HATCH, Mr. KYL, Mr. MCCONNELL, Mr. SANTORUM, Mr. SMITH, of New Hampshire, Mr. STEVENS, Mr. WARNER, Mr. BAUCUS, Mrs. BOXER, Mr. WYDEN, Mr. CORZINE, Mr. DURBIN, Mr. GRAHAM, Ms. LANDRIEU, Mr. HARKIN, Mr. JOHNSON, Mrs. MURRAY, Mrs. LINCOLN, Mr. NELSON, of Florida, Ms. MIKULSKI, Mr. REED, Mr. SCHUMER, Mr. HUTCHINSON, Mr. GRASSLEY, Mr. CAMPBELL, Mr. VOINOVICH, Mr. MURKOWSKI, Mr. ALLEN, Ms. SNOWE, Mr. THURMOND, Mr. NICKLES , Mr. MCCAIN, Mr. KERRY, Mr. BAYH, Mr. BENNETT, Mr. BOND, Mr. BREAUX, Mr. CRAPO, Mr. DODD, Mr. DORGAN, Mr. FEINGOLD, Mrs. FEINSTEIN, and Mr. FITZGERALD)) proposed an amendment to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) supra; which was considered and agreed to.

SA 3390. Mr. DASCHLE (for Mr. TORRICELLI) submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) supra; which was ordered to lie on the table.

SA 3391. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R . 3009) supra; which was ordered to lie on the table.

SA 3392. Mr. BROWNBACK (for himself and Mr. WYDEN) submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3388. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 3009, to extend the Andean Trade Preference Act to grant additional trade benefits under that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 351, between lines 18 and 19, insert the following:

(viii) The extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

SA 3389. Mr. REID (for Mr. LIEBERMAN (for himself, Mr. DASCHLE, Mr. SMITH of Oregon, Mr. ALLARD, Mr. BROWNBACK, Mr. BUNNING, Mrs. CARNAHAN, Mr. CLELAND, Mrs. CLINTON, Ms. COLLINS, Mr. DEWINE, Mr. HATCH, Mr. KYL, Mr. MCCONNELL, Mr. SANTORUM, Mr. SMITH of New Hampshire, Mr. STEVENS, Mr. WARNER, Mr. BAUCUS, Mrs. BOXER, Mr. WYDEN, Mr. CORZINE, Mr. DURBIN, Mr. GRAHAM, Ms. LANDRIEU, Mr. HARKIN, Mr. JOHNSON, Mrs. MURRAY, Mrs. LINCOLN, Mr. NELSON of Florida, Ms. MIKULSKI, Mr. REED, Mr. SCHUMER, Mr. HUTCHINSON, Mr. GRASSLEY, Mr. CAMPBELL, Mr. VOINOVICH, Mr. MURKOWSKI, Mr. ALLEN, Ms. SNOWE, Mr. THURMOND, Mr. NICKLES, Mr. MCCAIN, Mr. KERRY, Mr. BAYH, Mr. BENNETT, Mr. BOND, Mr. BREAUX, Mr. CRAPO, Mr. DODD, Mr. DORGAN, Mr. FEINGOLD, Mrs. FEINSTEIN, and Mr. FITZGERALD) proposed an amendment to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) supra; which was considered and agreed to.

At the appropriate place, insert the following new section:

SEC. ____. EXPRESSING SOLIDARTIY WITH ISRAEL IN ITS FIGHT AGAINST TERRORISM.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States and Israel are now engaged in a common struggle against terrorism and are on the frontlines of a conflict thrust upon them against their will.

(2) President George W. Bush declared on November 21, 2001, ''We fight the terrorists and we fight all of those who give them aid. America has a message for the nations of the world: If you harbor terrorists, you are terrorists. If you train or arm a terrorist, you are a terrorist. If you feed a terrorist or fund a terrorist, you are a terrorist, and you will be held accountable by the United States and our friends.''.

(3) The United States has committed to provide resources to states on the frontline in the war against terrorism.

(b) SENSE OF CONGRESS.—The Congress—

(1) stands in solidarity with Israel, a frontline state in the war against terrorism, as it takes necessary steps to provide security to its people by dismantling the terrorist infrastructure in the Palestinian areas;

(2) remains committed to Israel's right to self-defense;

(3) will continue to assist Israel in strengthening its homeland defenses;

(4) condemns Palestinian suicide bombings;

(5) demands that the Palestinian Authority fulfill its commitment to dismantle the terrorist infrastructure in the Palestinian areas;

(6) urges all Arab states, particularly the United States allies, Egypt and Saudi Arabia, to declare their unqualified opposition to all forms of terrorism, particularly suicide bombing, and to act in concert with the United States to stop the violence; and

(7) urges all parties in the region to pursue vigorously efforts to establish a just, lasting, and comprehensive peace in the Middle East.

SA 3390. Mr. DASCHLE (for Mr. TORRICELLI) submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 259, beginning on line 19, strike all through page 261, line 15, and insert the following:

(A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws;

(B) to ensure that parties to a trade agreement reaffirm their obligations as members of the ILO and their commitments under the ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up;

(C) to ensure that the parties to a trade agreement ensure that their laws provide for labor standards consistent with the ILO Declaration of Fundamental Principles and Rights at Work and the internationally recognized labor rights set forth in section 13(2) and constantly improve those standards in that light;

(D) to ensure that parties to a trade agreement do not weaken, reduce, waive, or otherwise derogate from, or offer to waive or derogate from, their labor laws as an encouragement for trade;

(E) to create a general exception from the obligations of a trade agreement for—

(i) Government measures taken pursuant to a recommendation of the ILO under Article 33 of the ILO Constitution; and

(ii) Government measures relating to goods or services produced in violation of any of the ILO core labor standards, including freedom of association and the effective recognition of the right to collective bargaining (as defined by ILO Conventions 87 and 98); the elimination of all forms of forced or compulsory labor (as defined by ILO Conventions 29 and 105); the effective abolition of child labor (as defined by ILO Conventions 138 and 182); and the elimination of discrimination in respect of employment and occupation (as defined by ILO Conventions 100 and 111); and

(F) to ensure that—

(i) all labor provisions of a trade agreement are fully enforceable, including recourse to trade sanctions;

(ii) the same enforcement mechanisms and penalties are available for the commercial provisions of an agreement and for the labor provisions of the agreement; and

(iii) trade unions from all countries that are party to a dispute over the labor provisions of the agreement can participate in the dispute process;

(G) to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 13(2));

(H) to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development;

(I) to reduce or eliminate government practices or policies that unduly threaten sustainable development;

(J) to seek market access, through the elimination of tariffs and nontariff barriers, for United States environmental technologies, goods, and services; and

(K) to ensure that labor, environmental, health, or safety policies and practices of the parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against United States exports or serve as disguised barriers to trade.

SA 3391. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. CENTRAL ASIA TRADE ACT.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States is now engaged in a war against terrorism, and it is vital that the United States respond to this threat through the use of all available resources;

(2) Open markets between the United States and friendly nations remain a vital component of the national security of the United States for the purposes of forming long lasting friendships, strategic partnerships, and creating new long-term allies through the exportation of America's democratic ideals, civil liberties, freedoms, ethics, principles, tolerance, openness, ingenuity, and productiveness.

(3) Utilizing trade with other nations is indispensable to United States foreign policy in that trade assists developing nations in achieving these very objectives.

(4) It is in the national security interests of the United States to increase and improve ties, economically and otherwise, with nations in Central Asia and the South Caucasus.

(5) The development of strong political, economic, and security ties between the nations of Central Asia and the South Caucasus and the United States will foster stability in this region.

(6) The development of open market economies and open democratic systems in the nations of Central Asia and the South Caucasus will provide positive incentives for American private investment, increased trade, and other forms of commercial interaction with the United States.

(7) Many of the nations of Central Asia and the South Caucasus have secular Muslim governments that are seeking closer alliance with the United States and that have diplomatic and commercial relations with Israel.

(8) The region of Central Asia and the South Caucasus could produce oil and gas in sufficient quantities to reduce the dependence of the United States on energy from the volatile Persian Gulf region.

(9) Normal trade relations between the nations of Central Asia and the South Caucasus and the United States will help achieve these objectives.

(b) SENSE OF CONGRESS.—(1) Prior to extending normal trade relations with the nations of Central Asia and the South Caucasus, the President should—

(A) obtain the commitment of those countries to developing a system of governance in accordance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (also known as the ''Helsinki Final Act'') regarding human rights and humanitarian affairs;

(B) ensure that those countries have endeavored to address issues related to their national and religious minorities and, as a member state of the Organization for Security and Cooperation in Europe (OSCE), committed to adopting special measures for ensuring that persons belonging to national minorities have full equality individually as well as in community with other members of their group;

(C) ensure that those countries have also committed to enacting legislation to provide protection against incitement to violence against persons or groups based on national, racial, ethnic, or religious discrimination, hostility, or hatred, including anti-Semitism; and

(D) ensure that those countries have continued to return communal properties confiscated from national and religious minorities during the Soviet period, facilitating the reemergence of these communities in the national life of each of those countries and establishing the legal framework for completion of this process in the future.

(2) Earlier this year the governments of the United States and Kazakhstan exchanged letters underscoring the importance of religious freedom and human rights, and the President should seek similar exchanges with all nations of Central Asia and the South Caucasus.

(c) PERMANENT NORMAL TRADE RELATIONS FOR KAZAKHSTAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Kazakhstan; and

(B) after making a determination under subparagraph (A) with respect to Kazakhstan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Kazakhstan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(d) PERMANENT NORMAL TRADE RELATIONS FOR TAJIKISTAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Tajikistan; and

(B) after making a determination under subparagraph (A) with respect to Tajikistan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Tajikistan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(e) PERMANENT NORMAL TRADE RELATIONS FOR UZBEKISTAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Uzbekistan; and

(B) after making a determination under subparagraph (A) with respect to Uzbekistan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Uzbekistan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(f) PERMANENT NORMAL TRADE RELATIONS FOR ARMENIA.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—

Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Armenia; and

(B) after making a determination under subparagraph (A) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extensions under paragraph (1)(B) of nondiscriminatory treatment to the products of Armenia included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(g) PERMANENT NORMAL TRADE RELATIONS FOR AZERBAIJAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Azerbaijan; and

(B) after making a determination under paragraph (1) with respect to Azerbaijan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extensions under paragraph (1)(B) of nondiscriminatory treatment to the products of Azerbaijan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

(h) PERMANENT NORMAL TRADE RELATIONS FOR TURKMENISTAN.—

(1) PRESIDENTIAL DETERMINATION AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Turkmenistan; and

(B) after making a determination under subparagraph (A) with respect Turkmenistan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extensions under paragraph (1)(B) of nondiscriminatory treatment to the products of Turkmenistan included under paragraph (1)(B), title IV of the Trade Act of 1974 shall cease to apply to that country.

SA. 3392 Mr. BROWNBACK (for himself, and Mr. WYDEN) submitted an amendment intended to be proposed to amendment SA 3386 proposed by Mr. DASCHLE to the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

Whereas the American people respect the Iranian people, and value the contribution that Iran's culture has made to world civilization over three millennia:

Whereas the Iranian people aspire to democracy, civil, political and religious rights and the rule of law, evidence by increasingly frequent anti-government and anti-Khatami demonstrations within Iran and the statements of numerous Iranian expatriates and dissidents;

Whereas Iran is an ideological dictatorship presided over by an unelected Supreme Leader with limitless veto power, an unelected Expediency Council and Council of Guardians capable of eviscerating any reforms, and a President elected only after the aforementioned disqualified 234 other candidates for being too liberal, reformist, or secular;

Whereas the United States recoganizes the Iranian peoples' concerns that President Muhammad Khatami's rhetoric has not been matched by his actions;

Whereas President Khatami clearly lacks the ability and inclination to change the behavior of the State either toward the vast majority of Iranians who seek freedom; or toward the international community;

Whereas political repression, newspaper censorship, corruption, vigilante intimidation, arbitrary imprisonment of students, and public executions have increased since Khatami's inauguration in 1997;

Whereas men and women are not equal under the law and women are legally deprived of their basic rights;

Whereas the Iranian government shipped 50-tons of sophisticated weaponry to the Palestinian Authority despite Chairman's Arafat's cease-fire agreement, consistently seeks to undermine the Middle East peace process; provides safe-haven to al-Qa'ida and Taliban terrorists; allows transit of arms for guerillas seeking to undermine our ally Turkey; provides transit of terrorists seeking to destabilize the U.S.-protected safe-haven in Iraq; and develop weapons of mass destruction;

Whereas since the terrorist attacks of September 11, 2001, and despite rhetorical protestations to the contrary, the Islamic Republic has actively and repeatedly sought to undermine the United States' war on terror;

Whereas there is a broad-base movement for change in Iran that represents all sectors of Iranian society, including youth, women, student bodies, military personnel, and even religious figures, that is pro-democratic, believes in secular government, and is yearning to live in freedom;

Whereas following the tragedies of September 11, tens of thousands of Iranians filled the streets spontaneously and in solidarity with the United States and the victims of the terrorist attacks;

Whereas the people of Iran deserve the support of the American people: Now therefore be it

Resolved, That it is the Sense of the Congress that—

(1) legitimizing the regime in Iran stifles the growth of the genuine democratic forces in Iran and does not serve U.s. national security interest;

(2) positive U.S. gestures toward Iran should be directed toward the people of Iran, and not political figures whose survival depends upon preservation of the current regime;

(3) it should be the policy of the United States to seek genuine democratic government that will restore freedom to the Iranian people, abandon terrorism, and live in peace and security with the international community.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the full committee of the Committee on Energy and Natural Resources.

The hearing will take place on Wednesday, May 8, 2002, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building. The purpose of this hearing is to receive testimony on the nomination of Guy F. Caruso to be Administrator of the Energy Information Administration.

Those wishing to submit written testimony for the hearing record should sent two copies of their testimony to the Committee on Energy and Natural Resources, Attn: Majority Staff, 264 Dirksen Senate Office Building, U.S. Senate, Washington, DC 20510.

For further information, please contact Sam Fowler on 202–224–7571 or Amanda Goldman on 202–224–6836.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, May 2, 2002, at 10 a.m., to conduct an oversight hearing on ''Bringing More Unbanked Americans Into the Financial Mainstream.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, May 2, 2002, at 10:15 a.m., to hold a hearing titled, ''Protecting U.S. Citizens Abroad From Terrorism''.

Agenda

Witnesses

Panel 1: Mr. Peter Bergin, Principal Deputy Assistant for Diplomatic Security and Director of the Diplomatic Security Service, Department of State, Washington, DC, and Ms. Dianne Andruch, Deputy Assistant Secretary for Overseas Citizens Services, Department of State, Washington, DC.

Panel 2: Mr. Frank Smyth, Washington Representative, the Committee to Protect Journalists, Washington, DC; the Honorable Vernon Penner, Vice President for Corporate International Services, Crisis Management Worldwide, Former Deputy Assistant Secretary of State for Overseas Citizens Services, Annapolis, MD; Mr. Thomas P. Ondeck, President, GlobalOptions, Inc., Washington, DC; and Dr. Sheryl E. Spivack, Assistant Professor of Tourism Studies, George Washington University, Washington, DC.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, May 2, 2002, at 9:10 a.m., for the purpose of conducting a business meeting to consider the nomination of Paul A. Quander, Jr. to be Director of the District of Columbia Court Services and Offender Supervision Agency.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Thursday, May 2, 2002, after the first scheduled vote.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, May 2, 2002, at 10 a.m., in Dirksen Building Room 226.

Agenda

I. Nominations

Julia Smith Gibbons to be United States Circuit Court Judge for the Sixth Circuit; Leonard E. Davis to be United States Circuit Court Judge for the Eastern District of Texas; David C. Godbey to be United States Circuit Court Judge for the Northern District of Texas; Andrew S. Hansen to be United States Circuit Court Judge for the Southern District of Texas; Samuel H. Mays, Jr., to be United States Circuit Court Judge for the Western District of Tennessee; Thomas M. Rose to be United States Circuit Court Judge for the Southern District of Ohio; and Paul G. Cassell to be United States Circuit Court Judge for the District of Utah.

To be United States Attorney: Steven M. Biskupic for the Eastern District of Wisconsin; James E. McMahon for the District of South Dakota; and Jan Paul Miller for the Central District of Illinois.

To be United States Marshal: Walter Robert Bradley for the District of Kansas; Randy Paul Ely for the Northern District of Texas; William Paul Kruziki for the Eastern District of Wisconsin; Stephen Robert Monier for the District of New Hampshire; and Gary Edward Shovlin for the Eastern District of Pennsylvania.

II. Bills

S. 2031, Intellectual Property Protection Restoration Act of 2002 [Leahy/Brownback].

S. 848, Social Security Number Misuse Prevention Act of 2001 [Feinstein/Gregg].

S. 1742, Restore Your Identity Act of 2001 [Cantwell].

S. 1644, Veterans' Memorial Preservation and Recognition Act of 2001 [Campbell].

S. 2431, The Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002 [Leahy/Campbell/Schumer/Clinton/Biden].

S. 1868, National Child Protection Improvement Act [Biden/Thurmond].

III. Resolutions

S. Res. 255, A resolution to designate the week beginning May 5, 2002, as ''National Correctional Officers and Employees Week'' [Feinstein/Hatch].

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Immigration and Naturalization Service: How Should It Be Restructured?'' on Thursday, May 2, 2002, in Dirksen Room 226 at 2:30 p.m.

Witness List

Panel I: Congressman Romano Mazzoli, Former U.S. Representative, Louisville, Kentucky.

Panel II: Paul Virtue, Former INS General Counsel, Washington, DC, and Stephen Yale-Loehr, American Immigration Lawyers Association, Ithaca, New York.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, May 2, 2002, for a hearing on pending legislation.

The hearing will take place in SR–418 of the Russell Senate Office Building at 9:30 a.m.

Agenda for Legislative Hearing Pending Legislation

S. 1113, to increase the Medal of Honor pension, and to provide for an annual adjustment in that pension.

S. 1408, to standardize the income threshold for copayment for outpatient medications with the income threshold for inability to defray necessary expense of care, and for other purposes.

S. 1517, to implement Hart-Rudman Commission recommendations on enhancing Montgomery GI Bill benefits.

S. 1561, to strengthen the preparedness of health care providers within the Department of Veterans Affairs and community hospitals to respond to bioterrorism.

S. 1576, to extend the eligibility for health care of veterans who served in Southwest Asia during the Persian Gulf War.

S. 1680, to provide that duty of the National Guard mobilized by a State in support of Operation Enduring Freedom or otherwise at the request of the President shall qualify as military service under the Soldier and Sailors Civil Relief Act.

S. 1905, to enhance veterans' programs and the ability of the Department of Veterans Affairs to administer them.

S. 2003, to clarify the applicability of the prohibition on assignment of veterans benefits to agreements regarding future receipt of compensation, pension, or dependency and indemnity compensation, and for other purposes.

S. 2025, to increase the rate of special pension for Medal of Honor recipients, to make that special pension effective from the date of the act for which the Medal of Honor is awarded, and to amend title 18, United States Code, to increase the criminal penalties associated with misuse or fraud relating to the Medal of Honor.

S. 2043, to extend by five years the period for the provision by the Secretary of Veterans Affairs of non-institutional extended care serves and required nursing home care, and for other purposes.

S. 2044, to provide for further improvement of the program to expand and improve the provision of specialized mental health services to veterans.

S. 2060, to name the Department of Veterans Affairs Regional Office in St. Petersburg, Florida, after Franklin D. Miller.

S. 2073, to provide for the retroactive entitlement of Ed W. Freeman to Medal of Honor special pension.

S. 2074, to increase, effective as of December 1, 2002, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

S. 2079, to facilitate and enhance judicial review of certain matters regarding veteran's benefits, and for other purposes.

S. 2132, to provide for the establishment of medical emergency preparedness centers in the Veterans Health Administration, to provide for the enhancement of the medical research activities of the Department of Veterans Affairs, and for other purposes.

S. 2186, to establish a new Assistant Secretary to perform operations, preparedness, security and law enforcement functions, and for other purposes.

S. 2187, to authorize the Secretary of Veterans Affairs to furnish health care during a major disaster or medical emergency, and for other purposes.

S. 2205, to clarify the entitlement to disability compensation of women veterans who have service-connected mastectomies, to provide permanent authority for counseling and treatment for sexual trauma, and for other purposes.

S. 2209, to provide an additional program of service disabled veterans' insurance for veterans, and for other purposes.

S. 2227, to clarify the effective date of the modification of treatment for retirement annuity purposes of part-time service before April 7, 1986, of certain Department of Veterans Affairs health-care professionals.

S. 2228, to authorize the Secretary of Veterans Affairs to operate up to 15 centers for mental illness research, education, and clinical activities.

S. 2229, to authorize a cost-of-living increase in rates of disability compensation and dependency and indemnity compensation, and to revise the requirement for maintaining levels of extended-care services to veterans.

S. 2230, to authorize VA to guarantee adjustable rate mortgage loans.

S. 2231, to increase Chapter 35 educational assistance benefits, and to increase funding to State Approving Agencies.

S. 2237, to enhance compensation for veterans with hearing loss.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Thursday, May 2, 2002, at 9:30 a.m., for a hearing entitled ''Gas Prices: How Are They Really Set?''.

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

PRIVILEGE OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that David Roll, a fellow on my staff, be granted the privilege of floor.

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

Mr. BAUCUS. Madam President, I ask unanimous consent that privileges of the floor be granted to Shara Aranoff, a fellow with the Senate Finance Committee trade staff, during the duration of the debate on the trade bill.

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

Mr. REID. Madam President, I ask unanimous consent that Sarah Lennon, a Department of Energy fellow in Senator CARNAHAN'S office, be granted the privilege of the floor during today's session.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DASCHLE. I ask unanimous consent that the Senate proceed to executive session to consider the following nomination reported out earlier today by the Health, Education, and Labor Committee: Elias Adam Zerhouni, to be Director of the National Institutes of Health. I further ask that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, any statements be printed in the RECORD, and the Senate return to legislative session without any intervening action or debate.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Elias Adam Zerhouni, of Maryland, to be Director of the National Institutes of Health.

Ms. MIKULSKI. Mr. President, I rise to congratulate Dr. Elias Zerhouni on his confirmation by the U.S. Senate as the new Director of the National Institutes of Health. I am pleased that his nomination was approved by the Health, Education, Labor, and Pensions Committee this morning and that the Senate has approved his nomination today.

I am proud that Maryland is home to the National Institutes of Health, and some of the best and brightest researchers in the world. Now Maryland is the home of the National Institutes of Health's new Director, Dr. Zerhouni.

Dr. Zerhouni has spent his impressive career turning medical research into tools and treatments that improve patients' lives. He is an innovative thinker and a successful entrepreneur who has turned his scientific discoveries into successful businesses. He is also a talented administrator who will bring his leadership skills to bear on this challenging new role. His administrative skills will be especially important as Congress completes the bipartisan commitment to double NIH's budget this year.

I am pleased that the U.S. Senate has given Dr. Zerhouni this resounding show of support as he prepares to take the helm of the world's finest research institution. I look forward to working with Dr. Zerhouni in his new role as Director of the National Institutes of Health. The National Institutes of Health and the American people will be well served by Dr. Elias Zerhouni.

Mr. KENNEDY. Mr. President, today the Senate is considering the nomination of one of the nation's most distinguished scientific leaders, Dr. Elias Zerhouni, to be the Director of the National Institutes of Health.

Dr. Zerhouni's life is a story about endless possibilities. He arrived from Algeria with little else but his medical training—and a desire to help his fellow human beings facing disease. From that humble beginning, he has explored the endless possibilities of medical research. His contributions have been extraordinary.

Dr. Zerhouni developed new methods for imaging living tissues that are in use in hospitals around the nation. As a skilled administrator, he has demonstrated leadership and vision time and time again at Johns Hopkins. He revitalized the Medical School's Clinical Practice Association. He worked skillfully with scientists, business leaders and elected officials to create a thriving biotechnology park.

Most recently, he established the groundbreaking Institute for Cell Engineering. At this remarkable new facility, scientists are exploring the potential of stem cells to alleviate some of the most deadly diseases we face as a nation. The stem cell research conducted at the new Institute is already providing new insights into therapies for Parkinson's Disease, spinal injury, diabetes, and other serious illnesses.

In many ways, the story of NIH is also a story about endless possibilities. NIH research has developed therapies to free millions of Americans from the limitations of disease and disability so that they, too, can explore the endless possibilities of an active and productive life.

Dr. Zerhouni will become the first NIH Director in this new century of the life sciences. Never have the possibilities for NIH been greater. The NIH budget will increase to more than $27 billion this year. Those funds will support research and training in thousands of research institutions across the nation and around the world. Leading the NIH is an awesome responsibility that will determine the quality of life for millions and millions of Americans for many years to come.

NIH research ranges from studies of microscopic structures in living cells to investigations of patterns of disease in entire populations. NIH research not only gives us information about what keeps us healthy or makes us sick, but it reveals new insights into who we are as human beings.

The advances made by NIH research in just the first two years of this new century are extraordinary—and the future promises still greater wonders. Already in this century, NIH research has helped map the human genome. No less important than these basic genetic studies are recent findings from NIH scientists that structured lifestyle changes can significantly reduce the risk of diabetics, sparing millions of Americans from this deadly disease.

The impact of NIH research on human health is incalculable. Life expectancies have risen dramatically over the last century, and some scientists believe that the first human being to live to be a productive 150 year-old is already alive today.

Never before have the challenges for NIH been greater. The anthrax attacks of last fall taught the nation what many of us knew already—that the powerful techniques of modern biology can be used not only to heal but to harm. Just this week, the Brookings Institute published a risk assessment showing that a million Americans could die in a major biological attack.

NIH must provide the leadership required to develop new medical weapons in the battle against bioterrorism. I know that good progress is already being make in the race to develop better vaccines against smallpox, anthrax, and other dangerous pathogens.

I would also like to extend my thanks, and the thanks of the entire Senate to Dr. Ruth Kirschstein, who has served so effectively as Acting Director since the departure of Dr. Harold Varmus. She has served in this important position with dedication and skill, to the great benefit of NIH and the nation.

Earlier this week, our committee received Dr. Zerhouni's nomination papers from the President. A few days ago, we listened to him explain his vision for meeting the challenges and seizing the opportunities of this new century of the life sciences as NIH Director. Earlier today, our committee approved his nomination unanimously. I hope my Senate colleagues will confirm his nomination quickly. I wish every good future to Dr. Zerhouni, and

I look forward to working with him closely in the years to come.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

PRINTING OF AMENDMENT 3386

Mr. DASCHLE. I ask unanimous consent that the Daschle substitute amendment No. 3386 be printed.

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

CLERGY HOUSING ALLOWANCE CLARIFICATION ACT

Mr. DASCHLE. I ask unanimous consent the Finance Committee be discharged from further consideration and the Senate proceed to the immediate consideration of H.R. 4156.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4156) to amend the Internal Revenue Code of 1986 to clarify that the parsonage allowance exclusion is limited to the fair rental value of the property.

There being no objection, the Senate proceeded to consider the bill.

Mr. DASCHLE. I ask unanimous consent that the bill be read the third time, passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related thereto be printed in the RECORD.

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

The bill (H.R. 4156) was read the third time and passed.

NATIONAL CORRECTIONAL OFFICERS AND EMPLOYEES WEEK

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 365, S. Res. 255.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 255) to designate the week beginning May 5, 2002, as ''National Correctional Officers and Employees Week.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. DASCHLE. I ask unanimous consent the resolution and preamble be agreed to, en bloc, the motion to reconsider be laid upon the table, that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

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

The resolution (S. Res. 255) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 255

Whereas the operation of correctional facilities represents a crucial component of our criminal justice system;

Whereas correctional personnel play a vital role in protecting the rights of the public to be safeguarded from criminal activity;

Whereas correctional personnel are responsible for the care, custody, and dignity of the human beings charged to their care; and

Whereas correctional personnel work under demanding circumstances and face danger in their daily work lives: Now, therefore, be it

Resolved,

SECTION 1. DESIGNATION OF NATIONAL CORRECTIONAL OFFICERS AND EMPLOYEES WEEK.

That the Senate—

(1) designates the week beginning May 5, 2002, as ''National Correctional Officers and Employees Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

PROGRAM

Mr. DASCHLE. Mr. President, I will inform my colleagues we will be in session on Tuesday for debate only to address the trade legislation. Senators will be welcome to offer amendments. They will be welcome, of course, to talk about the bill and, of course, if they have other matters to address, they would be welcome to do that as well in morning business. But we will come in at 3 o'clock on Monday, primarily to address for debate purposes only the trade bill.

UNANIMOUS CONSENT AGREEMENT—H.R. 2646

Mr. DASCHLE. Mr. President, I ask unanimous consent that on Tuesday, May 7, at 9:30 a.m., the Senate proceed to the conference report to accompany the farm bill under the following limitations with the total time limit of 12 hours divided as follows: On Tuesday, May 7, there be 6 hours of debate equally divided under the control of the chairman and ranking member of the Agriculture Committee; further, I ask unanimous consent that on Wednesday May 8, there be 6 hours equally divided; and, finally, I ask unanimous consent that following the use or yielding back of that time on Wednesday, the Senate proceed to a vote on or in relation to the conference report without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, reserving the right to object—I will not object—let me withdraw the reservation and speak after we have gotten the agreement.

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

The minority leader.

Mr. LOTT. Mr. President, thank you for the recognition. I thank Senator DASCHLE for agreeing to this time.

Obviously, the farm bill is a very important issue for our country, for our trade, and for many farmers, as well as consumers who depend on agriculture in America.

There are a lot of concerns about this legislation. This is a very large piece of legislation. I think it is a 6-year program. It adds over $73 billion to farm programs, as well as not only the commodities but conservation and nutrition and food stamps. This is a huge bill.

I think having adequate time to discuss the conference report is important.

The ranking member on our side of the aisle, Senator LUGAR, has a number of concerns which he needs to point out.

I think this is a fair way to get it done. It does take away time that we could be spending on other bills but we cannot just ignore the support or the opposition to a bill of this magnitude.

All things considered, this is the best way to proceed.

Mr. DASCHLE. Mr. President, I will say one more time that I appreciate the help and leadership shown by the Republican leader in bringing this bill to the floor. I know sometimes you can't have everything you want. I wanted a shorter period of time, but we will live with this, and we will move on. I thank him for that.

I yield the floor.

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

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

ORDERS FOR MONDAY, MAY 6, 2002

Mr. DASCHLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 3 o'clock on Monday, May 6; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the trade bill.

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

PROGRAM

Mr. DASCHLE. Mr. President, on Monday, we will then be on the trade bill with no votes. As I said a moment ago, the bill will be open to amendment.

ADJOURNMENT UNTIL MONDAY, MAY 6, 2002, AT 3 P.M.

Mr. DASCHLE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate now stand in adjournment under the previous order.

There being no objection, the Senate, at 5:58 p.m., adjourned until Monday, May 6, 2002, at 3 p.m.

NOMINATIONS

Executive nominations received by the Senate May 2, 2002:

FEDERAL ENERGY REGULATORY COMMISSION

JOSEPH TIMOTHY KELLIHER, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE TERM EXPIRING JUNE 30, 2007, VICE LINDA KEY BREATHITT, TERM EXPIRING.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DONALD W. PITTS, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER IN THE UNITED STATES MARINE CORPS FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTION 531:

To be captain

WADE V. DELIBERTO, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT AS A PERMANENT LIMITED DUTY OFFICER IN THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5589:

To be lieutenant

MARC J. GLORIOSO, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be commander

JACK S PIERCE, 0000

To be lieutenant commander

BRUCE H BOYLE, 0000
KEVIN L CRABBE, 0000
TERRY C GORDON, 0000
BRENT D JOHNSON, 0000
ROBERT S LAWRENCE, 0000
FREDERICK A MCGUFFIN, 0000
EDWARD J NASH, 0000
SETH D PHILLIPS, 0000
CURTIS PRICE, 0000
GORDON D RITCHIE, 0000
PATRICK M STURM, 0000
THOMAS B WEBBER, 0000

CONFIRMATION

Executive nomination confirmed by the Senate May 2, 2002:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ELIAS ADAM ZERHOUNI, OF MARYLAND, TO BE DIRECTOR OF THE NATIONAL INSTITUTES OF HEALTH.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.